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

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 76935 of 2016

(Arising out of Order-in-Appeal No.12/CUS(A)/GHY/16 dated 14/10/2016 passed by Commissioner, Customs, Central Excise & Service Tax (Appeals), Guwahati.)

M/s. Premela Trading
(Nepali Basti, Moreh, Manipur-795131)

Appellant

VERSUS

Commr. of Customs (Preventive), NER, Shillong
(Customs House, 110, M. G. Road, Shillong, Meghalaya-793001)

Respondent

APPEARANCE :
None for the Appellant
Mr. A. K. Chowdhury, Authorized Representative for the Respondent

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

FINAL ORDER NO.76132/2024

Date of Hearing : 18 June 2024
Date of Decision: 18 June 2024

PER R. MURALIDHAR:

No one has appeared on behalf of the Appellant inspite of notice.

2. The Learned AR points out that the issue is in a very short compass. Therefore, in the interest of justice, the Appeal itself was taken up for disposal with the help of the Learned AR.

3. The Learned AR points out that the Commissioner (Appeals) has dismissed the Appellant's Appeal on the ground that the Appeal was filed with a delay of more than 2 years.

4. On going through the impugned OIA, we find that the Commissioner (Appeals) has given the following findings:-

"*3. The matter of non receipt of the impugned order was referred to the Additional Commissioner, Customs (Prev), N.E.R., Shillong and he has* *informed vide his letter C.No. VIII(28)36/COMMR/APPEAL/16-17/11451(A) dated 30.09.2016 that the said O-I-O was served to the appellant through Imphal Customs Division on 07.02.2014 as evident from the dated acknowledgement receipt, copy of which is enclosed along with his letter. He has also informed that the appellant's contention of non receipt of the impugned order is an attempt to mislead the legal process on false pretext to cover up the delay of about 2 (two) years in filing appeal.*

4. Thus, it is evident from the letter of the Adjudicating Authority that the appellant received the impugned order on 07.02.2014 and filed this appeal on 06.06.2016 which is after expiry of sixty days from the date of receipt of the order-in-original. In terms of Section 128 of Customs Act, 1962, an appeal shall be presented within sixty days from the date of receipt of the decision or order of such adjudicating authority provided that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days. The appellant filed this appeal after expiry of more than 2 (two) years which is beyond the power of condonation by Commissioner (Appeals) in terms of Section 128 of Customs Act, 1962.

5. However, for the sake of principal natural justice, hearing was given to the appellant on 02.08.2016 and Shri D. Bhattacharjee, Retired Superintendent, Central Excise appeared for the appellant. Shri Bhattacharjee reiterated the submission and prayed to allow the appeal.

Since, the law does not permit to entertain the appeal, the appeal is liable to be rejected as time barred without going into merit of the case.

6. In view of the above, the appeal is rejected as time barred."

5. It has been held by the Hon'ble Supreme Court in the case of M/s. Singh Enterprises Vs. CCE, Jamshedpur-2008 (221) ELT 163 (SC) that the Commissioner (Appeals) does not have any power to condone the delay beyond 30 days after taking into account the normal two months period given for filing the Appeal. This judgment of the Hon'ble Supreme Court has been consistently followed by the High Courts and other Courts.

6. The details of serving of the OIO have been properly verified by the Commissioner (Appeals) as can be seen from the above paragraphs. We do not see any reason to interfere with the detailed and considered order passed by the Commissioner (Appeals). Therefore, we dismiss the Appeal on this ground itself.

(Dictated and pronounced in the open court.)

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

Sd/-
(Rajeev Tandon)
Member (Technical)

Pooja