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

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 75868 of 2019

(Arising out of Order-in-Appeal No.CUS/(PREV)/SLG(CCP)/15/2019 DATED 21.01.2019 Passed by Commissioner of Customs (Appeal), Kolkata.)

M/s. Angel International
(2, Rupchand Roy Street, 2nd Floor, Room No.210,
Kolkata-700007)

Appellant (s)

VERSUS

Commr. of Customs (Preventive), Kolkata
(Customs House, 3rd Floor, 15/1, Strand Road, Kolkata-700001)

Respondent (s)

APPEARANCE :
Mr. N. K. Chowdhury for the Appellant
Mr. M. P. Toppo, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO.75257/2023

Date of Hearing : 25 April 2023
Date of Decision : 25 April 2023

PER RAJEEV TANDON

The Learned Advocate pleads that the Learned Commissioner (Appeals) has dismissed their appeal on the ground of limitation vide his Order-in-Appeal No. CUS/(PREV)/SLG(CCP)/15/2019 Dated 21.01.2019. It is the case of the appellant that in the impugned matter, they were just not aware of any adjudication proceedings initiated against them by the Department in respect of the import of smoked rubber sheets vide B/E No.287/IMP/CUS/CBD/09-10 dated 21.06.2009, 322/IMP/CUS/CBD/09-10 dated 29.06.09, 323/IMP/CUS/CBD/09-10 dated 29.06.09 368/IMP/CUS/CBD/09-10 dated 29.06.09, 323/IMP/CUS/CBD/09-10 dated 29.06.09, 368/IMP/CUS/CBD/09-10 dated 13.07.09, 379/IMP/CUS/CBD/09-10 dated 15.07.09, 415/IMP/CUS/CBD/09-10 dated 22.07.09. He submits that they were never serviced with any Show Cause Notice in this regard.

2. As stated by the appellant, the Order-in-Original No.182/ADDL/CUS/NB/SLG/2010 dated 27.02.2010 was never received at their end and it was only by way of a communication sent by the Deputy

Commissioner of Customs (Preventive), Headquarter TAR Cell, vide F No. dated 9th July 2013 asking them for payment of the differential duty of Rs.29,72,987/- confirmed against them in terms of Section 28 (1) of the Customs Act, that they learnt of such a demand and the adjudication order. In pursuance of the non-receipt of the order, the Learned Advocate submits that promptly on 12/07/2013 they had also written to the Deputy Commissioner of Customs (Preventive), Tax Arrear Recovery & Reward Cell, CC(P), Custom House, Kolkata intimating the fact of non-receipt of any Show Cause Notice in the matter. They also mentioned therein that it was for the first time they were informed of the said order and the outstanding recovery of dues. They therefore, requested the authority to wait for 60 days time for appeal period to get over. A copy of this communication was also marked to the Additional Commissioner of Customs, Siliguri Commissionerte and was sent by speed post. They submit that till date, they have not received any response in this matter.

3. In so far, the Order-in-Original No. 182/ADDL/CUS/NB/SLG/2010 dated 27.02.2010 is concerned, the Learned Advocate also pointed out to certain anomalous situation therein viz. the order has actually been signed on 31st March 2010 by the Additional Commissioner but actually indicates the date of order as 27.02.2010. As per the records therein, the said order was despatched on April 12, 2010 vide Despatch No.1730-33.

4. The Revenue is however not in a position to either confirm or deny the receipt of the Order-in-Original by the Appellant. Other than pointing out the despatch number and date of despatch as indicated in xerox copy of the Order-in-Original on record. Obviously in taxing statutes, in particular, no presumption can be rested upon the delivery and service of an order and the fact need to be expressly established.

5. In view of the Revenue, not being able to demonstrate anything, to the submissions made by the Learned Advocate and the Learned Advocate amply demonstrating their bonafides in promptly writing to the concerned agencies, and also enclosing details of speed post transmission. The dismissal of the appeal by Commissioner (Appeals) on limitation is not sustainable. In his order, the Commissioner (Appeal) has mentioned that the appeal was filed on 24th July 2013, in respect of the adjudication order dated 27.02.2010 said to be received on 9th July 2013. I hold that under the circumstances, it cannot be imputed that the aforesaid appeal filed

before the Commissioner (Appeals) was barred by limitation. As the appeal has been filed well within 60 days of the said first receipt of the order in original by the appellants, the same is not hit by the timelines contained in Section 128 of Customs Act. I therefore, remit the appeal for appropriate decision to the Commissioner (Appeals) with a direction to the Jurisdictional Commissioner to ensure that a copy of the Show Cause Notice is supplied to the noticee/appellants within a month hereof.

6. The Learned Commissioner (Appeals) shall ensure compliance with the principles of natural justice, take their written submissions (if any) on record & permitting the appellant to produce evidence in their support that they may like to rely upon. Since the appeal is nearly 5 years old, the Commissioner (Appeals) may endeavour to dispose of the matter within 6 months hereof.

7. The appeal is disposed of in aforesaid terms.

(Dictated and pronounced in open court.)

Sd/-

(Rajeev Tandon)
Member (Technical)

Pooja