CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 10.04.2018

Custom Appeal No. 50540 of 2018
(Arising out of Order-in-Appeal No. CC(A) CUS/D-I/EXPORT /NCH/500/ 2017 dated 07.11.2017 passed by the Commissioner of Customs (Appeals), New Delhi).

M/s BCH Electric Limited Appellant

Vs.

CC, NCH, New Delhi Respondent

Appearance:

Ms. Nidhi Dhameeja, Advocate for the appellant
Sh. R. K. Manjhi, AR for the Respondent

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No. 51345/ 2018

Per: **Justice (Dr.) Satish Chandra**:

The present appeal is filed against the Order-in-Appeal No. CC(A) CUS/D-I/EXPORT /NCH/500/ 2017 dated 07.11.2017 passed by the Commissioner of Customs (Appeals), New Delhi where the Commissioner (Appeals) has dismissed the appeal on the ground of time bar. He has not adjudicated the appeal on merit. Being aggrieved, the present appeal is filed by the appellant.

2. With this background, we heard Ms. Nidhi Dhameeja, ld. Advocate for the appellant who submits that the order-in-original was never received by the

appellant and only after receiving the recovery notice, the appellant became active. She submits that there was no delay on the part of the assessee. To support her arguments, she referred the following case laws.

(i) SMIIEL vs. Dy. Commissioner of Customs -2017 (347) ELT 20 (Del.)

(ii) Sunrise Industrial Corporation vs. CCE, Amritsar-2012 (280) ELT 148 (Tri. Del.)

(iii) Marga Industries Ltd. vs. CCE, New Delhi-2006 (202) ELT 244 (Tri. LB)

3. On the other hand, Sh. R. K. Manjhi, ld. AR appearing for the Revenue supported the impugned order. He read out the impugned order at page 3 which is reproduced as under-

> "*Since, the appellant, in their Appeal Documents, have mentioned the date of receipt of impugned order as 25.10.2015, the Deputy Commissioner of Customs (Group-VII), Air Cargo Export, NCH, Deli vide letters dated 11.07.2017 and dated 30.08.2017, was requested to intimate the date and mode of despatch of the impugned Order-in-Original, was requested to intimate the date and mode of the impugned Order-in-Original to the appellant. In response, the Deputy Commissioner of Customs (Gr.VII), vide letter dated 03.08.2017, has categorically mentioned that the impugned order was duly despatched to the Appellant by Speed Post No. ED289627823IN dated 12.11.2014 and provided photocopies of the counter folio of the receipt issued by the Postal Department in token of having booked the said dak under speed post. It has also been informed by the Department that as per the available records, the said Order-in-Original was not received back as undelivered from the Postal Authority. The Deputy Commissioner has provided a copy of the counter folio of the receipt of Speed Post issued in token of booking of an article by the Postal Authority bearing the name and address of the Appellant/ recipient. Thus, if the report submitted by the Customs Department stating that order was despatched on time is considered as 12.11.2014 in the case then the Appeal having been filed on 27.11.2015 is with a gross delay of more than 10 months*."

4. Heard both sides and perused the record. It may be mentioned that the Hon'ble Supreme Court in the case of ***Singh Enterprises vs. Commissioner of C.***

Ex. Jamshedpur-2008 (221) ELT 163 (SC) observed that the Commissioner (Appeals) has power to condone the delay within the period of 60 + 30 = 90 days. The Commissioner (Appeals) has no power to condone the delay beyond the period of 90 days. In the instant case, the delay is more than 90 days (08 months).

5. By following the ratio laid down by Hon'ble Supreme Court we are of the view that the Commissioner (Appeals) has rightly dismissed the appeal on the ground of limitation. Hence, we find no reason to interfere with the impugned order which is hereby sustained alongwith the reasons mentioned therein.

6. In the result, the appeal filed by the appellant is dismissed.

(Dictated and pronounced in the open Court).

(V. Padmanabhan)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

Pant