IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI – 110 066

Date of Hearing 11.09.2015

For Approval & Signature :

Hon'ble Mr. S.K. Mohanty, Member (Judicial)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

Appeal No.E/1757/2011-EX[SM]
[Arising out of Order-in-Appeal No.161(DKV)CE/JPR-I/2011, dated 09.05.2011 passed by the C.C.E.(Appeals), Jaipur-I]

M/s. Khamdhenu Ispat Ltd. — Appellant

Vs.

C.C.E., Jaipur-I — Respondent

Appearance
Mr. R. Santhanam, Advocate
Mr. Bharat Agarwal, Advocate - For Appellant

Mr. GR Singh, DR - For Respondent

CORAM: Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Final Order No.____54333__, dated 11.09.2015

Per Mr. S.K. Mohanty :

This appeal is directed against the impugned order dated 09.05.2011 passed by the Commissioner (Appeals), Central Excise, Jaipur, dismissing the appeal of the appellant on the ground that the same was filed beyond the statutory time limit including the condonable period prescribed in the Central Excise statute.

2. Shri R. Santhanam, the ld. Advocate appearing for the appellant submitted that there is no delay in filing the appeal before the Commissioner (Appeals) in terms of Section 35 of the Central Excise Act, 1944. To justify his stand, the ld. Advocate has furnished a date chart, indicating the sequence of events taken place between issuance of the adjudication order and filing of appeal before the Commissioner (Appeals), which are extracted herein below:-

09.09.2010 -	Adjudication order issued by the Assistant Commissioner of Central Excise (received by the appellant on 28.09.2010 from the Range Superintendent)
01.10.2010 -	Appellant filed letter before the Assistant Commissioner of Central Excise for

	rectification of mistake in the Adjudication order.
28.12.2010 -	Pursuant to the above letter dated 01.10.2010, the Adjudicating authority advised the assessee to file appeal before the Commissioner (Appeals) .
03.01.2011 -	Appeal filed before the Commissioner (Appeals) against the Adjudication order pursuant to the directions vide letter dated 28.12.2010.

3. The ld. Advocate has filed an affidavit executed by the authorised officer of the appellant to state that the events explained in the above date chart is true and correct. The ld. Advocate further submitted that the time taken for pursuing the matter before the adjudicating authority for rectification of mistake in the adjudication order i.e. from 01.10.2010 to 28.12.2010, should be excluded for computation of limitation period for filing appeal in terms of Section 14 of the Limitation Act, 1963. Thus, according to the ld. Advocate, there is no delay in filing of appeal before the Commissioner (Appeals). To justify his said stand, the ld. Advocate has relied on the judgments of Hon'ble Supreme Court in the case of ***M.P. Steel Corporation -Vs.- CCE [2015 319 (ELT) 373 (S.C.)]***

and the Hon'ble Punjab & Haryana High Court, in the case of ***Sonia Overseas Pvt. Ltd. - Vs. - UOI [2015 (316) ELT 578 (P&H)]***.

4. On the other hand, Shri G.R. Singh, the ld. Departmental Representative, appearing for the respondent reiterated the findings recorded in the impugned order and relied on the judgment of Hon'ble Supreme Court in the case of ***Singh Enterprises Vs Commissioner of Central Excise, Jamshedpur, [2008 (221) ELT 163 (S.C.)]*** to state that the Commissioner (Appeals) is empowered to condone delay only up to 30 days after the expiry of 60 days and not beyond such period for entertaining the appeal.

5. I have heard the ld. counsel for both sides and perused the records.

6. I find from the letter dated 01.10.2010 that upon receipt of the Adjudication order dated 09.09.2010, the appellant had informed the jurisdictional Assistant Commissioner of Central Excise that adjustment of refund claim towards the alleged outstanding demand relating to previous period, is not proper in the absence of any statutory provisions to that effect and as such, the assessee is entitled for refund along with interest. In

the said letter, the appellant had requested the adjudicating authority to rectify the mistake in the adjudication order and to refund the entire amount. The said letter of the appellant was replied by the original authority vide letter dated 28.12.2010 stating *inter alia*, to adopt appellate remedy, which is the legal right of the assessee, if he is not satisfied with the Adjudication order.

7. On perusal of the above correspondences exchanged between the appellant and the original authority, I find that though the appellant was required to file the appeal against the Adjudication order dated 09.09.2010, but preferred to intimate his grievance once again to the original authority for sanction of refund amount. The request of the appellant was entertained by the original authority and upon direction for availing the appellate remedy, the appellant had filed appeal before the Commissioner (Appeals) within 60 days from the date of such communication by the original authority. The above undisputed facts transpire that the appellant was diligently perusing its remedy for resolving the dispute. On perusal of the correspondences exchanged between the appellant and the Central Excise Department, it would reveal that the appellant was not guilty of negligence or lapse or inaction for delaying the process in filing the appeal before the

ld. Commissioner (Appeals) within the stipulated time limit prescribed in the statute. Thus, in my opinion, the case of the appellant should be governed under Section 14 of the Limitation Act, 1963. Therefore, the time exhausted in perusing the matter with the adjudicating authority should be excluded for the purpose of computation of the limitation period provided in the statute for filing the appeal before the ld. Commissioner (Appeals). In this case, since the appeal was filed by the appellant before the ld. Commissioner (Appeals) on 03.01.2011, upon receipt of the communication from the adjudicating authority on 28.12.2010, filing of the appeal is not barred by limitation of time.

8. The case of the appellant squarely covered by the judgement of the Hon'ble Supreme Court in the case of ***M.P. Steel Corporation Vs. CCE (supra)***. The judgement of the Hon'ble Supreme Court in the case of ***Singh Enterprises Vs. CCE, Jamshedpur*** (supra), cited by ld. Departmental Representative for Revenue is distinguishable from the facts of the present case in-as-much-as in the said decided case, no sufficient cause was shown for filing of appeal before the ld. Commissioner (Appeals) beyond the period of 20 months from the date of communication of the adjudication order.

9. In view of the above, I do not find any merits in the impugned order. Accordingly, after setting aside the same, I remand the matter back to the ld. Commissioner (Appeals) for deciding the appeal on merits. Needless to say that opportunity of personal hearing shall be granted to the appellant before deciding the appeal afresh. The appeal is allowed by way of remand.

[Operated portion pronounced in the open court]

(**S.K. Mohanty**)
Member (Judicial)

SSK