

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

REGIONAL BENCH – COURT NO. IV

Custom Appeal Nos.40231-40232 of 2020-SM

[Arising out of Order-in-Appeal Sea Port.Cus II Nos.221 & 222/2020, dated 31.01.2020 passed by Commissioner of Customs (Appeals), Chennai]

Hari Babu,
No.63/23, Jeevarathinam Salai,
Tondiarpet,
Chennai 600 081.

Appellant

VERSUS

Commissioner of Customs,
Chennai II Commissionerate,
Customs House,
No.60, Rajaji Salai,
Chennai 600 001.

Respondent

Appearance:

Shri N. Viswanathan, Advocate for the Appellant
Ms. T. Usha Devi, Authorized Representative for the Respondent

CORAM : HON'BLE Ms. Sulekha Beevi C.S, MEMBER (JUDICIAL)

Date of Hearing : 26.04.2021
Date of Decision : 26.04.2021

FINAL ORDER Nos. 41476-41477 / 2021

Brief facts are that the appellant filed the above appeals before the Commissioner (Appeals) against the order passed by the original authority. The appeals were dismissed on the ground of being time-barred. Aggrieved by such order, the appellant is now before the Tribunal.

2. On behalf of the appellant, the learned counsel Shri N. Viswanathan opened his arguments by adverting to para 11 of the impugned order. He submitted that the lower authority has computed

the period of limitation from the date of dispatch of the original order. The date on which the impugned order is served upon the appellant has to be taken for computing the period of 60 days of filing the appeal. He submitted that the Order-in-Original was dispatched by department 15.02.2019 and as per the instructions given by his client, it was received on 18.02.2019. The appeal was filed on 22.04.2019. 20th and 21st April, 2019 being holidays [Sat. & Sun.], the appeal was filed on the next day. If computed from the date of service of the impugned order, there will be a delay of one day only. Even if computed from the date of dispatch as done by the Commissioner (Appeals), the delay will be less than 30 days and within the condonable period prescribed in the statute. The Commissioner (Appeals) did not inform the appellant with regard to the issue of delay and had heard the appeal on merits. The representative appearing for the appellant was not put to notice with regard to the issue of delay. If such defect was brought to the notice of the appellant, they would definitely have filed an application for condonation of delay. After hearing the appeal on merits and without pointing out the defect of delay, the order has been passed – “*rejected the appeals as time-barred*”. He prayed for remand of the matter, granting liberty to the appellant to file an application for condonation of delay.

3. The learned Authorised Representative Ms. T. Usha Devi appeared and argued for the department. She supported the findings in the impugned order.

4. Heard both sides.

5. On perusal of the impugned order, it is seen that the Commissioner (Appeals) has computed the period of limitation from the date of dispatch of the Order-in-Original . As per section 128 Clause (1) of Customs Act, 1962, the person aggrieved by the decision/order has to file the appeal within 60 days from the date of **communication** to him of such decision or order. The word used is “communication”. It implies that the Order-in-Original has to be put to the knowledge of the aggrieved person. Mere dispatch of the order

cannot be communication of the decision/order. Further, section 153 speaks about **service of order/decision**. The word used is 'service' of the order/decision and not dispatch of the order/decision. The words "service" as well as "communication" has to be construed to mean that such order is served or put to the knowledge of the aggrieved person. Further, even if the date of dispatch is reckoned for computing 60 days, the delay is less than 30 days and within the condonable period prescribed in the statute. When there is a defect in filing the appeal which can be rectified, the same has to be pointed out to the appellant before the appeal is heard on merits. The Appellant cannot be deprived of the remedy of appeal in a hyper-technical manner. Such ways adopted to increase disposals is deprecated.

6. From the foregoing, I find that the disposal of appeals on the ground of time bar cannot sustain. The impugned orders are set aside. The appeals are remanded to the Commissioner (Appeals), who shall give an opportunity to the appellant to file an application for condonation of delay. After considering such application, the appeal should be heard on merits. Ordered accordingly.

(Dictated and pronounced in open court)

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

Ksr

ksr