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

REGIONAL BENCH – COURT NO.2

Excise Appeal Nos. 75092-75094 of 2015

(Arising out of Order-in-Appeal Nos. 93-95/JSR/2014 dated 18.11.2014 passed by Commissioner of CGST & Central Excise, Jamshepur.)

M/s Bihar Raffia Industries Limited,
(A-6(Part) & A-8(Part), Phase-V,
Adityapur Industrial Area,
Gamaharia, Jamshedpur-832108)
M/s Trilok Chand Agarwal,
M/s Naresh Agarwal,

...Appellant

VERSUS

Commissioner of CGST & Central Excise, Ranchi,
(605, Mahabir Tower, Main Road, Ranchi-834001.)

.. ...**Respondent**

APPERANCE :
Shri S. P. Mazumdar, Advocate for the Appellant
Shri P. Das, Authorized Representative for the Respondent

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

FINAL ORDER No. 76462-76464/2024

DATE OF HEARING : 18.07.2024
DATE OF DECISION : 18.07.2024

Per R. Muralidhar :

The Commissioner (Appeals) has dismissed the appeals filed by the Appellants on the ground that the appeal was filed after normal period of 60 days plus the condonable period of 30 days i.e. 90 days. Therefore, the he has hold that the appeal is not maintainable. On going through the OIA, it is observed that the Commissioner (Appeals) has held as under:-

> "2. The appeals were initially brought to this office on 01.10.2014 without mandatory deposit of 7.5% of duty demanded or penalty imposed, which were returned because of lack of said deposit. The said appeals were received by speed post thereafter on 07.10.2014 without said deposits. This office

> vide letter CCE (A)/Misc./02/RAN/2014/2210 dated 09.10.2014 returned the same as appellants have not deposited the mandatory deposit of 7.5% of duty demanded or penalty imposed. These appeal were finally received in this office with mandatory deposit of 7.5% on 28.10.2014 alongwith letter dated 27.10.2014 of appellant no. 1."

2. We find that the appellant have filed the appeals on 1.10.2014 i.e. within 90 days. The Appellants have pre-deposited 7.5% amount of the litigated amount subsequently on 28.10.2014. However, the Commissioner (Appeals) has taken the date of filing of appeal as 28.10.2014 for dismissing the appeal.

3. We take the view that once the appeal is filed on 1.10.2014 and defect of non-fulfillment of pre-deposit is pointed out, the date of filing the appeal should be taken as 1.10.2014 only. Since we find that this case the appeals have been filed 90 days from this date the delay is required to be condoned.

4. We condone the delay and remand the matter to the Commissioner (Appeals). The Commissioner (Appeals) is directed to decide the issue on merits within 4 months in the date of receipt on this order.

6. The appeal is disposed off thus.

(Dictated and pronounced in the open court)

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

Sd/-
(Rajeev Tandon)
Member (Technical)

Tushar Kr.