## IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

## EASTERN ZONAL BENCH: KOLKATA

**Customs Appeal No. 75126/2018**

(Arising out of Order-in-Appeal No.KOL/CUS (AIRPORT)/AA/1382/2017 dated 18.10.2017 passed by the Commissioner of Customs (Appeals) Kolkata)

Shri Dhritiman Dutta

Applicant (s)/Appellant (s)

**Vs.**

Commr. of Customs (Prev.), W.B.

Respondent (s)

Appearance:

Shri S.P. Siddhanta, Consultant for the Appellant (s)

Shri S.N. Mitra, A.C. (A.R.) for the Respondent (s)

**CORAM:**

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

Date of Hearing/Decision:- 28.05.2018

ORDER NO. : F/O 76180/2018

**Per Shri P.K.Choudhary**

Heard both sides and perused the appeal records.

2. The Ld. Consultant appearing on behalf of the appellants drew attention of the Bench that Order-in-Original dated-18/12/2014 was issued on 22/12/2014 and was received by the Revenue on the same date i.e. 22/12/2014 and they were required to file appeal before the first Appellate Authority on or before 20th February, 2015 i.e. within 60 days from the date of communication of the Order-in-Original. The appeal was however, filed on 27/3/2015. The Ld. Consultant filed the relevant documents in respect of his submissions which he obtained through filing an RTI.

3. I observe that the appeal filed by the Revenue before the lower appellate authority was not only filed beyond the statutory period of 60 days but also filed beyond the condonable period of 30 days. Though in the impugned order in para 5, the Commissioner (Appeals) has touched the issue but has not mentioned whether the delay was condoned before proceeding on the merits of the case. Para 5 of the impugned order is reproduced for ready reference.

> "*The appellant has also requested to condone the delay in filing the appeal on the ground that Review order was delayed and was communicated to them on 23.03.2015 resulted the delayed filing of the appeal*"

4. In view of the decision of the Hon'ble Supreme Court in the case of Singh Enterprises Vs. Commr. of C.Ex., Jamshedpur reported in [2008 (221) E.L.T. 163 (S.C)], the Commissioner (Appeals) cannot condone the delay beyond the condonable period of 30 days which in the present case expired on 22.03.2015.

5. In view of the above discussion, the order passed by the Commissioner (Appeals) do not sustain and accordingly the same is set aside. The appeal filed by the appellant is allowed.

(Dictated and Pronounced in the Open Court)

Sd/- 28.05.2018

**(P.K.Choudhary)**
**MEMBER(JUDICIAL)**

k.b/-