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

Date of hearing: 15.05.2018
Date of pronouncement: 22.05.2018

Custom Appeal No. 50932 of 2018-SM
(Arising out of order-in-appeal No. CC(A) CUS/D-II/ICD TKD/ EXPORT/ 1514/ 2017 dated 28.12.2017 passed by the Commissioner of Customs (Appeals), New Delhi).

M/s SOIR International Appellant

Vs.

CC, New Delhi Respondent

Appearance:

Sh. Prem Ranjan, Advocate for the appellant
Sh. K. Poddar, AR for the Respondent

Coram:

Hon’ble Mr. V. Padmanabhan, Member (Technical)

Final Order No. 51949/2018

Per: **V. Padmanabhan**:

The present appeal is challenging Order-in-Appeal No. 1514/17 dated 28.12.2017. Vide the impugned order, the Commissioner (Appeals) held that the appeal filed before him is time barred. Hence, the present appeal.

2. The appellant filed a claim for refund of the Additional Duty of Custom (SAD) before the original authority. The refund, claimed in terms of Notification No. 102/2007-Cus. Dated 14.09.2007, was sanctioned by the Assistant Commissioner. A part of the refund sanctioned was paid through RTGS whereas the balance amount of Rs. 2,33,821/- was ordered to be recredited into FPS licence of the appellant. The appellant had no grievance

against such an order of the original authority. But later he realised that the scheme of recredit into the FPS licence was stopped. Upon failure to get such benefit by recredit, he addressed a letter dated 14.11.2016 to the Assistant Commissioner to make the payment of refund in cash. In pursuance of the reference dated 18.08.2016 made by the Assistant Commissioner (Refund) to DGFT, the latter Authority declined to interfere and referred the matter back to the Customs Authorities on 30.12.2016.

3. Finally, the appeal against the Order-in-Original dated 19.04.2016, was filed against the refund order before the Commissioner (Appeals) on 19.01.2017. The said appeal was held as time barred because it was not filed within the mandatory period from the date of the original authority's order (which was received by the appellant on 25.04.2016). Aggrieved by the impugned order, present appeal has been filed.

4. With this background, we heard Sh. Prem Ranjan, ld. Advocate for the appellant and Sh. K. Poddar, ld. AR for the Revenue.

5. It is the submission of the ld. Advocate that the appeal should be held as within time since the delay was on account of the appellant pursuing the redressel of their grievance with DGFT. He also submitted that the appellant was not originally aggrieved by the refund sanctioned order but became aggrieved when the benefit of the same was not received by him. He also relied on the following case laws.

i) Kamdhenu Ispat Ltd. vs. CCE, Jaipur-I
2017 (358) ELT 380 (Tri. Del.)

ii) Allen Diesels India Pvt. Ltd.
2016 (334) ELT 624 (Del.)

5. Ld. AR for the Revenue justified the impugned order. He submitted that the appeal has been filed before Commissioner (Appeals) after a delay of 265 days and hence is not maintainable. He also submitted that the appellant has approached the DGFT authorities only after the appeal period i.e. on 30.08.2016.

6. Heard both sides and perused record.

7. The refund sanction order was received by the appellant on 25.04.2016. But the appellant initially did not file any appeal since the refund was already sanctioned. But, later he realised that he did not receive the portion of the refund which was ordered for recredit into the FPS licence. They approach the DGFT authorities, following the letters sent by customs authorities to them for allowing such recredit. Finally, on 30.12.2016 with the DGFT closing the file, it became clear that he is not getting any redressel of his grievance from DGFT but immediately after the closing of the case on the part of the DGFT, the appeal was filed before Commissioner (Appeals) on 19.01.2017.

8. The time limit for filing appeal prescribed in Section 128 is 60 days period between the date of communication of the original authorities order to the date of filing of the appeal before Commissioner (Appeals). In the peculiar circumstances of the case, the appellant was not aggrieved by the original authority's order received on 25.04.2016. He became aggrieved only on 30.12.2016, when his attempt to secure the recredit into the FPS licence failed. Immediately thereafter he has filed the appeal before Commissioner (Appeals).

9. I am of the view that the time limit in this case, for purposes of Section 128 is to be reckoned from 30.12.2016. From such date the appeal is filed within time. The time exhausted in pursuing the matter with DGFT should be excluded for the purpose of computation of the limitation period, as per terms of Section 14 of the Limitation Act, 1963. The above view finds support in the decision of the Tribunal in the case of ***Kamdhenu Ispat Limited*** (supra).

10. In the result, the impugned order is set aside and the matter remanded to the Commissioner (Appeals) to pass orders on merit.

(Pronounced on 22.05.2018).

(V. Padmanabhan)
Member (Technical)

Pant