IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Customs Appeal No. 50147, 50462-50463 /2016

[Arising out of Order-In-Appeal No.CC(A) CUS/D-II/ICDEXP-1088-15-16 dated 26.10.2015, CC(A) CUS/D-II/ICDEXP-1335-1336-15-16 dated 23.12.2015 both passed by Commissioner of Customs ICD, Export, TKD, New Delhi]

M/s. Magppie International Ltd. **Appellants**

Vs.

Commissioner of Customs **Respondent**
ICD Export, TKD, New Delhi

Appearance:
Shri Rajat Dosi, Advocate for the Appellants
Shri Govind Dixit, DR for the Respondent

CORAM:
Hon'ble Ms Archana Wadhwa, Member (Judicial)
Hon'ble Mr. B Ravichandran, Member (Technical)

Date of Hearing/ Decision: 01.03.2017

FINAL ORDER NO . 52235-52237 /2017

Per Archana Wadhwa:

After hearing both the sides duly represented by Shri Rajat Dosi, learned Advocate appearing for the appellant and Shri Govind Dixit, learned DR appearing for the Reenue, we find that appellate authority rejected the appeals on the point of limitation as having been filed beyond the time period allowed under law, as also on merits.

2. As regards time bar, we note that the appellant had taken a categorical stand before the appellate authority that they were earlier operating from different address and later on shifted to new address and the impugned order was sent to old address and not at new address and they were not aware of the same. It is only when the Revenue approached them for the recovery, they came to know about the passing of impugned order passed by adjudicating authority and procured copy of the same from the department. The appellants thereafter filed the appeal within limitation period from the date of receipt of impugned orders.

3. It is seen that the appellate authority observed that the appellant has not produced any evidence to establish on record that impugned orders were received by them subsequently. We agree with the appellant that limitation would start from the date of receipt of the impugned orders . As such, it is necessary and requisite in law to find out the actual date of receipt. If the appellant had changed their address, the fact that the order was received by any authorized person of the appellant in previous address is required to be established. Therefore, we are of the view that appellate authority instead of rejecting the appeal on point of limitation, should have made efforts to find out from the office of the concerned adjudicating authority as to whether the impugned order were actually served upon the appellant. Otherwise, we agree that the appeal if filed beyond the period, read

with powers of Commissioner (Appeals) to further condone the delay up to the period prescribed under the law, cannot be entertained by him. However, as already observed the date of receipt of the order is very important which needs to be verified. For the said purpose, we set aside the impugned order and remand the matter to the Commissioner (Appeals) for fresh decision after giving an opportunity to the appellant to establish the date of the receipt of the impugned order as also after verifying the date of dispatch and evidence of service to the appellant, from the office of concerned adjudicating authority office.

4. In case, the appellants are held to have filed the appeal within the limitation period, appellate authority would decide the issue on merits.

5. All the appeals are disposed of in the above manner.

(Dictated and pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

(B Ravichandran)
Member(Technical)

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