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

Appeal No. E/75848/2018

(Arising out of Order-in-Appeal No.344/HWH/CE/2017-18 dated 29.11.2017 passed by the Commissioner of CGST & Central Excise (Appeals-II), Kolkata)

M/s Gillanders Arbuthnot & Co. Ltd.
Applicant (s)/Appellant (s)

Vs.

Commissioner of CGST & C.Ex., Howrah Commissionerate
Respondent (s)

Appearance:
Shri T.K.Roy, Consultant and Shri K.S.Roy, Consultant for the Appellant (s)
Shri H.S.Abedin, AC(AR) for the Respondent (s)

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

Date of Hearing/Decision:- 08.08.2018

ORDER NO.FO/76508/2018

Per Shri P.K.Choudhary

Heard both sides and perused the appeal records.

2. I find that the ld. Commissioner(Appeals) had not decided the appeal on merits but rejected the appeal filed by the assessee on the ground of time barred. I find that the Order-in-Original dated 29.07.2016 was received by the assessee on 05.08.2016 and accordingly they were required to file the appeal before the Lower Appellate Authority on or before 05.10.2016. However, the appeal was filed on 28.10.2016 i.e. after a delay of 23 days. They had filed an application before the Ld. Commissioner (Appeals) for condoning the delay in filing of the appeal mentioning the sudden illness of the officer who was looking after their excise matters. Ld. Consultant mentioned that the person Shri Satya Narayan Sinha Mahapatra was all along ill and finally died on 28.03.2017. He further submits that owing to the

absence of the officer the appeal could not be filed within the due date. On going through the impugned order, I find that the present appeal was filed by the appellant beyond the statutory period of 60 days but within the condonable period. I also find that the ld. Commissioner (Appeals) has not decided the issue on merit but dismissed the appeal as time barred.

3. In view of the above discussions, I condone the delay in filing of the appeal before the first appellate authority and set aside the impugned order and remand the matter to the Ld. Commissioner (Appeals) to decided the issue on merits. Needless to mention a reasonable opportunity of hearing be granted to the appellant. Both parties are at liberty to place evidences in their favour.

4. The appeal filed by the appellant is allowed by way of remand to the Commissioner (Appeals).

(Dictated and Pronounced in the Open Court)

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

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