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

C/41799,41800/2016 – SM

[Arising out of Order-in-Appeal C.CUS II No.626 & 627/2016, dated 29.06.2016 passed by the Commissioner of Customs (Appeals-II), Chennai]

M/s. GREAVES COTTON LTD. APPELLANT

Versus

COMMISSIONER OF CUSTOMS, CHENNAI – II RESPONDENT

Appearance:

For the Appellant Shri V. Hari Kumar, Adv.
For the Respondent Shri A. Cletus, ADC

CORAM:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)

Date of hearing/decision **09-05-2017**

FINAL ORDER NOs. 40698 & 40699/2017

Per Archana Wadhwa:

Both the appeals are disposed of by a common order as they arise out of the same of order of Commissioner (Appeals) vide which he has dismissed the appeals as time-barred.

2. On going through the impugned order, I find that the appellate authority has observed that since the appeals are being filed after 926 days and 842 days from the date of dispatch of the impugned order and in as much as there is no jurisdiction vested to the appellate authority to condone such a huge delay, the appeals have to be rejected as time-barred.

3. On the other hand, the appellants have taken a categorical stand that the orders impugned before Commissioner (Appeals) were not received by them and it is only after an RTI application, the

Customs, Excise & Service Tax Appellate Tribunal department forwarded the copies of the impugned orders and as such, if the date of receipt of the order is taken into consideration, the appeals were filed well within the period of limitation.

4. While there can be no dispute about the fact that Commissioner (Appeals) cannot condone the delay beyond a period of 30 days as envisaged in section 128 (1) of the Customs Act, 1962 and as held by the Hon'ble Supreme Court in the case of *Singh Enterprises Vs Commissioner of Central Excise, Jamshedpur* reported in *2008 (221) E.L.T.163 (S.C.)* but the fact remains that the period of limitation has to be counted from the date of receipt of the order by the assessee. In the impugned order, the Commissioner (Appeals) has taken the date of dispatch of the order as the relevant date. There is no discussion on the date of receipt. Accordingly, I deem it fit to set aside the impugned order and remand the matter to Commissioner (Appeals) to verify the appellant's claim that the impugned order were actually received by them on 01.03.2016. The appellant would also be given opportunity to establish the actual date of receipt of the impugned orders.

5. In view of the above, the impugned order are set aside and both the appeals are remanded for fresh decision in the light of the observations made as above.

(Dictated and pronounced in open court)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

ksr
15-05-2017

Customs, Excise & Service Tax Appellate Tribunal

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