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

**Appeal No. C/225/2008**

Arising out of Order-in-Original No. 01/Cus/CC(P)/WB/2008 dated 15.01.2008 passed by the Commissioner of Customs (Prev. ), W.B. Kolkata.

Smt. Bharati Sen.

…Appellant (s)

**Vs.**

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

…Respondent (s)

Appearance:
Shri K. P. Dey, Advocate for the Appellant (s)
Shri S. N. Mitra, A. C. (AR) for the Respondent(s)

**CORAM:**
**HON'BLE SHRI P. K. CHOUDHARY, MEMBER (JUDICIAL**
**HON'BLE SHRI BIJAY KUMAR, MEMBER (TECHNICAL)**

Date of Hearing/Decision: - 20.07.2018

ORDER No…FO/A/77211/2018

**Per Bench:**

The appellant was posted as Inspector of Central Excise and Customs at Changrabandha Land Customs Station at the border of Bangladesh in the State of West Bengal.

2. The appellant has filed the appeal against imposition of penalty of Rs.5000/- under Section 114 of Customs Act, 1962.

3. Heard both sides and perused the appeal records.

4. The Adjudicating Authority observed that the appellant had abetted/colluded with the exporter, M/s Preetam Marketing Ltd., by contravening the provisions of the Customs Act, 1962 and also failed to discharge duty properly as laid down under the Customs Act, 1962, for the purpose of scrutiny of Bills of Exports and examination of the

goods, and the appellant is liable to penalty under Section 114 of Customs Act, 1962.

5. Section 114 of the Act provides that :-

> " Any person who, in relation to any goods, does or omits to any act which act or omission would render such goods liable to confiscation under Section 113, or abets the doing or omission of such an act, shabby be liable to penalty."

The Ld. Counsel for the appellants drew the attention of the Bench of the relevant portion of the Central Excise Manual 2013-2014 (CBEC) supplementary/Instructions Chapter 8 as follows:-

> *"4.4 In case of exports under Duty Exemption Entitlement Certificate Scheme (DEEC), Duty Exemption Pass Book Scheme (DEPB) and claim for Drawback, the Superintendent of Central Excise shall also examine and seal the consignment and sign the documents in token of having done so. In exceptional cases, where the exporter has unblemished track record of compliance (Central Excise) and where there is non-availability of Superintendent of Central Excise due to leave, vacant post or other reasonable causes, the jurisdictional Deputy/Assistant Commissioner of Central Excise may permit examination and sealing by Inspector. Other types of export may be examined and sealed by the Inspector of Central Excise."*

6. The ld. Advocate also drew the attention of the Bench to the decision of the Tribunal in the case of Suvasis Banerjee & Others Vs. Commr. of Customs (Prev.), West Bengal, vide Order No.FO/A/75832-75835/16 dated 10.08.2016. In that case, the appellants were the Officers of the Customs and filed appeals against the penalty of Rs.5,000/- each under Section 117 on the similar ground as in the present case. The Tribunal allowed the appeals. The relevant portion of the said decision is reproduced below:

*"4. Heard both sides & perused the case records. The issue involved in the present appeals is whether penalty has been correctly imposed upon the appellant under Sec 117 of the Customs Act 1962. Learned Advocate appearing for the appellants argued that a notice is required to be given to the officers within time specified under Sec 155 (2) of the Customs Act 1962 and that no such notice was issued to the appellants. It is observed from Para-23 of the OIO dt 20/8/2007 passed by the Adjudicating authority that this point was specifically taken by the appellant before the adjudicating authority but Adjudicating authority has not given any findings on this issue. It is observed that CESTAT Bangalore in the case of CC & CE Hyderabad-II Vs Rajiv Kumar Agarwal (Supra) has taken following view on the applicability of Sec 155 (2) of the Customs Act 1962 :-*

*6.1No doubt, the above allegations are? quite serious in nature. However, the Adjudicating Authority has dropped the proceedings on two grounds :-*

*(i) The proceedings are time barred in view of Section 155(2) of the Customs Act.*

*(ii) The acts of omission and commission of the respondents have not rendered the goods liable to confiscation under the Customs Act. Hence, they are not liable for penalty under Section 114.*

*In these circumstances, we want to deal with only the above two grounds on which the Commissioner has dropped the proceedings. Revenue contends in the grounds of appeal that Section 155 of the Customs Act would not be applicable to the adjudication proceedings on the ground that Section 155 refers to suits, prosecutions or legal proceedings before the Court. It has further been stated that this position has been brought out in the case of Costao Fernandes v. the State. On going through the*

*Coasto Fernandes decision, we do not find in that decision anywhere holding that Section 155 of the Customs Act would not be applicable to the adjudication proceedings against the Customs Officers. We reproduce Section 155 of the Customs Act.*

*155. Protection of action taken under this Act. - (1) No suit, prosecution or other legal proceeding shall lie against the Central Government or any officer of the Government or a local authority for anything which is done, or intended to be done in good faith, in pursuance of this Act or the rules or regulations.*

*(2) No proceeding other than a suit shall be commenced against the Central Government or any officer of the Government or a local authority for anything purporting to be done in pursuance of this Act without giving the Central Government or such officer a months previous notice in writing of the intended proceeding and of the cause thereof, or after the expiration of three months from the accrual of such cause.*

*A reading of the said Act shows that the protection under the above section is applicable to all legal proceedings. Further, if protection to officers against proceedings in courts can be given, there is no reason why such a protection cannot be given to proceedings before quasi judicial authorities. Therefore, we do not find much substance in the Revenues contention. Further, the Tribunal, in the case of M.I. Khan, has held that protection under Section 155 of the Customs Act is available even in respect of adjudication proceedings. Therefore, the Commissioner was correct in holding that the protection under the Act is available to the respondents. However, in terms of Section 155(2), in order to initiate any proceedings, the time limit indicated therein should be adhered to. In the present case, it is on record that the* *proceedings have not been initiated within the time limit. Therefore, without going into the merits of the case and also the alleged connivance of the respondents, we hold that the Commissioner was legally correct in dropping the proceedings on the grounds of limitation prescribed in Section 155(2) of the Customs Act, 1962. Hence, the Revenues appeals have no merits and the same are rejected.*

*4.2. Similar view was expressed by other co-ordinate CESTAT benches in the following cases:-*

*(i) CC New Delhi Vs M. I. Khan (Supra)*

*(ii) Parvathy Kailasam Vs. CCE Tirupathi (Supra).*

*5. There is nothing on record that provisions of Sec 155 (2) of the Customs Act 1962 were complied with before initiating action against the appellants. Respectfully following the ratio of above relied upon case laws appeals filed by the appellants are allowed without going into the other aspects of these proceedings.*

*6. Appeals allowed."*

7. I find that the facts and circumstances of the present cases are squarely covered by the decision of the Tribunal in the case of Suvasis Banerjee & Others Vs. Commr. of Customs (Prev.), West Bengal (supra). Therefore, the imposition of penalty under Section 114 on the appellant is not justified.

8. In view of the above discussions, the penalty imposed on the appellant is set aside and the appeal filed by the appellant is allowed.

(Operative portion of the order already pronounced in the open court)

**(Bijay Kumar)**
**Member (Technical)**

**(P. K. Choudhary)**
**Member (Technical)**

Tushar Kr.