CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
SCO 147-148, SECTOR 17-C, CHANDIGARH-160017

SINGLE MEMBER BENCH
Court-II
Appeal No.ST/60776/2018-EX

(Arising out of Order-in-Appeal No.LUD-EXCUS-001-APP-905-18 dt.10.4.2018 passed by the CCE(Appeals), Chandigarh)

Date of hearing/Decision:06.09.2018

Simran International **Appellant**

Vs.
CCE, Ludhiana **Respondent**

Present for the Appellant: Shri Harvinder Singh, Advocate
Present for the Respondent: Shri A.K.Singh, AR

Coram: Hon'ble Mr.Devender Singh, Member (Technical)

FINAL ORDER NO. 62862/2018

PER: DEVENDER SINGH

The facts of the case are that the appellant are a manufacturer- exporter registered with the Department. They were issued a show cause notice dt.27.8.2015 for rejection of refund amounting to Rs.5,28,051/- under Notification No.42/12-ST dt.29.6.2012. The matter was adjudicated and the refund claim was rejected by the adjudicating authority vide Order-in-Original dt.12.4.2016. A corrigendum to the said Order-in-Original was issued by adjudicating authority on 3.6.2016. The appellant filed an appeal before the Commissioner (Appeals) on 1.8.2016. Their appeal was rejected by the first appellate authority on the ground that Order-in-Original dt.12.4.2016 was despatched under registered AD post and the registered letter should have been delivered within maximum period of 2-3 days. The Commissioner (Appeals), therefore, concluded that there was delay of more than 90 days in filing the appeal and it was outside the purview of the powers of the Commissioner (Appeals). Aggrieved from the same, the appellant have filed this appeal.

2. Ld. Advocate for the appellant submits that they did not receive Order-in-Original dt.12.4.2016 and on receipt of corrigendum dt.3.6.2016, they filed the appeal on 1.8.2016, which is within the limitation period. He also argued that the law is settled that when a corrigendum is issued to an Order-in-Original, the limitation has to be counted from the date of service of the corrigendum order. In this regard, he relied on the following judgments:-

1. Arihant Telecommunications vs. Union of India-2017 (4) TMI 387-Bombay High Court.
2. Pan Drugs Ltd. vs. Union of India-2016 (7) TMI 496- Gujarat High Court
3. Fast Track Tour & Travels vs. Union of India-2014 (2) TMI 90 Jharkhand High Court
4. Sheikh Safdar vs. CC, Nhava Sheva-2016 (12) TMI 1371-CESTAT, Mumbai

He, therefore, pleaded that the impugned order be set aside.

3. Ld. AR for the Revenue referred to para 8 of the order of Commissioner (Appeals) and argued that the appellant had received the impugned order and should have filed appeal in time. He also reiterated the other findings in the order of the Commissioner (Appeals).

4. Heard both sides and perused the record.

5. I find that the adjudicating authority issued a corrigendum dt.3.6.2016 to the Order-in-Original dt.12.4.2016 within two months from the date of Order-in-Original. It is settled law that the corrigendum is part and parcel of the order intended to be rectified and hence the period of filing appeal is to be reckoned from the date of corrigendum. In this regard, in similar set of facts, Hon'ble Bombay High Court in the case of Arihant Telecommunications (supra) has held below:-

> *"4. In the present case, the order-in-original was passed on 31-10-2012 and the appeal was filed on 27-2-2013. It would be seen that after the order was passed on 31-10-2012, there was some mistake in the order was noticed. Corrigendum was issued on 31-12-2012 for correcting the amount of penalty. Naturally the appeal period will have to be computed from the corrected date of the order as that is the order that would be executable. The said aspect is also considered by the Division Bench of Jharkhand High Court in the case of Fast Track Tour and Travels v. Union of India, reported in 2013 (295) E.L.T. 36 (Jhar.), wherein it is held that the limitation would be counted from the date of corrigendum."*

6. Similar view has been taken by the Hon'ble Gujarat High Court in the case of Pan Drugs (supra), Hon'ble Jharkhand High Court in the case of Fast Track Tour & Travels (supra) and by this Tribunal in the case of Sheikh Safdar (supra).

7. In view of the above settled position of law, the period of limitation in the present case, is to be computed from the corrected date of the order, which is 3.6.2016. By taking the date of corrigendum, the appeal is within the period of limitation. Considering the above, the impugned order is not sustainable and

the same is accordingly set aside. The matter is remanded back to the Commissioner (Appeals) to consider the appeal filed by the appellant on its merits.

8. The appeal is allowed by way of remand in the above terms.

(order dictated and pronounced in the court)

(DEVENDER SINGH)
MEMBER (TECHNICAL)

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