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

Date of Hearing: 12/06/2018

Appeal No. C/51045/2018-(DB)

(Arising out of Order-in-Appeal No.IND-EXCUS-000-APP-532-17-18 dated 25.01.2018 passed by the Commissioner of Customs(Appeals), Madhya Pradesh)

PRESTIGE POLYMERS PVT LTD — Appellant

Vs.

C.C.E & ST- INDORE — Respondent

<u>Appearance</u>
Sh. Anjali J. Manish, Adv. — for the appellant

Sh. Rakesh, DR — for the respondent

CORAM: **Hon'ble Mr. ANIL CHOUDHARY, Member (Judicial)**
Hon'ble Mr C.L.MEHER, Member (Technical)

Final Order No: 52228/2018

<u>Per :Mr. Anil Choudhary</u>

The present appeal has been filed against the impugned order dated 25/1/2018 passed by the Commissioner (Appeals) who has rejected the appeal filed by the appellant against the adjudication order dated 4/10/2016, only on grounds of delay. That the Ld Commissioner appeal has not considered the fact that the impugned order dated 4/10/2016, had not been served on the appellant and the copy was only provided on

13/1/2017, but without any preamble and procedure to file the appeal. That the complete documents were served only on 1/3/2017 and hence the appeal preferred against the order date 4/10/2016, after receipt of order on 1/03/2017, was filed on 6/4/2017, which is within the period of filing the appeal. (That in the preamble of the Order-in-Appeal). Dated 25/1/2018, it has been categorically stated that the appeal against the order would lie to this Hon'ble Tribunal under Section 129(A) of the Customs Act. Further, the Ld. Commissioner (Appeal) has considered the case only on grounds of limitation under Section 128 of Customs Act, 1962 and hence the appeal is maintainable before this Tribunal.

2. That the director in charge of appellant was in jail from 6/9/16 till 6/1/2017 and only upon being released from July he approached the Ld. SEZ authority to provide him the copies of the Customs cases against him.

3. Further the LOA was suspended from 8/9/2016 and hence the service of the order had not been made.

4. Ld A.R for Revenue submits that the appeal is not maintainable, being hit by limitation as per Commissioner (Appeal) order, the said O-I-O, was served through speed post, and the same was also pasted on the factory as well as on the SEZ Notice Board, as per the provisions of the Section 153 of the Customs Act, 1962. Thus the appeal was hit by limitations not maintainable.

5. Heard we are satisfied that there is no deliberate delay or latches on the part of the appellant. The appeal was filed within the time of limitation from the

date of service of O-I-O, before the Commissioner (Appeal). Thus, the appeal is allowed by way of remand to Commissioner (Appeals) to decide the matter on merits.

(Dictated & pronounced in open Court)

(Mr. C.L.MAHAR)
Member (Technical)

(Mr. ANIL CHOUDHARY)
Member (Judicial)

Tejo