IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Customs Appeal No.76652 of 2019

(Arising out of Order-in-Appeal No.Kol/Cus(CCP)/AA/381/2019 dated 03.06.2019 passed by Commissioner (Appeals) of Customs, Kolkata)

M/s Shree Prakash Ghosh
Commerce House, 9th Floor, Room No.7, 24, Ganesh Chandra Avenue, Kolkata-700013
Appellant

VERSUS

Commissioner of Customs (Preventive), Kolkata
15/1 Strand Road, Kolkata-700001
Respondent

Appearance:
Shri H.P.Pandey,Advocate
Shri M.P.Toppo, Authorized Representative for the Respondent

CORAM:
HON'BLE SHRI RAJEEV TANDON, TECHNICAL MEMBER

FINAL ORDER NO……75201/2023

DATE OF HEARING : 31.03.2023
DATE OF DECISION : 31.03.2023

PER RAJEEV TANDON :

It is the case of the appellants that the adjudication order passed by the Ld.Additional Commissioner dated 03.02.2016, was not served on them. It is seen from the record that the Department has supplied the certified true copy of the Order-in-Original dated 03.02.2016 to the appellant vide a formal communication C.No.VIII(10)23/ADC/ADJ/CUS/WB/14-15/7264 P dated 16.06.2016.

2. At this stage, the ld.Advocate for the appellant, pleads that the lower appellate authority has rejected the appeal on the ground of limitation and has not decided the appeal on merit. He also submits that the limitation for filing the appeal before him, is to be computed from the date of receipt of the order. He, therefore, submits that there is no delay in filing the appeal. Accordingly, the appeal cannot be dismissed as time barred. He, therefore, pleads that the impugned order be set aside and the ld.Commissioner (Appeals) be directed to hear the appeal on merits.

3. The Department, however, has not demonstrated that the adjudication order was actually served upon them in accordance with Section 153 of the Customs Act, 1962, prior to making available to them a certified copy of the order as stated hereinbefore. Thus, computed from the aforesaid time of service of the order, I find that there was no delay in filing the appeal before the Commissioner (Appeals). I set aside the impugned order and remand the matter to the Ld. Commissioner (Appeals) for deciding the issue on merit in accordance with law without visiting the aspect of time bar. Needless to mention, a reasonable opportunity of hearing be granted to the appellant to present their case. Both sides are at liberty to produce evidences in their support.

4. In the result, the Appeal filed by the appellant is allowed by way of remand.

Dictated and pronounced in the open Court.

Sd/-
(Rajeev Tandon)
Member (Technical)

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