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

Customs Appeal No.40497 of 2013 & C/CO/ 40712/2017

(Arising out of Order-in-Appeal C. Cus. No. 1400 to 1442/2012 dated 29.11.2012 passed by the Commissioner of Customs (Appeals), Chennai)

Commissioner of Customs (Exports) **Appellant**
Custom House, 60, Rajaji Salai
Chennai – 600 001.

Vs.

M/s. Tarajyot Polymers Ltd. **Respondent**
Archana Complex
37/12-14th Cross
Lalbagh Road
Bangalore – 560 027.

With

(ii) Appeal No. C/40499/2013 – Intex Technologies India Ltd.
(iii) Appeal No. C/40519/2013 – Gomraj and Sons
(iv) Appeal No. C/40523/2013 – Padma Agencies
(Arising out of Order-in-Appeal C. Cus. No. 1400 to 1442/2012 dated 29.11.2012 passed by the Commissioner of Customs (Appeals), Chennai)

APPEARANCE:

Shri S. Balakumar, AC (AR) for Appellant
Shri B.N. Guaraj, Advocate for the Respondent No. 1
Shri Ramesh Arvind, Advocate for Respondent No. 2
Shri K. Subash, Advocate for Respondent No. 3
Ms. K. Nancy, Advocate for Respondent No. 4
Shri S. Balakumar, AC (AR) for the Respondent

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

Final Order Nos. **42484-42487 / 2021**

Date of Hearing: 23.12.2021
Date of Decision: 23.12.2021

Brief facts are that the respondents had filed refund claim of SAD in terms of Notification No. 102/2007-Cus dated 14.9.2007 as amended by Notification No. 93/2008 dated

1.8.2008. After due process of law, the original authority allowed the refund claim. Against such order, the department filed appeals before the Commissioner (Appeals). After hearing the appeals, the Commissioner (Appeals) observed that the appeals filed by the department are time-barred for the reason that the review order has been passed beyond the time limit of three months as stipulated under sec. 129(D)(3) of the Customs Act, 1962. The Commissioner (Appeals) ordered for return of the appeals to the department to resubmit the same with documentary evidence to establish the date on which the review authority has received the order passed by adjudicating authority and actual date of passing the review order.

2. Today, when the matter came up for hearing, the learned AR Shri S. Balakumar appeared and argued for the department. He reiterated the grounds of appeal. He submitted that the Commissioner (Appeals) has returned all these appeals to the department on the ground of insufficient document. However, in the interest of justice and fairness, he has given an option to the department to furnish documentary evidence to overcome the limitation aspect and then resubmit the appeals. This direction of the Commissioner (Appeals) is without sanction of law as there is no provision for giving such direction under the Customs Act, 1962. It is submitted by him that sub-section (3) of section 129D of the Customs Act, 1962 prescribes the time-limit for reviewing the order by the reviewing authority which is three months from the date of communication of the decision or order of the

adjudicating authority. Therefore, the time-limit has to be computed from the date of receipt of the order by the reviewing authority and not from the date of issue of order. The Commissioner (Appeals) has taken the date of hearing of order, date of dispatch of order etc. and reckoned that the review order has been passed beyond the time limit of three months. He therefore prayed that the appeals may be allowed.

3. The learned counsel Shri B.N. Gururaj, Ms. K. Nancy, Shri Ganesh Aravindh and Shri J. Subash appeared and argued for the respondents. The learned counsel Shri B.N. Gururaj led the arguments on behalf of others. He adverted to para 3 of the impugned order wherein the Commissioner (Appeals) has incorporated a Table showing the date of the order passed by the adjudicating authority, the date of review order as well as the delay for passing the review order. He submitted that even if computed from the date of the order passed by the adjudicating authority or the date of issuance of the order, there is a delay caused in passing the review order. Although several chances were given to the department, they were not able to furnish any details with regard to the date of receipt of the order by the reviewing authority. For this reason, the Commissioner (Appeals) has held that the appeals are time-barred. He ought to have dismissed the appeals on this ground. However, the Commissioner (Appeals) has returned the appeals to the department for resubmitting after obtaining details with regard to date of receipt of the order by the reviewing authority. The

department ought to have resubmitted the appeals with necessary documents showing the date of receipt of the order by the reviewing authority. Instead without furnishing any documents to establish that the review order has been filed within three months from the date of receipt of the order passed by the adjudicating authority, these appeals are filed before the Tribunal. That all these appeals are time barred. He prayed that the appeals may be dismissed.

4. Heard both sides.

5. Although the entire batch of cases are listed today, only counsels appearing for respondents in the above appeals have appeared and argued the matter.

6. The learned counsel has drawn attention to the Table in para 3 of the impugned order. The said Table reads as under:-

Respondent	OIO No.	OIO Date / Issued Date	Date of review order	Delay in days
Ramachandra Art Silk Yarn Trading	10068/2009	10.11.2009	24.2.2010	15
Mirc Electronics Ltd	10000/2009	30.10.2009/ 11.11.2009	11.3.2020	31
Shri Ram Impex India Pvt. Ltd.	9789/2009	08.10.2009/ 14.10.2009	22.2.2010	39
Tarajyot Polymers	10203/2009	3.12.2009	12.3.2010	10
Sha Abhaychand Banaji	10121/2009	25.11.2009	12.3.2010	16
Intex Technologies (India) Ltd	9922/2009	28.10.2009/ 04.11.2009	17.3.2010	41
Jailaxmi Centre	10110/2009	23.11.2009	5.3.2010	11
Sri Palani Andavar Export	10124/2009	25.11.2009	16.4.2010	51
Regent Plaster Boards & Products P Ltd.	10812/2010	28.01.2010	6.5.2010	10
Associate Lumbers P Ltd	10903/2010	05.02.2010	1.6.2010	27
Sri Ganesh Timber Traders	11074/2010	19.02.2010/ 22.10.2010	1.6.2010	13
Sri Bhagawan Timbers	11454/2010	18.03.2010 25.03.2010	12.7.2010	18

Sidharth Sales Agencies	11426/2010	23.03.2010/ 24.03.2010	14.7.2010	21
Pannalal Mahesh Chandra Jewellers	11500/2010	23.03.2010/ 30.03.2010	6.7.2010	7
Pannalal Mahesh Chandra Jewellers	11674/2010	07.04.2010/ 09.04.2010	14.7.2010	6
Shri Maneesh Traders	10840/2010	29.01.2010/ 01.02.2010	19.7.2010	80
Pannalal Mahesh Chandra Jewellers	11650/2010	07.04.2010/ 09.04.2010	14.7.2010	7
Enn Dee Granites & Stone P Ltd	11428/2010	22.03.2010/ 24.03.2010	16.7.2010	23
VCR Timber Enterprises	11459/2010	24.03.2010/ 25.03.2010	9.7.2010	15
V.K.Patel & Co.	11494/2010	23.03.2010/ 30.03.2010	16.7.2010	17
Shankar Vijay Saw Mill	11538/2010	29.03.2010/ 1.4.2010	16.7.2010	16
Ambica Agencies	11830/2010	19.04.2010/ 20.04.2010	29.7.2010	10
S.Ganesh & Nagendra Co.	11732/2010	29.03.2010/ 13.04.2010	4.8.2010	23
Caterpillar India P Ltd	11860/2010	22.03.2010/ 22.04.2010	10.8.2010	20
Venus Welds	11950/2010	24.03.2010/ 03.05.2010	23.8.2010	21
Million Papier P Ltd.	12012/2010	29.01.2010/ 10.05/2010	25.8.2010	16
Gomraj & Sons	12589/2010	06/08.2010/ 10/08/2010	15.11.2010	6
Shri Ram Impex India Pvt. Ltd.	12825/2010	30.08.2010/ 07.09/2010	13.12.2010	7
Trendz Paper & Stationers (India) P	13236/2010	30.09.2010/ 21.10.2010	30.9.2010 / 21.10.2010	Nil/01/2011
Thermoking India P Ltd.	14047/2010	20.12.2010/ 7.1.2011	20.12.2010 / 7.1.2010	19.4.2011
Gebin Water Management System P Ltd.	15993/2011	05.05.2011/ 18.5.2011	8.5.2011 / 18.5.2011	26.8.2011
Transworld Wood P Ltd.	16022/2011	19.4.2011	19.4.2011	29.8.2011
Jayaraj Intl. P Ltd.	16061/2011	24.05.2011/ 26.05.2011	24.5.2011 / 26.5.2011	6.9.2011
Padma Agencies	16215/2011	01.06.2011/ 08.06.2011	1.6.2011 / 8.6.2011	14.9.2011
Sree Sumangala Metals & Industries	16164/2011	31.05.2011	31.5.2011	22.9.2011
Doosan Infracore India P Ltd.	16275/2011	7.6.11/ 10.6.2011	7.6.11 / 10.6.2011	27.9.2011
Speciality Paper & Boards P Ltd.	16447/2011	22.6.11/ 30.06.2011	22.6.2011 / 30.6.2011	10.10.2011
BALAJI YARN TRADING CO	17020/2011	15.7.2011/ 4.8.2011	15.7.2011 / 4.8.2011	16.11.2011
SRI HARI IMPEX	16986/2011	12.7.11/ 03.08.2011	12.7.2011 / 6.8.2011	16.11.2011
S & T ENGINEERS P LTD	17138/2011	12.7.2011/ 16.8.2011	12.7.2011 / 16.8.2011	23.11.2011

SOUTH INDIA GLASS IMPEX	17152/2011	15.7.2011 16.8.2011	15.7.2011 / 16.8.2011	23.11.2011
SRI MURALI KRISHNA CO	16434/2011	27.6.11/ 30.06.2011	27.6.2011 / 30.6.2011	27.10.2011
Kodak India P Ltd	10439/2009	11.12.2009/ 31.12.2009	11.12.2009 / 31.12.2009	Nil/04/2010

7. From the above Table, it can be seen that there is much delay in passing the review order. As per sub-section (3) of section 129D of the Customs Act, 1962, review order has to be passed within three months from the date of receipt or the communication of the order passed by the adjudicating authority. The Commissioner (Appeals) has granted several chances to the department to furnish details with regard to the date of receipt of the order passed by the adjudicating authority. In fact, the date of order of adjudicating authority itself is not furnished in many orders. The department has failed to comply with the directions passed by the Commissioner (Appeals) and thereupon he had no other way but to dispose of the appeals on the ground of limitation. However, the Commissioner (Appeals) instead of dismissing the appeals on limitation has given a further chance to the department to resubmit the appeals after obtaining the details with regard to the date of receipt of order by the reviewing authority. The said discussion is as under:-

> *"4. On scrutiny of the orders in original by LAA and the subsequent review orders by the jurisdictional Commissioner, find the following discrepancies:-*
>
> *a) In many of the Order in Originals date of passing of the order or issuance of the order was not mentioned.*

b) If the date of passing of the order is mentioned there is no mention on the date of issuance

c) The LAA passed the order on certain dates and subsequently after an unexplained delay the job number and the Order in Original was generated.

d) Invariably date of receipt of the order by the review cell was not indicated anywhere.

e) In the review orders also the reviewing authority did not make any mention of the date on which either he received the file for reviewing or the date of receipt of the Order in Original by the review cell.

f) There was a huge gap between the date of signing of the order by the LAA and even the order date.

g) The question of limitation was decided by me on the above basis with the available dates, which appears latest among the date of passing of the order, dispatch date of the order or the date on which the job number / OIO number was generated. Delay less than 5 days also was not taken into consideration while deciding the limitation aspect as it could be a reason attributable to the delays on transit.

5. Apart from that in two appeals viz. No. 29 and 43, the Reviewing Authority did not affix the date of his signature. Review order although mentions the month and year yet the date is conspicuously absent. In the case of appeal at Sl. No. 29, the date of issue i.e. 21.10.2010 is taken into cognizance. Going by that the last date would be 20.1.2011. Therefore, the appeal has to be treated as improperly filed. As to the appeal mentioned at Sl. No. 43, the date of issue viz. 31.12.2009 is taken into cognizance and accordingly the last date is found out to be 31.3.2010 whereas the Review Order shows the month as April 2010. Therefore, since the last date is over by March itself, the Review Order becomes time-barred.

6. Absence of documentary proof provided by the department has led to this avoidable perplexity. 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 mockery of this forum. The reviewing authorities at least should have lessened my burden by mentioning the exact date of receipt of the original orders in their Review orders. Such action by the reviewing authorities would have

> *helped me to take up proper and just decision on merits instead of stumbling on the limitation aspect. Many of the respondents have promptly pointed out this feel, I am totally let down by the department in these appeals before the respondents. Hope in future the department will take appropriate measures to avoid such a situation where the respondents cannot raise a finger and fault the department. The only solace I find in these department appeals are that the original authority had filed the appeals in time (within one month) from the date of review orders."*

8. From the discussions made by the Commissioner (Appeals) in the above paragraphs, it is explicit that the department has not been able to furnish any details as to the date of receipt of order by the reviewing authority. This Tribunal had also granted several adjournments to the department to obtain these details. Today, when the matter came up for hearing, ld. AR has not been able to place any such details with regard to the date of receipt of the order by the reviewing authority. On such score, I have no hesitation to conclude that the review order passed by the department is beyond the time-limit prescribed under sub-section (3) of section 129D of the Customs Act, 1962 and therefore the appeals filed before the Commissioner (Appeals) are time-barred.

9. In the result, these appeals are dismissed as being without any merits. The cross-objection filed by the respondent also stands disposed of.

(Dictated in open court)

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

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