

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA**

Appeal No.C/77000/2017

(Arising out of Order-in-Appeal No.Kol/Cus(CCP)/AA/946/2017 dated 07.09.2017 passed by the Commissioner of Customs (Appeals), Kolkata)

M/s. S.J.Fabrics Pvt. Ltd.

Applicant (s)/Appellant (s)

Vs.

Commissioner of Customs, Kolkata(Preventive)

Respondent (s)

Appearance:

Shri Arijit Chakraborty, Advocate for the for the Appellant/Applicant (s)

Shri S.K.Naskar, AC(AR) Respondent (s)

CORAM:

Hon'ble Shri P.K.Choudhary, Member (Judicial)

Date of Hearing/Decision:- 11.04.2018

ORDER NO.FO/75819/2018

Per Shri P.K.Choudhary

1. Heard both sides and perused the appeal records.
2. I find that the Commissioner (Appeals) has rejected the appeal as time barred. The Order-in-Original dated 09.05.2017 was received by the assessee on 12.05.2017 and the appeal was filed on 10.08.2017 before the First Appellate Authority. According to the Section 128 of the Customs Act, 1962, the appeal should be filed within a period of 60 days. In the present case it was required to be filed on or before 11.07.2017. I find that the appeal was filed beyond the statutory period of 60 days but within the condonable period of 30 days. It appears that the Commissioner (Appeals) has calculated the period of 93 days taking the date of Order-in-Original i.e. 09.05.2017. I also find that the Commissioner (Appeals) has not decided the

appeal on merits and accordingly it would be appropriate to remand the matter to the Commissioner (Appeals) to decide the same on merits. The delay in filing of the appeal before the Commissioner (Appeals) is condoned and the appeal is allowed by way of remand to the Commissioner (Appeals). Needless to mention, a reasonable opportunity of hearing be granted to the appellant to present their case. All issues are kept open and both sides are at liberty to produce evidences in their support.

3. The appeal is allowed by way of remand.

(Dictated and pronounced in the open court.)

S/d.
(P.K.Choudhary)
MEMBER (JUDICIAL)

SS