

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. III

Customs Miscellaneous Application No.40288 of 2019

(on behalf of Appellant)

and

Customs Appeal No.41232 of 2019

(Arising out of Order-in-Appeal C.Cus.No.631/2014 dt. 09.04.2014 passed by Commissioner of Customs (Appeals), Chennai]

M/s.Sri Steels

Old No.220/1, Linghi Chetty Street
Shastri Nagar, Adyar,
Chennai 600 020.

Appellant

VERSUS

Commissioner of Customs (Refunds),

Chennai Sea Customs
Custom House,
60, Rajaji Salai
Chennai 600 001.

Respondent

APPEARANCE :

Ms. G.Shanmugam, Consultant for the Appellant

Ms. T. Usha Devi, DC (AR) for the Respondent

CORAM :

HON'BLE MS. SULEKHA BEEVI, C.S., MEMBER (JUDICIAL)

DATE OF HEARING : 16.08.2019

DATE OF DECISION : 16.08.2019

FINAL ORDER No. 41024 / 2019

The above COD application has been filed by the appellant seeking to condone the delay of about 4½ years in filing the appeal.

2. The Ld. Consultant, Shri G. Shanmugam appeared and argued the matter. He submitted that the issue is with respect to rejection of a refund claim filed by the appellant. The appellant had filed an appeal before the Commissioner (Appeals) against the order of rejection of refund by the Asst. Commissioner (Refund Sanctioning Authority). The appellant did not receive any intimation as to whether the matter was referred to the call book. They also did not receive any copy of the order. Later on, on 29.01.2019, the appellant filed a RTI application to the department seeking as to whether any Order-in-Appeal has been passed and if so, to provide copy of the same along with details and mode of despatch. A reply was received on 16.02.2019 where the appellant was provided with the copy of the OIA. After receiving the copy of the OIA, the appellant filed this appeal within 60 days. Therefore, there is actually no delay in filing the appeal when computed from the date of communication of the order. He further added that though the appellant requested for information as per RTI Act as to the details of despatch, the department has not provided the same. The despatch number has not been provided in reply to the RTI query. He therefore prayed that there was no wilful delay on the part of the appellant in filing the appeal and the same may be condoned.

3. Ld.A.R, Ms.T. Usha Devi has strongly opposed the application. She adverted to the last but one paragraph of OIA and submitted that on 26.03.2014, the Proprietor of the appellant firm Shri Vinod Kumar was given an opportunity of personal hearing. Thus, when the appellant

have attended the personal hearing, they ought to have followed up the outcome of the appeal. It is only on 29.01.2019 that they have filed a RTI query requesting for details of the order-in-appeal passed. There is much delay on the part of the appellant in filing this appeal and for which sufficient cause has not been explained by the appellant. She further submitted that department in reply to the RTI application has furnished all the information as requested in the query submitted by the appellant. If aggrieved by such information supplied by the department, appellant ought to have filed appeal before the First Appellate Authority under the RTI Act which has not been done. Department has also given details with regard to date of despatch as well as mode of despatch. The order-in-appeal was despatched on 11.04.2014 through speed post. Since appellant has not put forward any reasons for condoning such huge delay of about 4 ½ years, the COD application deserves to be dismissed.

4. Heard both sides.

5. On perusal of the COD application, I see that appellant has not even mentioned the number of days of delay in the application. From the date of Order-in-Appeal, it is calculated to be about 4 ½ years. Ld.Consultant for the appellant has submitted that the delay occurred because the OIA was not communicated to them. On perusal of the OIA, as rightly pointed out by Ld. A.R, the Proprietor of the appellant firm Shri Vinod Kumar had attended the personal hearing on

26.03.2014. Thereafter, the Proprietor has not enquired about the outcome of their appeal. It is only on 29.01.2019 that the very same Proprietor Shri Vinod Kumar has filed the RTI application requesting for details of the OIA. In reply to the RTI query, the department has furnished the number and date of the OIA and also provided a copy of the same. The date of despatch is mentioned as 11.04.2014 and the mode of despatch is also shown as 'Speed Post'. The appellant has not preferred any appeal against the said reply furnished by the CPIO of the department under the RTI Act. Taking these facts into consideration, I am of the view that there has been inordinate delay on the part of the appellant to file the appeal. The plea put forward by the appellant that department did not inform them as to whether the matter was referred to call book etc. is not reflected anywhere in the records. This is a mere assumption made by the appellant.

6. From the discussions made above, I am of the view that there is huge delay in filing the appeal which remains unexplained by the appellant. COD application is dismissed. Consequently, the appeal is also dismissed.

(dictated and pronounced in court)

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

