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

REGIONAL BENCH – COURT NO.2

**Customs Appeal No. 75641 of 2014**

(Arising out of Order-in-Appeal No.604/Pat/Cus/Appeal/2014 dated 18/02/2014 passed by Commissioner (Appeals), Customs, Central Excise, Service Tax, Patna.

**Shri Pankaj Kumar Sharma**
(S/o-Shri Yaswant Kumar Sharma,
R/O-Mohalla-Balughat, Brahmasthan,
P. S.- Muzaffarpur Town, Anchal Mushari, District-Muzaffarpur, Bihar)

**Appellant**

*VERSUS*

**Commr. of Customs, Patna**
(2nd Floor, Central Revenue Building, Birchand Patel Path, Patna-800001)

R**espondent**

**APPEARANCE :**
None for the Appellant
Mr. Faiz Ahmed, Authorized Representative for the Respondent

**CORAM:**
**HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)**
**HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)**

**FINAL ORDER NO.75018/2024**

Date of Hearing : 05 January 2024
Date of Decision:05 January 2024

**PER R. MURALIDHAR:**

No one has appeared on behalf of the Appellant. Since the matter pertains to the year 2014, in the interest of justice, we have taken up the Appeal for disposal with the help of the learned AR.

2. The Learned AR points out that the Commissioner (Appeals) has passed the impugned Order on the ground that the Appellant has filed the Appeal with the delay of 198 days.

3. On going through the OIA, it is seen that the Commissioner (Appeals) has conducted proper enquiry and has found that the OIO

dated 09/07/2013 was delivered to the Appellant on 15/07/2013 by Speed Post. On the same issue, the Department has also sent a letter on 05/11/2013 to the Appellant to the effect that the OIO was sent by Speed Post and was delivered to them on 15/07/2013. The detailed findings of the Commissioner (Appeals) are extracted below:-

> *3. The appellant submitted that impugned order was received by them on 29.11.2013. The appellant submitted that they came to know about the passing of impugned order on 10.10.2013 and then they made a correspondence on 10.10.2013 to the Assistant Commissioner, Customs Divn. Muzaffarpur for providing of Adjudicating Order as the same has not been received by them. However on verification from the office of Assistant Commissioner, Customs Divn. Muzaffarpur, it was not found correct. The copy of proof of corroborative postal receipt was also submitted by the department vide their letter C.No.VIII(10)208-Cus/Seiz/Muz/12-13/6716 dated 03.02.2014. This postal receipt clearly shows that impugned order at given address was delivered on 15.07.2013. Earlier, vide departments letter C.No.VIII (10)208-Cus/Seiz/Muz/12-13/5359 dated 05.11.13, it has been intimated to the appellants that the impugned order has been sent to them by speed post and the same has already been delivered to them on 15.07.2013. On 22.11.2013, the appellant made further correspondence to the Assistant Commissioner, Customs Divn. Muzaffarpur referring the said department's letter and mentioning that impugned order has not been received by them and requested for supply of the same. In turn, Department vide letter C.No.VIII(10)208-Cus/Seiz/Muz/12-13/5651 dated 29.11.2013 provided the photocopy of the impugned order.*
>
> *4. However, after going through the said letter and statement made by the postal authorities, I find that Order in question was dispatched to the appellant by registered speed post and delivered on 15.07.2013 which confirms the delivery thereof to the addressee as well as proper service under Section 37C of the Central Excise Act, 1944 which is applicable in customs matter equally. Besides, the appellant failed to justify any source which has apprised him on 10.10.13 regarding passing of impugned order by the Ld.Adjudicator. Accordingly, I find that impugned order was properly served on 15.07.2013 and there was extraordinary delay in filing the appeal.*

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> *5. The appeal has been filed beyond the statutory period of 60 days from the date of communication of decision/order to the appellant. The instant appeal has been filed on 23.01.14 i.e. after 198 days which is beyond the prescribed limits for filing appeal under Sec. 128 of the Customs Act, 1962 & the condonation power of the Commissioner(Appeal). The time limit of filing appeal is 60 days from receipt of the order. The condonation limit is further 30 days hence making it 90 days in all. Thus, it is beyond Commissioner(Appeal)'s condonable power. Accordingly, the appeal is dismissed as barred by limitation.*

4. The Hon'ble Supreme Court in the case of **Singh Enterprises Vs CCE Jamshedpur – 2008 (221) ELT 163 (SC)** has held that when the delay is beyond the condonable period of 30 days, neither the Tribunal nor the High Court or Supreme Court has any power to condone the same. Therefore, when the Commissioner (Appeals) has got factual details verified and has given a detailed findings, we do not see any reason to interfere with the same.

5. Accordingly, the Appeal stands dismissed.

(Dictated and pronounced in the open court.)

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

**Sd/-**
**(Rajeev Tandon)**
**Member (Technical)**

Pooja