

**CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH, COURT NO. IV

Customs Condonation of Application No. 50741 of 2019
(on behalf of appellant)
in
Appeal No. 52170 of 2019

[Arising out of the Order-in-Original No. SKS/COMMR/ACE/04/2019 dated 31/01/2019 passed by The Commissioner of Customs, Air Cargo (Export), New Customs House, New Delhi.]

Shri Amanullah

3 B, 70/02, Ahan-e-Illahi Apartments,
Zakir Nagar (Jamia Nagar), New Friends Colony,
New Delhi – 110 025.

Appellant

VERSUS

Commissioner of Customs (General)

Air Cargo (Export), New Customs House,
New Delhi – 110 037.

Respondent

Appearance

Shri V.S. Negi, Advocate – for the appellant.

S/Shri Rakesh Kumar and Chandan Kumar Jain, Authorized
Representative (DRs) – for the Respondent.

CORAM: HON'BLE SHRI C.L. MAHAR, MEMBER (TECHNICAL)
HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

FINAL ORDER NO. 50148/2020

DATE OF HEARING : 08/01/2020.

DATE OF DECISION: 08/01/2020.

RACHNA GUPTA :-

Arguments upon application seeking condonation of delay of 110 days heard. Learned Counsel for the appellant/applicant has impressed upon para 3 of the application while submitting a sufficient cause for the aforesaid delay. The said para reads as follows :-

"that since the appellant was put to extra financial burden by the exporter due to their misfeasance, the appellant was pursuing with

the exporter to get the appellant compensated in value. The supplier had filed Writ Petition No. 2826/2019 against the said order-in-original No. SKS/COMMR/ACE/04/2019 dated 10/05/2019 before Hon'ble Delhi High Court for re export/re sale of the goods which is still pending and finally the exporter has reached to amicable settlement with the appellant and has agreed to withdraw the said Writ Petition on 16/09/2019, the next date of hearing. The above events has resulted in delay of 110 days in filing the present appeal".

2. The reason mentioned therein is impressed upon to be sufficient cause of the delay. The learned Counsel also explained the extent of financial burden as has rather been caused due to said delay. The same is accordingly prayed to be condoned. Learned Departmental Representative while rebutting the said submission stated that the reason quoted is not at all sufficient to explain the delay of as many as 110 days. It is brought to the notice that the writ-petition which has been taken shelter for the purpose was not even the petition of the appellant nor of any of the co-noticees. The request of condonation of delay based on the said writ-petition is prayed to be rejected. The application is accordingly rejected.

3. After hearing both the parties, we are of the opinion as follows :-

"Admittedly the order which has been challenged in the impugned appeal was announced on 30 January 2019. Admittedly the same was received by the appellant on 10 February 2019. In view of said admission it is apparent that the period to file the impugned appeal stands expired on 11 May 2019. Now coming to the reason quoted as sufficient cause for the delay of 110 days in filing the appeal, we observe that the only reason quoted is pendency of writ-petition No. 2826/2019 being filed before Hon'ble High Court of Delhi. Apparently and admittedly the said writ-petition was filed on 10 May 2019 that is just one day prior the date of expiry of period of limitation available to the present applicant to file the impugned appeal. The subsequent period taken by the writ-petition before the Hon'ble High Court therefore cannot a criteria for holding the said

reason to be a sufficient cause. The application is miserably silent about any other reason for huge delay of 110 days.

4. Otherwise also, we observe that the writ-petition was filed by one Shri Stanley Fernandes. The said petitioner though was consignor but apparently he is not appellant nor as is apparently the co-noticee of the appellant in the impugned show cause notice No. 3007 dated 07 February 2018. Also there is no order been passed against him as is apparent from the impugned order dated 30 January 2019. For this reason also the pendency of said writ-petition does not seem to extend any benefit to the present applicant who is none but the importer and the proposed allegation of mis-declaration on his part that too to the extent of importing 43020 pieces of memory card serve 4 GB and 8 GB quantity under the garb of three battery UPS, is not available to him.

5. In the given circumstances and the confirmation of the proposal of confiscation and the imposition of penalty upon the appellant, we are not inclined to accept the reason quoted to be a sufficient cause. More so, for the reason that the order under challenge also given the importer an opportunity for paying redemption fine. The applicant is miserably silent about seeking the said option. Seen from any angle, the reason mentioned by the applicant is held to not to be the sufficient cause to explain the 110 days delay. Accordingly, the Condonation of Delay is declined. Application therefore stand dismissed. Consequent thereto the appeal also stands dismissed.

(Dictated and pronounced in open court.)

(C.L. Mahar)
Member (Technical)

(Rachna Gupta)
Member (Judicial)