

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

**Application No.C/COD/41987/2018
Appeal No.C/42412/2018**

[Arising out of Order-in-Appeal No.213/2015 dt. 27.02.2015 passed by
Commissioner of Customs (Appeals-II), Chennai]

A.K. Paper Products Pvt. Ltd.

Appellant

Versus

The Commissioner of Customs,
Chennai

Respondent

Appearance :

Shri Hari Radhakrishnan, Advocate
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 / decision : 01.01.2019

FINAL ORDER No. 40030 / 2019

Per Madhu Mohan Damodhar

The Miscellaneous Application No.C/COD/41987/2018 has been filed by
the appellant for condonation of delay of 1233 days in filing the appeal on the
following grounds :

“It is submitted that aggrieved by the impugned Order-in-Appeal dated 27.02.2015 and also aggrieved by the subsequent communication dated 12.04.2016 of the lower adjudicating authority, the Appellant had filed the writ petition bearing number 18828 and 18829/2016 before the Hon’ble High Court of Madras. The Hon’ble High Court, vide order dated 11.09.2018 directed the appellant to approach the Hon’ble Tribunal. The Appellant had filed the Writ petition in June, 2016, immediately after the receipt of the communication dated 12.04.2016 from the lower adjudicating authority. The time spent before the Hon’ble High Court would necessarily have to be excluded in light of the provisions of The Limitation Act.”

2.1 When the matter came up for hearing, on behalf of the appellant, Ld.

Advocate Shri Hari Radhakrishnan submitted the following chronology of events :

S.No.	DATE	EVENTS
1	03.04.2012 18.06.2012 28.09.2012	The Appellant filed bills of entry no.6445028/03.04.2012, 7141127 / 18.06.2012 and 8072900 / 28.09.2012 at Chennai Customs for import of “Carbon Less Paper Black Image” under CTH 48099000.
2	27.03.2013	The Assistant Commissioner of Customs (Group 2), Respondent has issued a show cause notice in F.No.TA.112177 / 19.03.2013 IAD/CRA dated 27.03.2013 to the Appellant, denying the benefit of notification No.46/2011 (Custom) dated 01.06.2011 claimed under Sl.No.553.
3	26.11.2014	Order-in-Original No.03/2014 dated 26.11.2014 was passed by the Deputy Commissioner of Customs (Group 2).
4	27.02.2015	Common Order-in-Appeal C.Cus. No.212/2015 dated 27.02.2015 were passed by the Commissioner of Customs (Appeals), Chennai,

		wherein he directed the lower authorities to seek suitable clarification from the Board regarding this issue and if any clarification comes to extend the benefit of notification then same should be given to the appellant along with consequential relief.
5	26.11.2015	Commissioner of Customs, Chennai II Commissionerate, sent a letter to the Board asking for clarification.
6	12.04.2016	The Deputy Commissioner of Customs sent a communication to the appellant to pay the demand amount along with interest immediately, by relying the clarification received from CBEC (TRU), New Delhi regarding legality of benefit under notification no.46/2011-Customs dated 01.06.2011 to CTH 4809 in F.No.341/30/2012-TRU dated 22.12.2015.
7	01.06.2016	The Appellant filed writ petition No.W.P.No.18828 of 2016 challenging the Order-in-Appeal No.212-215/2015 dated 27.02.2015, confirming the Order-in-Original No.3/2014 dated 26.11.2014 passed by the Deputy Commissioner of Customs (Group 2) was filed before the Hon'ble High Court of Madras.
8	01.06.2016	Appellant also filed Writ petition No.W.P.No.18829 of 2016 challenging the communication dated 12.04.2016 issued by the Deputy Commissioner of Customs (Group 2), was filed before the Hon'ble High Court of Madras.
9	11.09.2018	Order dated 11.09.2018 was passed by the Hon'ble High Court of Madras in W.P.No.18828 of 2016 by granting liberty to the appellant to file an appeal to the Tribunal.
10	30.10.2018	The Appellant has filed the present appeal before this Hon'ble Tribunal.

2.2 Ld. Advocate also furnished the following dates and events :

S.No.	DATE	EVENTS
(i)	16.03.2015	Appellant received the impugned order.
(ii)	15.04.2016	Communication received from the lower adjudicating authority regarding clarification received from Board.
(iii)	02.06.2016	Writ petition filed before High Court challenging the OIA and communication dt. 15.04.2016 received from the adjudicating authority
(iv)	11.09.2018	Date of order passed by the Hon'ble High Court

2.3 Ld. Advocate further submits that 857 days, from 01.06.2016 to 04.10.2018 was spent before the Hon'ble High Court of Madras. If the said period is excluded the actual delay would only be 378 days. Ld.Advocate submits that for these reasons, delay in filing the appeal may be condoned.

3. On the other hand, Ld. A.R Shri B. Balamurugan submits that the Commissioner (Appeals) order was basically a remand order directing the lower authority to seek suitable clarification from the Board regarding the point of dispute and if any clarification comes to extend the benefit of notification, then the same should be given to the appellants. He submits that pursuant to this appeal, the clarification was sought for by Deputy Commissioner and the clarification received from Board was conveyed to the appellant against which only they had gone to the High Court. Hence the appeal against the subsequent decision conveyed by Deputy Commissioner will lie to Commissioner (Appeals) and not before CESTAT.

4.1 Heard both sides. After hearing both sides, we find that the Ld. A.R is correct in his assertions. The order of Commissioner (Appeals) dated 27.02.2015 had disposed of the appeal of appellant by directing the lower authority, as pointed out by Ld. A.R, to seek suitable clarification from the Board. That was done, albeit after nine months from the said order, on 26.11.2015. The clarification from the Board was issued in F.No.341/30/2012-TRU on 22.12.2015. The Deputy Commissioner thereon vide a letter dt. 12.04.2016 had conveyed the said clarification and directed the appellant to pay up the demand amount along with interest immediately.

4.2 In the event, we find that the remand instructions in Commissioner (Appeals) dt. 27.02.2015 sought to be appealed against by the appellant, has already been acted upon by the authority below and a decision inter alia directing to pay up the demanded amount along with interest has been thereafter issued by the Deputy Commissioner.

4.3 This being so, appellant cannot have any grievance against the order of the Commissioner (Appeals) since that has been acted upon. This appeal has in fact been filed after that event. Any grievance then would only be in consequence against the decision / order conveyed by the Deputy Commissioner on 12.04.2016. As correctly pointed out by the Ld. A.R, the decision / order of Deputy Commissioner, being an officer lower in rank than a Principal Commissioner of Customs, will necessarily have to be appealed against to the Commissioner (Appeals) as per the provisions of Section 128 of the Customs Act, and not to the Appellate Tribunal as envisaged in Section 129 *ibid*. In any

case, appellant did not have any proximate grievance to the order of Commissioner (Appeal) dt. 27.02.2015.

4.4 Viewed in this light, the order dated 27.02.2015 would cease to an impugned order and instead the order / decision that now may be appealable is only the order / decision conveyed dt. 12.04.2016 issued from F.No.341/30/2012–TRU by the Deputy Commissioner of Customs (Group-II), which will lie only to the Commissioner (Appeals).

4.5 It is also pertinent to note that the the Hon'ble High Court of Madras vide their order dt. 11.09.2018 in W.P. No.18828/2016 and W.M.P. No.16435 of 2016 held as under :

“The writ petitioner is at liberty to approach the Appellate authorities and thereafter, before the Appellate Tribunal constituted under Section 129 (A) of the Customs Act, 1962 for the purpose of redressing his grievances in the manner known to law.”

4.6 The appropriate appellate authority for the aforesaid mentioned order / decision of Deputy Commissioner dated 12.04.2016 will only be the Commissioner (Appeals) and appellant cannot jump the gun by filing an appeal, before this Tribunal. As the instant appeal itself cannot lie before this Tribunal, there will obviously be no point in considering the application for condonation of delay. In the circumstances, the COD application is dismissed. In consequence, appeal is also dismissed being not maintainable.

(Operative part of the order pronounced in court)

(P. Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

gs

Application No.C/COD/41987/2018
Appeal No.C/42412/2018

Application No.C/COD/41987/2018
Appeal No.C/42412/2018