CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI

Appeal Nos.C/40078-40085/2016

[Arising out of Order-in-Appeal C.Cus. II No.902 to 909/2015 dt. 30.09.2015 passed by Commissioner of Customs (Appeals-II), Chennai]

Tinna Rubber & Infrastructure Ltd. Appellant

Versus

Commissioner of Customs, Chennai Respondent

Appearance :

Ms. M. Swarupa, Advocate
For the Appellant

Shri K. Veerabhadra Reddy, JC (AR)
For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing / decision : 21.05.2018

FINAL ORDER No. 41535-41542 / 2018

Per Bench

All these appeals since involving identical dispute, they are taken up for common disposal.

2. The common facts in these appeals are that appellants had, from time to time, imported tyre scrap cut into two or three pieces. These goods were intended to be used in the manufacture of Crumb Rubber Powder or Crumb Rubber Modified Bitumen used in road laying. At the point of import, appellant represented that additional duty of Customs equal to excise duty, namely, CVD, is not required to be paid on these imported consignments. Appellants were unable to process Bills of Entry in the EDI system with Nil CVD rate, hence they paid the CVD under protest and filed appeals against the assessments. However, the lower appellate authority in all these cases has rejected the appeals as having been filed beyond the prescribed period including period of condonation.

3. Today when the matter came up for hearing, on behalf of the appellants, Ld. Advocate Ms. Swarupa draws our attention to page 4 of the impugned order to point out that payment of duty was effected in respect of eight concerned Bills of Entry on different dates, hence the ‘relevant date’ for calculating the prescribed period for filing the appeals to the Commissioner (Appeals) will have to be reckoned from those dates. According to Ld. Advocate, appeals in respect of Bills of Entry filed in March 2015 were filed in 53 days from the date of payment of duty and hence these appeals were very much within the

prescribed period of 60 days within which appeals ought to have been filed. In respect of remaining Bills of Entry filed in April 2015, appeals had been filed 69 days from the relevant date, hence the 9 days delay could be condoned as per the provisions of Section 128 of the Customs Act, 1962. Hence the impugned orders rejecting the appeals as time barred are not just and proper and they require to be set aside. Ld. Advocate requests that the matter may be remanded to enable the Commissioner (Appeals) to re-examine the relevant dates of each appeal separately.

4. On the other hand, Ld. A.R Shri K. Veerabhadra Reddy supports the impugned orders.

5. Heard both sides. We find merit in the argument of the Ld. Advocate. The appeals for the purpose of Section 128 ibid should have been filed within a period of 60 days from the date of payment of duty in respect of these cases. There is also a further condonable period of 30 days provided in that section. From the arguments put forth by Ld. Advocate it appears *prima facie* that all these eight appeals had been filed before the Commissioner (Appeals) within this combined period of 90 days. This being so, the matter is required to be remanded back to lower appellate authority concerned to ascertain the veracity of the appellant's contentions with regard to

their having filed appeals within a maximum of 90 days from the 'relevant date' in each case. If these contentions are found to be correct, the appeals should be taken up for hearing and disposal on merits also keeping in mind the decision of the Hon'ble High Court of Delhi in their own case reported as *Tinna Rubber & Infrastructure Ltd. Vs UOI* - 2017 (353) ELT 161 (Del.). Appeals are allowed by way of remand.

(dictated and pronounced in court)

(Madhu Mohan Damodhar)	**(Sulekha Beevi C.S)**
Member (Technical)	**Member (Judicial)**

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