

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

Stay Petition No. 77606/2018
AND
Customs Appeal No. 79091/2018

(Arising out of Order-in-Appeal No. KOL/CUS (PORT)/AA/1458/2018 dated-
02/08/2018, passed by the Commissioner of Customs (Appeals), Kolkata)

The Commissioner of Customs (Port), Kolkata

Applicant (s)/Appellant (s)

Vs.

M/s. Kiran Sanitaryware Pvt. Ltd.

Respondent (s)

Appearance:

Shri S. Guha, A.C. (A.R.),

for the Appellant (s)

NONE

for the Respondent (s)

CORAM:

SHRI P.K. CHOUDHARY, HON'BLE JUDICIAL MEMBER
SHRI V. PADMANABHAN, HON'BLE TECHNICAL MEMBER

Date of Hearing/Decision :- 22.04.2019

ORDER NO: SO/75610/2019 & FO/75435/2019

PER SHRI P.K. CHOUDHARY

The Department has filed the stay petition for staying the operation of the impugned order.

2. We observe that the Commissioner (Appeal) has rejected the appeal before him as time barred without going into the merits of the case. The

Commr. (Appeals) has taken the date of the order i.e. 11/11/2016 as the date of communication of the order and has calculated the period of 90 days and accordingly holding that since the review order was passed beyond the period of 90 days, had rejected the appeal. On going through the grounds of appeal, we observe that the order dated 11/11/2016 was communicated (received) on 15/11/2016 and reviewed by the Commr. of Customs (Port) on 10/2/2017 under Section 129D of the Customs act, 1962 which is well within the prescribed time limit. Since the Commr. (Appeals) has not decided the appeal on merit but has rejected the same as time barred, it would be appropriate to remand the appeal back to the Commr. (Appeal) to decide the appeal on merit in accordance with law. The appeal is allowed by way of remand to the Ld. Commr. (Appeal). The stay petition also gets disposed off.

(Dictated and pronounced in the open court)

Sd/-
V. PADMANABHAN
(TECHNICAL MEMBER)

Sd/-
P.K. CHOUDHARY
(JUDICIAL MEMBER)

k.b/-