

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

REGIONAL BENCH - COURT NO.1

**Diary No.75471 of 2021 of Miscellaneous Application (COD)  
And**

**Diary No.75045 of 2020**

(Arising out of Order-in-Original No.06/07 dated 28.02.2007, passed by  
Commissioner of Customs (Preventive), Customs House, CCP, West Bengal, Kolkata.)

**Umesh Jain**

(2, M. D. Road, Kolkata-700007, W.B.)

**...Appellant**

*VERSUS*

**Commissioner of Customs (Preventive), Kolkata**

(Customs House, 15/1, Strand Road, Kolkata-700001)

**Respondent**

**APPEARANCE**

Mr. S.C. Ratho, Consultant for the Applicant/Appellant

Mr. Tariq Sulaiman, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)**

**ORDER NO. Defect Misc. No. 266**

DATE OF HEARING : 19 June 2023

DATE OF DECISION : 19 June 2023

**PER MURALIDHAR:**

The Appellant has filed the present COD Application for being filed  
the Appeal with a delay of 4,636 days.

2. The Learned Consultant appearing on behalf of the Appellant  
submits that in terms of CESTAT Denovo Order No.A1473-  
1475/CAL/2000 dated 07.09.2000, denovo proceedings were taken up  
by the Adjudicating Authority in 2006. The Appellant was given  
opportunities for Personal Hearing on 25/07/2006 which was attended  
by the Counsel of the Appellant. Further opportunities were given on  
11/08/2006, 8/09/2006, 11/09/2006 and 11/10/2006, but no one  
turned up for hearing from the Appellant sides for the Personal  
Hearing. Thereafter, the Adjudicating Authority passed OIO No.06/07

dated 28/02/2007. The Appellant claims that the copy of this Order was never received by them. The Appellants were issued a letter dated 02/11/2012 from the Arrears Cell seeking recovery of penalty of Rs.5,00,000/- The appellant submitted their letter dated 06/12/2012 stating that the OIO No.06/2000 dated 28/02/2000 referred in the letter issued by Arrears Cell pertains to earlier proceedings and in the due course the matter had reached the Tribunal which had remanded the matter back to the Adjudicating Authority vide Final Order No. A/1473-1475/Cal Dated 7.09.2000. Thereafter two more letters dated 16/02/2013 and 08/03/2013 were served on the Appellant from the Arrears Section. The Appellant vide his letter dated 06/03/2013 once again submitted that the Denovo proceedings were ordered by the Tribunal. Subsequently a letter dated 08/11/2019 was received from Department wherein it is stated that the denovo proceedings OIO No.06/07 dated 28/02/2007 was passed confirming the Personal penalty of Rs.5,00,000/- on the Appellant. This letter directed the Appellant to deposit this amount immediately. As per the Affidavit filed by the Appellant, he says that he was sent a copy of this OIO with the letter dated 08/11/2019 and after receiving of the same, the present Appeal has been filed with a delay of 4,636 days. The Learned Consultant prays that the delay of 4,636 days may be condoned and the Appeal may be taken up on record.

3. The Learned AR submits that the letter received from the concerned Customs Department wherein it is clearly shown that this order No. 06/07 dated 28/02/2007 was dispatched by Speed Post to the Appellant. He also draws my attention to the letter dated 08/11/2019 wherein the Department has stated that then the OIO No.06/07 dated 28/02/2007 was sent by Speed Post Receipt No.EM543750084IN, and the letter was returned by the Postal Authorities with the remarks "Not claimed". Therefore, the Learned AR submits that the Appellant is deliberately claiming that they have

received the OIO only in 2019 after refusing to accept the OIO sent by the Speed Post in February 2007.

4. Heard both sides.

5. After going through the factual matrix, it is clear from the OIO that the Appellant has been indulging in delaying the tactics right from 03/01/2003. It is on record that, after the Denovo Proceedings were initiated by the Adjudicating Authority in 2003, the Appellant for the first time has stated that they have not received the copy of SCN. The Appellant had already gone upto CESTAT and has never taken this stand before the CESTAT when the Final Order was passed on 28/02/2000. Further, it is seen that when the Hearings were fixed on 25/02/2003, 06/03/2003 & 20/05/2003 etc., the Appellant was continuously seeking Adjournments and was not attending the Personal Hearing. After this, fresh Adjudication proceedings were taken up by the next Adjudicating Authority on 11/07/2006 wherein the Appellant sought adjournment. Further, Personal Hearings were fixed on 11/08/2006, 08/09/2006, 11/09/2006 & 11.10.2006, but no one turned up on behalf of the Appellant. Thereafter, the impugned order was passed. Further, it is on record that the letter dated 02/11/2012 was received by the Appellant at the same address for which he has filed the reply on 06/12/2012. Similarly, the letter dated 06/02/2013 and 18/02/2013 was received by the Appellant at the same address for which he has filed the reply on 06/03/2003. Therefore, this shows that the Appellant had deliberately not claimed the OIO no. 06/07 dated 28/02/2007 when the same was attempted to be delivered by the Postal Authorities. Further when the arrears reminder letters were sent in 2012 and 2013 as to why the Appellant did not make any effort to approach the Adjudicating Authority to check the status of the Denovo Adjudication is not known. The Appellant while properly sending their reply to the Department on the arrears letters, never bothered to approach the Denovo Adjudicating Authority to know the status of their case, which was taken up for

Adjudication by way of issue of several PH letters in 2006 & 2007 with the Adjudicating granting PH on several occasions. This shows that the Appellant has not brought in any supportive evidence or any plausible explanation to consider the Condonation of this huge delay of 4636 days.

6. As per the factual matrix discussed above, the Appellant has not brought in any evidence towards non-receipt of OIO and has failed to explain his silence for many years without making any efforts to find out the status of denovo adjudication even after receiving the Letters in 2012/2013 seeking payment of arrears. Therefore, I see no merit in the present COD Petition and dismiss the same. Consequently, the Appeal filed by him also stands dismissed.

(Dictated and pronounced in the open Court.)

Sd/-  
**(R. Muralidhar)**  
**Member (Judicial)**

**Pooja**