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

C/368, 369/2012

(Arising out of Order-in-Appeal C.Cus. No. 971-977/2012 dated 29.08.2012 passed by the Commissioner of Customs (Appeals), Chennai).

M/s. The Himalaya Drug Co. : Appellants

Vs.

CC (Port-Import), Chennai : Respondent

Appearance

Shri Dayananda K., Consultant
for the Appellant

Shri B. Balamurugan, AC (AR)
for the Respondent.

CORAM:

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of Hearing: **22.06.2018**
Date of Pronouncement:**09.07.2018**

FINAL ORDER No. **41960-41961/2018**

PER: P. DINESHA

These appeals are filed against the common order of the Commissioner of Customs (Appeals), Chennai dated 29.08.2012. In his order the Commissioner has rejected the appeals filed by the appellant as hit by limitation, ie., appeals having been filed beyond the stipulated period of 60 days. The Ld. Commissioner (Appeals) has further observed that the discretion to condone the delay could be exercised since the delay was within the condonable limits but however, the appellant having not filed any petition requesting for condonation of delay, the appeal was rejected without there being an order on merits.

2. The present appeals are filed by the assessee challenging interalia, that the action of the Commissioner (Appeals) in not condoning the delay was wrong; that it had requested for 15 days' time to file the petition for condonation; that the issue involved being that of classification, which fact has not been examined properly by the Commissioner (Appeals), etc.

3. During the course of hearing the Ld. Consultant Shri Dayananda. K appeared for the appellants and Ld. AR Shri B. Balamurugan, AC, appeared for the Revenue and we have heard both and considered the documents furnished.

4. It is the case of the appellant that the appellant was not aware of the Customs procedure and hence it had filed an appeal against the OIO before the Asst. Commissioner vide acknowledgement dated 08.06.2010. The appellant during the course of hearing has relied on the decision of *J.M Baxi & Co. Vs. GOI* - 2016 (336) ELT 285 (Mad.) and also the decision of the Hon'ble Supreme Court in the case of *M.P. Steel Corporation Vs. CCE* – 2015 (319) ELT 373 (SC) and also the decision of the

Hon’ble Supreme Court in the case of *Khamdhenu Ispat Limited Vs. CC* – 2017 (358) ELT 380 (Tribunal –Del.)., in his support for condoning the delay.

5. The discretion to condone the delay is a statutory power and is not a matter of right for the appellant to expect the delay to be condoned automatically, without there being at least a request in some form or the other. At the same time, judicial propriety demands that in the interest of justice a delay could be condoned even if there is a verbal request. The appellant being a reputed company, would necessarily be guided by able hands/consultants in all aspects of taxation etc., and it is therefore strange for such a reputed company to plead ignorance. Be that as it may, the minimum response that was expected, especially when the Commissioner (Appeals) points out the lack of an application for condonation, is to file one at the earliest. Ignorance, however, cannot continue beyond this point when the lower appellate authority has specifically flagged the issue. We therefore find it appropriate to put the assessee to terms. The assessee is directed to pay costs of Rs. 25,000/- for each appeal, that is a total of Rs. 50,000/- for both the appeals for restoration of the matter back to the Commissioner (Appeals) for denovo proceedings. The assessee shall complete the formalities of making a request for condonation of delay in writing but however, the Commissioner (Appeals) after accepting the same, shall pass an appropriate order on merits in

accordance with law, after affording reasonable opportunities to the assessee. All issues are left open.

6. The appeals are thus allowed by way of remand to the Commissioner (Appeals) after setting aside the OIAs dated 29.08.2012.

(Order pronounced in the open Court on 09.07.2018)

(P. DINESHA) MEMBER (JUDICIAL)	(MADHU MOHAN DAMODHAR) MEMBER (TECHNICAL)

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