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

**Appeal No. C/42175/2013**

(Arising out of Order-in-Appeal C. Cus. No.1036/2013 dated 26.7.2013 passed by the Commissioner of Customs (Appeals), Chennai)

M/s. Symbio Generics Appellant

Vs.

Commissioner of Customs, Chennai Respondent

Appearance

Shri A.K. Jayaraj, Advocate for the Appellant
Shri Jagan Babu, AC (AR) for the Respondent

**<u>CORAM</u>**

**Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)**

Date of Hearing / Decision: **07.01.2019**

Final Order No. **40023 / 2019**

The appellant is aggrieved by the rejection of refund claim on the ground of being time-barred.

2. On behalf of the appellant, ld. counsel Shri A.K. Jayaraj submitted that the appellant filed refund claim for refund of SAD as per Notification No.102/2007-Cus. dated 14.9.2007. The refund claim ought to have been filed before the Air Cargo Commissionerate and instead they filed before the Sea Cargo Commissionerate. After receipt of the refund claim, the concerned officer had endorsed the date of receipt. Thereafter,

on 12.11.2012, the said refund claim was transferred from the Sea Cargo Commissionerate to Air Cargo Commissionerate for processing the refund. The Assistant Commissioner (Refunds), Air Cargo Commissionerate vide order dated 27.12.2012 held that the refund claim ought to have been filed on or before 26.5.2012 and rejected the same observing that it is time-barred. In appeal, Commissioner (Appeals) upheld the same. He adverted to page 26 of the appeal memorandum in which the copy of the refund claim is enclosed by the appellant. The ld. Counsel submitted that the appellant had filed the refund claim within the due date although there was an error in noting the address of the proper Commissionerate. The Sea Cargo Commissionerate has kept the refund application without returning or rejecting the refund claim for almost six months and only with much delay has transferred the refund claim to the Air Cargo Commissionerate. The delay if any in transferring the refund claim to the Air Cargo Commissionerate is on the part of the department for which the right of the appellant to claim refund cannot be taken away.

3. The ld. AR Shri Jagan Babu supported the findings in the impugned order. He adverted to the refund claim submitted by the appellant and argued that the appellant had not given the correct address of the Commissionerate. Both Air Cargo Commissionerate as well as Sea Cargo Commissionerate was mentioned in the address which has caused the confusion. The

same has been forwarded by the Sea Cargo Commissionerate on the request of the appellant and therefore the delay if any is due to the act of the appellant in requesting to transfer the refund claim after the due date for filing the refund claim.

4. Heard both sides.

5. The issue is with regard to the rejection of refund claim on the ground of being time-barred.

6. On perusal of the refund claim enclosed in the appeal memorandum, it is seen that the appellant has filed the refund on 24.5.2012. The due date for filing the refund claim is 26.5.2012. The letter dated 12.11.2012 issued by the Deputy Commissioner of Customs (Refunds), Sea Cargo Commissionerate to Air Cargo Commissionerate indicates that the Sea Cargo Commissionerate has received the refund claim on 24.5.2012. They have also assigned number 1662 to the refund claim. It is seen that the Sea Cargo Commissionerate has slept over the refund claim for almost six months without rejecting or returning the same to the appellant for want of jurisdiction. On receipt of the refund claim, which is filed before wrong jurisdiction, the officer concerned ought to have intimated the appellant to file before the correct jurisdiction. The department having slept over the refund claim for almost six months and thereafter rejecting the same alleging that it is time-barred is unjustified. On appreciation of the facts, I find that the appellant has filed the refund claim within the due date

before the department. When it has been transferred to the correct Commissionerate (Air Cargo Commissionerate), the Assistant Commissioner of Customs (Refunds) ought to have considered the same on merits. Therefore, the impugned order rejecting the refund claim on the ground of being time-barred is set aside and the matter is remanded to the Assistant Commissioner (Refunds), Air Cargo Commissionerate for processing the refund as per law within a period of four weeks from the date of receipt of this order.

7. The impugned order is set aside and the appeal is allowed by way of remand in the above terms.

(Dictated and pronounced in open court)

(**Sulekha Beevi C.S.**)
Member (Judicial)

Rex