

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

REGIONAL BENCH – COURT NO. III

Customs Appeal No.40762 of 2013

(Arising out of Order-in-Appeal No.C.Cus.24/2013 dated 15.01.2013 passed by Commissioner of Customs (Appeals), Chennai)

Commissioner of Customs (Exports),

Customs House,
 60, Rajaji Salai,
 Chennai – 600 001.

...Appellant

VERSUS

M/s. VCR Timber Enterprises,

No.125, GST Road,
 Opp. ESI Hospitals, Chromepet,
 Chennai – 600 044.

...Respondent

And

Customs Appeal No.40778 of 2013

(Arising out of Order-in-Appeal No.C.Cus.81/2013 dated 24.01.2013 passed by Commissioner of Customs (Appeals), Chennai)

Commissioner of Customs (Exports),

Customs House,
 60, Rajaji Salai,
 Chennai – 600 001.

...Appellant

VERSUS

M/s. Mehndipur Balaji Impex (P) Ltd.,

51-56, Sitram Market,
 Shakkar Patti,
 Kanpur – 208 001.

...Respondent

APPEARANCE:

Ms. Anandalakshmi Ganeshram, Superintendent (A.R)
 For the Appellant

None
 For the Respondent

CORAM:**HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)****HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)****DATE OF HEARING : 13.03.2023****DATE OF PRONOUNCEMENT: 22.03.2023****FINAL ORDER NOS. 40183-40184 / 2023****Per Bench**

1. The above appeals are filed by the Department against the order passed by the Commissioner (Appeals) who dismissed the appeals of the department on the ground of limitation. The issue being same both these appeals are disposed of by this common order.

2. Appeal No.C/40762/2013 is taken as the reference case to explain the facts. The respondent namely M/s. VCR Timber Enterprises, Chennai filed refund claim in terms of Notification No.102/2007 C-Cus dated 14.09.2007 for refund of 4% additional duty of Customs paid by them in respect of goods imported and subsequently sold. The refund sanctioning authority vide Order-in-Original dated 26.02.2010 sanctioned the refund claim. The Department filed appeal before the Commissioner (Appeals) against this order of sanctioning the refund. The Commissioner (Appeals) *vide* order impugned herein, observed that the review order as required under Sub Section (2) of Section 129 D of Customs Act, 1962 has

been passed beyond the period of three months as envisaged in Sub Section (3) of Section 129 D of Customs Act, 1962, and dismissed the appeal as time barred.

3. In appeal No.C/40778/2013 the refund sanctioning authority *vide* order dated 08.03.2010 sanctioned the refund claim. The Department filed appeal before the Commissioner (Appeals) against this order of sanctioning the refund. The Commissioner (Appeals) *vide* order impugned herein, observed that the review order as required under Sub Section (2) of Section 129 D of Customs Act, 1962 has been passed by the Reviewing Authority beyond the period of three months as envisaged in Sub Section (3) of Section 129 D of Act *ibid*, and dismissed the appeal as time barred. Aggrieved by such orders the Department is now before the Tribunal.

4. The learned AR Ms. G. Anandalakshmi appeared and argued on behalf of the Department. It is submitted by the learned AR that in appeal No.C/40762/2013 the Order-in-Original dated 26.02.2010 was received by the reviewing authority only on 11.03.2010. As per Sub Section (3) of Section 129 D, the review order has to be passed within three months from the date of communication of the order. The reviewing authority passed the review orders on 09.06.2010 and when computed from the date of receipt of order, the review order is passed well within three months. Instead of computing the period of three months from the date of receipt of the Order-in-Original by the reviewing authority, the Commissioner (Appeals) has computed the period of three months from the date of the Order-in-Original. The learned AR submitted that the seal of the Review

Cell along with date impressed on the Order-in-Original will establish that the copy of the Order-in-Original was received by the reviewing authority only on 11.03.2010. The Commissioner (Appeals) has erroneously computed the period of three months from the date of Order-in-Original (26.02.2010) and held that there is a delay of approximately 5 days in passing the review order.

5. In appeal No.C/40778/2013 the Order-in-Original dated 08.03.2010 was received by the reviewing authority only on 16.03.2010. The review order has been passed on 15.06.2010 which is well within three months as prescribed under Sub-Section 3 of Section 129 D of Customs Act, 1962. To support her submission, she adverted to the seal of Review Cell along with date which is affixed on the Order-in-Original and argued that the seal would show that the Order-in-Original was received by the reviewing authority only on 16.03.2010. The learned AR submitted that the Commissioner (Appeals) has erred in dismissing the appeals as time barred.

6. None appeared for the respondents in both appeals. The appeals were taken up for disposal after hearing learned AR and perusing the appeal records.

7. As per Sub Section (2) of Section 129 D of Customs Act, 1962, the review authority has to examine the decision or order passed by adjudicating authority so as to satisfy the legality or propriety of such decision or order and has to pass a review order directing the department

to prefer an appeal before the Commissioner (Appeals). Sub Section (3) of Section 129 D provides that every such order under Subsection (2) shall be made within a period of three months from the date of communication of the decision or order passed by the adjudicating authority. For better appreciation Sub Section (2) and (3) of Section 129 D of Customs Act, 1962 are noticed as under:

"Section-129D-

(2) The [Principal Commissioner of Customs or Commissioner of Customs] may, of his own motion, call for and examine the record of any proceeding in which an adjudicating authority subordinate to him has passed any decision or order under this Act for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct [such authority or any officer of Customs subordinate to him] to apply to the [Commissioner (Appeals)] for the determination of such points arising out of the decision or order as may be specified by the [Principal Commissioner of Customs or Commissioner of Customs] in his order.

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(3) Every order under sub-section (1) or sub-section (2), as the case may be, shall be made within a period of three months from the date of communication of the decision or order of the adjudicating authority."

8. In both these appeals it is argued that when the period of three months is computed from the date of receiving the Order-in-Original by the reviewing authority, the review orders passed are well within time as prescribed under Sub Section (3) of 129 D of Customs Act, 1962. From the Section as noticed above it can be seen that the period of three months has to be computed from the date of communication of the decision or order passed by the adjudicating authority. In both appeals the learned AR

has argued that the seal affixed on the Order-in-Original would show the date on which the Order-in-Original was received by the Reviewing Authority and that Commissioner (Appeals) ought not to have computed the period of three months from the date of passing of order by adjudicating authority (26.02.2010/08.03.2010).

9. At this juncture it is necessary to refer to discussions in the impugned orders made by Commissioner (Appeals). In Para 5 and 6 of appeal C/40778/2013, the Commissioner (Appeals) has noted the reasons for computing the period of three months from the date of the Order-in-Original. The Commissioner (Appeals) has noted that the Department did not provide any evidence to establish on which date the Order-in-Original was received by the reviewing authority. It is stated that in spite of repeated request to furnish the original case files to check the date on which the Order-in-Original was received by the reviewing authority, the Department did not respond to the requests. It is sufficiently brought out from the discussions, that there was no evidence available before the Commissioner (Appeals) as to the date on which the Order-in-Original was received by the reviewing authority. The discussion made in Para 5 and 6 reads as under:

"5. From the appeal filed before me, I find that the O-in-O was reviewed and order was passed by the Jurisdictional Commissioner of Customs beyond the stipulated period for such review as mandated under the Customs Act, 1962. The delay by which the review order was passed by the reviewing authority was 6 days approximately. The above delay was noticed based on the facts and figures available as such from the appeal papers filed before me by the department. In order to find out whether actually any delay exist in passing the review order, the original case files were called for from the department yielded no result. The

repeated request in calling for the case filed proved futile.

6. The question of limitation was decided by me on the above basis with the available date, which appears latest among the date of passing of the order, dispatch date of the order or the date on which the job number/ O-in-O number was generated. I am totally not satisfied the way the department responds for the appeal filed by them. The way they filed the appeal and treated the same makes a mockery of this forum. The reviewing authorities at least could have lessened my burden by mentioning the exact date of receipt of the original orders in their review orders. Such an action by the reviewing authorities would have helped me to take a proper and just decision on merits instead of stumbling on the limitation aspect."

10. The very same discussion in verbatim is made by the Commissioner (Appeals) in Para 6 and 7 of impugned order in appeal C/40762/2013. Being a repetition it is not worthwhile to reproduce it again.

11. On going through the discussions made by Commissioner (Appeals) in the above stated paragraphs, the strong inference that can be drawn is that there was no evidence available to establish as to the date on which the Order-in-Original was received by Reviewing Cell and apparently there is delay in passing the Review Order. The Commissioner (Appeals) has taken all effort to call for the files to check the date of receiving the order by the Reviewing Authority so as to avoid dismissing the appeals as time barred. His efforts did not see any result and had to dismiss the appeals as time barred.

12. We have perused the review order dated 09.06.2010 and 15.06.2010. Surprisingly, in both review order, the date of receiving the

Order-in-Original by the Reviewing Cell is not mentioned. When Sub Section (3) of Section 129 D prescribes a time frame of three months from the date of receiving the order passed by adjudicating authority, it is necessary and would be convenient to mention it in the review order.

13. We are able to see that these appeals are filed before the Tribunal with copies of Orders-in Original having a date seal of the Review Cell, on the first page of the order itself. We are unable to understand, if the seal was present, why the Commissioner (Appeals) had not taken note of such a clear seal affixed on the Order-in-Original. What prevented the department from producing it before the Commissioner (Appeals) even after repeated request. How did the seal appear for the purpose of filing an appeal before the Tribunal. The Bench raised these doubts to the learned AR as to what is the reason that the Commissioner (Appeals) was not able to take notice of such seal if it was present on the order while considering the appeal. The learned AR was not able to reply.

14. We also observe that the strongly worded anguish expressed by the learned Commissioner (Appeals) in the impugned order should have been taken very seriously by the Learned Committee of Chief Commissioners. They should have enquired into the reasons why the department did not respond with promptness to repeated requests by the Learned Commissioner (Appeals) calling for the original case file from the department. If they have done so and were satisfied by the enquiry that there was only a genuine misunderstanding of facts or that there was an explainable delay in submitting the files as requested by the Learned

Commissioner (Appeals) and that the Orders-in-Original were actually reviewed in time, they should have mentioned their findings while filing their appeal. It may have helped us to appreciate the situation better. On the converse if it was found that the Commissioner (Appeals) was correct they could have avoided filing an appeal thus saving a lot of unproductive work.

15. In the facts and circumstances of the matter we are strongly of the opinion that the seal seen affixed on the photo copy of the Orders-in-Original found in the annexure to the appeal filed by the department, purporting to show the date of receipt of the order in the review section, to be suspect. Moreover we have no reason to disbelieve the Commissioner (Appeals) that no evidence was placed before him as to the date on which the Orders-in-Original was received by the reviewing authority, in spite of repeated requests. Revenues actions should be beyond suspicion. Hence the strong inference that can be drawn is that there was no evidence available to establish as to the date on which the order-in-original was received by the Review Cell and apparently there was a delay in passing the review order.

16. We would at this stage like to caution all parties concerned that any interference in the course of administration of justice is an offence punishable under law. If a forged or fabricated document is filed in court to get some relief the same amounts to interference with the administration of justice. Sub section (8) of section 129C of the Customs Act, 1962 reads as under:

"SECTION 129C. Procedure of Appellate Tribunal. —

... ..

(8) Any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code (45 of 1860), and the Appellate Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)."

Section 193 of the Indian Penal Code is reproduced as below:

"Section 193 in The Indian Penal Code

193. Punishment for false evidence.—Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine, and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine."

17. We are of the opinion that such incidents should not occur in future and considering that similar appeals are being noticed from time to time, we therefore direct the Registry to issue a copy of this order to the jurisdictional Principal Chief Commissioner who is directed to issue instructions to the Committee of Commissioners, so that appeals of this nature are filed with due seriousness and after satisfying themselves about the truth of the matter, as discussed above. We say so, because the Tribunal cannot be taken as a forum to do deceptive acts. We also direct the Principal Chief Commissioner to issue instructions so as to include the date of receiving the Order-in-Original by the review cell in the Review Order itself.

18. As discussed, we cannot accept the contention of the department that the orders were received by the reviewing authority only on 11.3.2010 / 16.3.2010. We find no grounds to interfere with the observations and findings of the Commissioner (Appeals).

19. In the result, the impugned orders are sustained. The appeals filed by the department are dismissed.

(Pronounced in the open court on 22.03.2023)

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

Sd/-
(M. AJIT KUMAR)
MEMBER (TECHNICAL)

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