IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III

DATE OF HEARING : 28/08/2017.
DATE OF DECISION : 28/08/2017.

Customs Appeal No. 51189 of 2017

[Arising out of the Order-in-Appeal No. CC (A)/CUS/D-II/ICD/ 281/2017 dated 03/05/2017 passed by The Commissioner of Customs (Appeals), New Custom House, New Delhi.]

M/s ASP Sealing Products Ltd. Appellant

Versus

CC, New Delhi (ICD TKD) Respondent

Appearance

Ms. Reena Rawat, Advocate – for the appellant.

Shri R.K. Manjhi, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 56585/2017 Dated : 28/08/2017

Per. S.K. Mohanty :-

This appeal is directed against the impugned order dated 03/05/2017 passed by the Commissioner of Customs (Appeals), New Delhi. Vide the impugned order, the appeal filed by the appellant was dismissed on the ground that the same was preferred beyond the statutory time limit prescribed under Section 128 (1) of the Customs Act, 1962.

2. The learned Advocate appearing for the appellant submits that the adjudication order dated 26/03/2014 was not received by the appellant and the same was handed over by the Department on 23/07/2014 on its request. Thus, considering the date of receipt of the adjudication order as 23/07/2014, the appellant had preferred appeal within the statutory limit of 60 days before the Commissioner (Appeals). To support such stand that the adjudication order was received by him on 23/07/2014, the learned Advocate has submitted various correspondences exchanged between the Department and the appellant, including the affidavit by the authorized officer.

3. On the other hand, learned DR appearing for the Revenue reiterates the findings recorded in the impugned order and submits that the adjudication order was dispatched immediately on the date of its passing and in that case, the appeal was required to be filed within the stipulated time limit.

4. Heard both the sides and perused the case records.

5. We find that the learned Commissioner (Appeals) has not specifically discussed the provisions of Section 153 of the Customs Act, 1962, which provides the manner of service of notice, etc. In view of the fact that there is no documents available in the file to prove that the adjudication order was

received by the appellant on 26/03/2014 and in view of the fact that the Department has not responded to various correspondences of the appellant regarding actual date of service of the order, we are of the view that the date of communication of the adjudication order to the appellant should be examined by the Commissioner (Appeals) in terms of Section 153 ibid.

6. Therefore, after setting aside the impugned order, we remand the matter back to the Commissioner (Appeals) for deciding the issue of date of communication of the adjudication order on the appellant and thereafter to decide the issue on merits. Accordingly, after setting aside the impugned order, the appeal is allowed by way of remand.

(Order dictated and pronounced in open court.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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