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

REGIONAL BENCH - COURT NO.2

Customs Appeal No.75669 of 2020

(Arising out of Order-in-Appeal No.KOL/CUS(CCP)/KA/168/D/2020 dated 17.08.2020 passed by Commissioner of Customs(Appeals), Kolkata.)

Shri Nirmal Baid
(S/o-Late Uttam Chand Baid, [proprietor of Shree G.M. Enterprise], Millpara, Dhupguri, District-Jalpaiguri, West Bengal, Pin-735101.)

...Appellant

VERSUS

Commissioner of Customs (Preventive), Kolkata

.....Respondent

(15/1, Strand Road, Kolkata-700001.)

APPEARANCE

Shri N.K.Chowdhury, Advocate for the Appellant (s)
Shri M.P.Toppo, Authorized Representative for the Respondent (s)

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

FINAL ORDER NO. 75537/2022

DATE OF HEARING : 29 September 2022
DATE OF DECISION : 29 September 2022

P.K.CHOUDHARY :

Heard both sides and perused the Appeal records.

2. I find that the Ld.Commissioner(Appeals) has not decided the Appeal before him on merits, but has rejected the Appeal as time barred. The date of communication of the Order-in-Original dated 26.12.2016 is 29.12.2016. However, Ld.Commissioner(Appeals) has observed in Para 4 of the impugned order as under:-

> "4. I have carefully gone through the records of the appeal and the submission made by the appellant. I find that in this case the appellant has filed the appeal on 28.02.2017 against the Order-in-Original No.48/JC/CUS/SLG/2016-17 dated 26.12.2016 issued on 26.12.2016. Accordingly, there is delay of four (4) days in filing the appeal. Also, the appellant failed to re-produce any reason or prayer for condonation of

delay for the said Order-in-Original against which the said appeal is filed. Accordingly, the appeal against the said Order-in-Original is filed beyond the period of sixty days but well within the period of ninety days. However, no application for condonation of delay regarding the same was filed by the appellant."

3. On going through the above paragraph, I find that the date of the order is 26.12.2016, the date of issuance of the order is 26.12.2016 and the date on which the assessee has received the order is also taken as 26.12.2016 which is not correct. The assessee received the Order-in-Original on 29.12.2016 as per Form No.CA-I (page 11 of the Appeal Paperbook) and as such there is no delay in filing of the Appeal before the First Appellate authority. The Ld.Commissioner(Appeals) has referred to the decision of the Tribunal in the case of Raghav Industries Vs. C.C., Amritsar [2008 (231) ELT 298 (Tri.-Del)]. This decision is not applicable to the facts of the present case because in that case the Appeal was filed beyond the condonable period of 30(thirty) days.

4. I find that the Appeal was filed before the First Appellate authority within the statutory period of 60(days) and there is no delay in filing the Appeal before the First Appellate authority. Since the Ld.Commissioner(Appeals) has not decided the Appeal on merits, it would be appropriate to remand the matter to the Ld.Commissioner(Appeals) to decide the Appeal on merits without further visiting the aspect of limitation. Needless to mention a reasonable opportunity of hearing be granted to the Appellant. All issues are kept open. Both sides are at liberty to place evidences in their favour.

Appeal is allowed by way of remand to the Ld.Commissioner(Appeals).

(Dictated and pronounced in the open Court.)

Sd/

(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

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