IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL CHENNAI

REGIONAL BENCH – COURT NO. III

Customs Appeal No. 40335 of 2020

(Arising out of Order-in-Appeal Seaport C.Cus.No. II/725/2020 dated 18.05.2020 passed by the Commissioner of Customs (Appeals-II), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

Shri R. Ravichandran, Director **: Appellant**
M/s. Blessings Cargo Care Private Limited,
No. 26/33, Venugopalapuram Main Street,
Venugopalapuram, Nanganallur, Chennai – 600 061

VERSUS

The Commissioner of Customs **: Respondent**
Chennai-II Commissionerate,
Custom House, No. 60, Rajai Salai, Chennai – 600 001

APPEARANCE:

Shri G. Derrick Sam, Advocate for the Appellant

Ms. Sridevi Taritla, Authorized Representative (A.R.) for the Respondent

CORAM:

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

FINAL ORDER NO. 41483 / 2021

DATE OF HEARING: 28.04.2021

DATE OF DECISION: 28.04.2021

Order :

The appellant is a Custom House Agent and had filed Bill-of-Entry on behalf of M/s. Compuage Infocom Ltd. for imports made in 2009/2010.

2. Later, appellant was issued a Show Cause Notice *inter alia* alleging wrong classification of the goods imported by them, and for imposing penalties. After adjudication, the Original Authority vide Order-in-Original No. 20284/2013 dated 18.02.2013 rejected the

classification adopted by the importer and confirmed the differential duty along with penalties. Penalty was imposed upon the appellant also, who is the Custom House Agent. Against such order, they filed appeal before the Commissioner (Appeals) who rejected the same on the ground of limitation. Hence, this appeal.

3.1 On behalf of the appellant, Learned Counsel Shri G. Derrick Sam appeared and argued the matter. It is the case of the appellant that they did not come to know about the Order passed against them since it was served on their earlier address furnished by them to the Department. The appellant vide letter dated 03.07.2012, which was received by the Department on 12.07.2012, had informed that they had shifted their office from the existing address to the new premises. However, the Order-in-Original was issued to their earlier address and the appellant did not receive the copy of the said Order-in-Original so as to file an appeal within time. They came to know only when an alert was raised in the EDI system in 2019. On coming to know of the Order-in-Original on 24.04.2019, they applied for a copy and filed the appeal before the Commissioner (Appeals) on 23.05.2019. The Commissioner (Appeals) vide Order impugned herein dismissed the appeal as time-barred.

3.2 The Learned Counsel for the appellant relied on the letter dated 03.07.2012, received by the Department on 12.07.2012, wherein the appellant had informed that they were shifting their office from the existing address to the new premises. The appellant has also produced the Note wherein the concerned Administrative Officer of the Custom House, Chennai has ordered for verification of the new address furnished by the appellant. The mobile number as well as the landline number of the appellant is also noted in this document.

3.3 It is argued by the Learned Counsel for the appellant that even though the appellant had intimated the Department about the change of address, the Order-in-Original was issued to their earlier address and for this reason, the appellant did not receive the copy of the Order-in-Original. That they came to know about the Order-in-Original only in 2019 and therefore, the appeal was filed within time after coming to know about the Order-in-Original.

3.4 He prayed that the matter may be remanded to the Commissioner (Appeals) for hearing on merits of the case.

4. Learned Authorized Representative Ms. Sridevi Taritla appearing for the respondent supported the findings in the impugned order. She submitted that the appellant ought to have been vigilant to follow the outcome of the proceedings before the Original Authority. That the delay is very huge and therefore, the contentions raised by the appellant cannot be accepted.

5. Heard both sides.

6. The appellant has furnished the letter dated 03.07.2012 to establish that they have intimated their change of address to the Department. The Note given by the Administrative Officer of the Custom House, Chennai also shows that there were instructions given for verification of the new address of the appellant. There is nothing to disbelieve these documents. After intimating the change of address in July 2012, the Department has issued the Order-in-Original in February 2013 to the old address of the appellant.

7. As per Section 128 as well as Section 153 of the Customs Act, 1962, any decision/order has to be communicated/served upon the person to whom it is addressed. In the instant case, there is no actual 'service' or 'communication' of the decision/order upon the appellant. Therefore, the date on which the appellant has come to know about the Order-in-Original has to be

considered for computing the period of limitation. When computed from such date, the appeal is filed within the time of sixty days. Thus, there is no delay in filing the appeal.

8. From the discussions made above, I hold that the rejection of the appeal on the ground of time-bar cannot sustain. The impugned order is set aside.

9. The matter is remanded to the Commissioner (Appeals), who shall decide the case on merits.

(Dictated and pronounced in open court)

Sd/-
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

Sdd