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

REGIONAL BENCH - COURT NO.2

Customs Appeal No.76395 of 2019

(Arising out of Order-in-Appeal No.KOL/CUS(CCP)/AA/191/2019 dated 13.03.2019 passed by Commissioner of Customs(Appeals), Kolkata.)

M/s. S.J.Fabrics Private Limited
(60, Vivekananda Road,
1st Floor, Kolkata-700006.)

...Appellant

VERSUS

Commissioner of Customs (Preventive), Kolkata

.....Respondent

(Adjudication Cell, ADC Level,
Customs House, 3rd Floor,
15/1, Strand Road,
Kolkata-700001.)

APPEARANCE

Shri Arijit Chakraborty, Advocate for the Appellant (s)
Shri Manish Mohan, Additional Commissioner (Authorized Representative) for the Respondent (s)

CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)

FINAL ORDER NO. 75385/2020

DATE OF HEARING : 25 August 2020
DATE OF DECISION : 25 August 2020

P.K.CHOUDHARY :

Heard both sides.

2. I find that the learned Commissioner(Appeals) has not decided the appeal before him on merits, but has dismissed the same as time barred.

3. Learned Advocate appearing on behalf of the appellant submits that the period of limitation has been calculated from the date of issuance of the order which is 3rd October 2018 whereas the statutory

provisions provided that the period of limitation should be calculated from the date of receipt of the order. Whereas the order was received by the Appellant on 5th October 2018 and the appeal was filed on 4th December 2018. If the date of receipt of the order is taken into consideration, it is observed that the appeal was filed within the statutory period of 60(sixty) days and there was no delay in filing the appeal. Since the learned Commissioner(Appeals) has not decided the appeal before him on merits, but dismissed the same as time barred, it would be appropriate to remand the matter to the learned Commissioner(Appeals) to decide the appeal on merits. It is also categorically mentioned that there is no delay in filing the appeal before the lower appellate authority, therefore, there is no occasion to visit the aspect of limitation.

4. In view of the above discussion, the impugned order is set aside and the appeal filed by the appellant is allowed by way of remand to the learned Commissioner(Appeals) to decide on merits. Needless to mention a reasonable opportunity of hearing may be granted to the appellant. All issues are kept open. Both sides are at liberty to place evidence in their favour.

(Dictated and pronounced in the open Court.)

SD/

(P.K.CHOUDHARY)

MEMBER (JUDICIAL)

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