CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Customs Appeal No. 50777 of 2020 [SM]

[Arising out of Order-in-Appeal No.17 (SM) CUS/JPR/2020 dated 28.02.2020 passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur]

M/s. Synergy Steels Ltd. **...Appellant**
Plot No.2 & 5, Matsya Industial Area,
Alwar - 301030

VERSUS

Commissioner of Customs **...Respondent**
NCR Building, Statue Circle,
Jaipur-302005

APPEARANCE:

Mr. Mohit Gohlyan, Advocate for the Appellant
Mr. Nagendra Yadav, Authorized Representative for the Respondent

Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING/DECISION:19.08.2021

FINAL ORDER No. 51796/2021

RACHNA GUPTA

Order in Appeal No.17/2020 dated 28 February, 2020 has been assailed before this Tribunal vide which the appeal against the OIO has been rejected on the ground of limitation.

2. I have heard Shri Mohit Gohlyan, learned Counsel fort he appellant and Shri Nagendra Yadav, learned Authorized Representative for the Department.

3. It is submitted on behalf of the appellant that the issue involved is about refund of excess basic customs duty as was deposited by him, accordingly, has good merits for this claim to have been allowed in favour of appellant. However, the claim has been rejected by Original Adjudicating Authority without appreciation of the relevant facts and the Appellate Authority has rejected the same on the ground of limitation, despite that Commissioner (Appeals) has power to condone the delay of 30 days. It is impressed upon that the present appeal though could not be filed within sixty days as required by the statute but the appeal was filed within next one month for which the ld. Commissioner (Appeals) is empowered to condone the delay the continuous non-availability of the appellant due to unavoidable circumstances, during said period has been the sufficient reason for the delay. But Commissioner (Appeals) has totally ignored the said submission. Also there has been no justification for not exercising the said discretion. Accordingly the order is prayed to be set aside and appeal is prayed to be allowed.

4. To rebut these contentions, learned D.R. has mentioned that there has been repeated delay apparent on part of the appellant as the claim of refund was also filed beyond a period of one year. Appeal before Commissioner (Appeals) was not filed within the statutory period. No reasonable justification has been rendered by the appellant explaining the said period of delay. Hence, there is

no infirmity in the order of Commissioner (Appeals) while rejecting the appeal on the ground of limitation. The appeal in hand is accordingly prayed to be dismissed.

5. After hearing the rival contentions and perusing the record, it is observed and hold as follows:-

The appellant have filed a refund claim for the excess basic custom duty as was against Bill of Entry dated 23rd December, 2017 but the same was proposed to be rejected vide SCN No. 133 of 4th May, 2019. The said proposal has been rejected vide OIO dated 2nd September, 2019. The appeal thereof was filed before Commissioner (Appeals) on 29th November, 2019. No doubt the appeal has been filed beyond the period of 60 days as is required under Section 35 & 128 of Central Excise Act, 1962 but the said provisions itself empowers the Commissioner (Appeals) to condone the delay of 30 days. The appeal in hand, apparently, has been filed within the said period of 30 days over and above the initial period of 60 days.

6. Ld. Commissioner (Appeals) in para 7 of Order under challenge has specifically recorded that the appellant has mentioned certain unavoidable reasons which restrained him from filing the appeal in time. However, it is observed that no circumstance which prevented the timely filing of appeal was given. To my opinion, the Commissioner (Appeals) has taken a hyper-technical approach as far as the pleas of limitation are concerned. He has failed to exercise the discretion provided to him under the statute. Mentioning of unavoidable circumstance is opined to be a sufficient reason for not meeting the time limit in

filing the appeal which is otherwise within the scope of condonable limit. Law has been settled that adjudication on merits has to be preferred instead of rejecting on the technical issues as that of time, unless and until there is an apparent delay that too either with malafide intent or negligence or lack of due diligence. In the present case, none of the circumstances are apparent. The learned Counsel for the appellant has in addition impressed upon having a good case on merits. Without reflecting into merit I take my support from the decision referred, namely, **Mullaji Prints Pvt. Ltd. Vs. CCE, Customs, Surat reported as 2004 (165) ELT 542 (Tri.-Mumbai)** wherein it has been held that when the contention of appellants is such that they got a good case on merits non-condonation of delay may result in injustice to them. Otherwise also learned Apex Court has always taken liberal view in condoning delay.

7. Based upon the said discussion, I feel present to be a fit case where learned Commissioner (Appeals) could have exercised the discretion provided to him under the statute. I, accordingly, hereby set aside the order by remanding it back with the directions to the Commissioner (Appeals) to adjudicate the same on merits. Consequent thereto, the appeal stands allowed by way of remand.

[Dictated and pronounced in the open Court]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Anita