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

Date of Hearing/Order: 13.9.2017

Appeal No. E/50352/2017-SM

(Arising out of Order-in-Appeal No. BHO-EXCUS-001-APP-472-16-17 dated 24.11.2016 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Bhopal)

M/s Combined Engineerings Pvt. Ltd. Appellant

Vs.

CCE & ST, Indore Respondent

Appearance

Shri Jay Kumar, Advocate - for the appellant

Shri K. Poddar, D.R. - for the respondent

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

Final Order No. 57019/2017

Per S.K. Mohanty:

This appeal is directed against the impugned order dated 24.11.2016 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Bhopal, in dismissing the appeal of the appellant on the ground that the same was filed beyond the period of limitation prescribed under Section 35 of the Central Excise Act, 1944.

2. The ld. Advocate appearing for the appellant submits that appeal against the adjudication order dated 31.3.2014 was wrongly filed in the office of the Administrative Commissioner on 22.5.2014. He further submits that the appeal papers were forwarded by the office of Administrative Commissioner to the office of the Commissioner (Appeals) and on receipt of such appeal papers, personal hearing was granted to the appellant on 22.4.2016. Thus, he submits that the period between filing of appeal before the wrong forum and subsequent receipt of the same by the office of the Commissioner (Appeals) should be excluded for the purpose of computation of limitation. In this context, he has referred to the provisions of Section 14 of the Limitation Act, 1963 and also relies on the judgement of Hon'ble Punjab & Haryana High Court in the case of ***Sonia Overseas Pvt. Ltd. Vs. Union of India -*** 2015 (316) ELT 578 (P&H).

3. On the other hand, the ld. DR appearing for the respondent reiterates the findings recorded in the impugned order.

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

5. I find that the appeal against the adjudication order dated 31.3.2004 was filed within the stipulated time frame before the office of the Commissioner of Central Excise, instead of the office of

Commissioner of Central Excise (Appeals). On receipt of the appeal papers from the office of the Administrative Commissioner, notice of personal hearing was issued to the appellant and thereafter, the appeal was dismissed on the ground of limitation. It is an admitted fact that due to inadvertence, the appeal was filed by the appellant in wrong forum. Since the appeal papers were not returned by the office of the Administrative Commissioner to the appellant and the same was considered for admittance by the office of the Commissioner (Appeals) for disposal, I am of the view that the provisions of Section 14 of the Limitation Act, 1963 can be invoked for condonation of delay, caused between the period of filing the appeal and transferring of the same to the office of the Commissioner (Appeals). In other words, such period should be excluded for the purpose of computation of the limitation period provided under Section 35A ibid. I find that in identical situation, the Hon'ble Punjab & Haryana High Court in the case of ***Sonia Overseas Pvt. Ltd.*** (supra) has allowed the prayer made by the petitioner, holding that Section 14 ibid is applicable for extension of prescribed limit in certain cases.

6. In view of above, I am of the considered opinion that dismissal of appeal by the Commissioner (Appeals) is not proper and justified. However, considering the fact that without discussing the merits of the case, the appeal of the appellant was dismissed on the ground of

limitation, I am of the view that the matter should go back to the Commissioner (Appeals) for deciding the appeal on the basis of documents/records available before him. Therefore, after setting aside the impugned order, I remand the matter to the Commissioner (Appeals) for deciding the appeal afresh on merits. Needless to say that opportunity of personal hearing should be granted to the appellant before deciding the appeal.

7. The appeal is allowed by way of remand.

(Pronounced in Court)

(S.K. Mohanty)
Member (Judicial)

RM