

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

REGIONAL BENCH - COURT NO. – III

**Customs Misc. Application (COD) No. 40659/2019
and
Customs Appeal No. 41776/2019**

(Arising out of Order-in-Original No. 58964/2017 dated 12.10.2017 passed by the
Commissioner of Customs, Chennai – VIII)

M/s. Sea Swan Shipping & Logistics

65/31, 3rd Floor, SMJ Moore Plaza
Moore Street, Muthialpet
Chennai – 600 013.

Appellant

Vs.

Commissioner of Customs

Chennai VIII Commissionerate
Custom House
60, Rajaji Salai
Chennai – 600 001.

Respondent

APPEARANCE:

Shri N. Viswanathan, Advocate for the Appellant
Ms. T. Usha Devi, DC (AR) for the Respondent

CORAM

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

Final Order No. **40545 / 2020**

Date of Hearing: 26.02.2020
Date of Decision: 26.02.2020

The above application for condonation of delay is filed by the appellant seeking to condone the delay of 764 days in filing the appeal.

2. The Id. counsel for appellant Shri N. Viswanathan appeared for the appellant. That proceedings were initiated against the applicant / appellant who is a Customs Broker alleging violation of Regulation

11(a) and (n) of CBLR, 2013. The proceedings culminated in passing Order-in-Original dated 12.10.2017, whereby penalty of Rs.50,000/- was imposed. The appellant then opted to pay the penalty and not to take up the matter in appeal. However, later the appellant wanted to extend his business to other ports. He apprehended that he would not receive a no objection certificate due to the penalty imposed. On obtaining legal advice, the appellant has thereafter preferred the present appeal. It is argued by the learned counsel that no penalty can be imposed when the inquiry report is in favour of the Customs Broker. That the issue as to whether penalty can be imposed when the inquiry report is in favour of the Customs broker is decided by the Hon'ble High Court of Delhi in the case of HM Logistics Pvt. Ltd. Vs. Commissioner of Customs (General) – 2016 (334) ELT 262 (Del.). It is submitted by him that in the present case as the inquiry report is in favour of the appellant, the penalty ought not to have been imposed. That appellant has a good case on merits. Therefore, the appellant ought to be given a chance to contest the case.

3. The Id. counsel relied upon the decision of the Hon'ble Supreme Court in the case of N. Balakrishnan Vs. M. Krishnamurthy – 2008 (228) ELT 162 (SC) to argue that the length of delay is immaterial and if the applicant has given plausible explanation for the delay, the same has to be accepted. It is also emphasized by the counsel that when there is no deliberate act on the part of applicant for not availing the remedy of appeal, the delay ought to be condoned. In the present case, the delay was not caused due to any dilatory tactics on the part of the appellant. He prayed that a liberal view may be

taken so as to condone the delay. It is also prayed that the application may be considered by imposing cost on the appellant.

4. The Id. AR Ms. T. Usha Devi opposed the application. She submitted that the appellant has not opted to file the appeal during the period prescribed as per the statute for filing appeal. The delay caused can be condoned only if sufficient cause is made out. In the present case, no sufficient cause is established by the appellant. The decision of the Hon'ble Supreme Court in the case of N. Balakrishnan Vs. M. Krishnamurthy (supra) cannot be relied upon in the present case since the facts in the said appeal are different. The delay occurred as counsel failed to appear and to inform the party. In the present case, appellant has opted not to file the appeal and paid the penalty. He cannot then contend that there is delay to file appeal.

5. It is also argued by her that it cannot be said that the livelihood of the appellant is affected by the imposition of penalty. The appellant has not adduced any evidence to show that any request for extending business to other ports were made or has been rejected. Even if such request is rejected, the appellant has remedy by way of filing appeal to the higher authorities. The appellant has not availed the remedy of filing appeal during the prescribed time limit and admittedly opted not to avail the remedy, there is no cause made out to condone such huge delay. She prayed that the COD application may be dismissed.

6. Heard both sides.

7. The appellant has filed this application seeking condonation of 764 days in filing the appeal. The impugned order is passed on 12.10.2017 imposing penalty of Rs.50,000/- on the appellant. The

finding made in the order is that the appellant violated Regulation 11(a) and (n) of CBLR, 2013. It is submitted by the counsel that the appellant initially had opted to file appeal since he did not want to pursue the matter in litigation. Later, when he intended to expand his business to other ports, he apprehends that he would not be able to get no objection certificate for obtaining extension of license to other ports. Though it is sated that the appellant apprehends that he would not be able to obtain NOC, there is no evidence brought forth before me that he made any request and the same was rejected. It is merely his apprehension. He is still working as a Customs Broker. Further, as rightly pointed out by Id. AR, that if any order is passed rejecting the request for extension of license, the appellant has a remedy to file an appeal against such order. This ground raised by the appellant does not find favour with me.

8. The main contention put forward by the learned counsel is that the decision of the Hon'ble High Court of Delhi in the case of HM Logistics Pvt. Ltd. (supra) is in favour of the Customs Broker and would be applicable to the impugned order and for this reason the penalty imposed is not sustainable. It is settled position of law that merely because a decision which is in favour come to the notice, it cannot be a ground to seek condonation of delay. The appellant has failed to promptly avail the appeal remedy. Though law of limitation is not meant to destroy the right of parties, it cannot favour those who are sleeping. In the present case, the appellant has deliberately opted not to file appeal initially. Thereafter, this appeal is filed only on the advice given that the penalty can be set aside as per the decision of the Hon'ble High Court of Delhi. As discussed earlier,

there is no evidence to show that the livelihood of appellant is affected or his intention to expand business is interrupted.

9. I find that the appellant has not been able to put forward sufficient cause to condone the delay. Further, the delay is more than two years. I find that the application for condonation of delay is without merits. The same is dismissed. Consequently, the appeal also gets dismissed.

(Dictated and pronounced in open court)

(SULEKHA BEEVI C.S.)
Member (Judicial)