IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH – COURT NO. 1
CUSTOMS Appeal No. 75910 of 2019

(Arising out of Order-in-Original No.KOL/CUS(CCP)/AA/127/2019 dated 14.02.2019 passed by Commissionerof Customs(Appeal), Kolkata)

M/s. Lakhdatar Traders **: Appellant**
19, Armenian Street, 1st Floor,Room No. 216, Kolkata-700 001.

VERSUS

Commissioner of Customs, Kolkata. **: Respondent**
15/1, Strand Road, Kolkata-700 001.

APPEARANCE:

Shri Nilotpol Chowdhury, Advocate for the Appellant

Shri S.Chakroborty, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75292/ 2025

DATE OF HEARING :10.02.2025

DATE OF DECISION:10.02.2025

Order : [Per Shri Ashok Jindal]

The appellant is in appeal against the impugned order wherein the Ld. Commissioner (Appeal) has dismissed the appeal as barred by limitation holding that the same is filed after 562 days of the receipt of the order.

2. Against the said order appellant is before us.

3. Appellant filed appeal before Ld. Commissioner (Appeal) against the Adjudication order dated 01.08.2016. The Ld. Commissioner (Appeal) held that as on 01.08.2016 the order was issued to the appellant and, he has filed the appeal after 90 days of that order. In that circumstances he rejected the appeal under Section 128 (1) of the Customs Act as time barred.

4. Against the said order appellant is before us.

5. The Ld. Counsel appearing on behalf of the appellant submits that the order dated 01.08.2016 was actually signed by the Adjudicating Authority on 09.08.2016 and same was never communicated to the appellant despite best efforts made by the appellant by reminders dated 13.05.2017 and 13.12.2017 and finally the said order was received by the appellant only on 18.12.2017. To support this contention he drew our attention to the covering letter issued to the appellant dated 18.12.2017 and thereafter appellant filed appeal on 14.12.2018. Therefore, taking the claim of the appellant the appeal has been filed before the Ld. Commissioner (Appeal) within time.

6. In that circumstances impugned order is to be set aside.

7. Heard the parties. Peruse the record.

8. Under Section 128(1) of the Customs Act, 1962 the appeal is required to file before Ld. Commissioner (Appeal) within 60 days of the receipt of the adjudication order. There is no evidence placed by the Revenue the date of service of the said order on the appellant.

9. We further take note on the fact that appellant made request two times for issue of the order but the same was not replied to the appellant. In that circumstances, the benefit of doubt goes in favour of the appellant. In the absence of any evidence placed on record of delivery of the adjudication order on the appellant, the date of receipt of the adjudication order shall be treated as 18.12.2017 and within 60 days thereof the appellant has filed appeal before

the Ld. Commissioner (Appeal). In that circumstances, we hold that the appellant has filed appeal before the Ld. Commissioner (Appeal) within time prescribed under Section 128(1) of the Customs Act, 1962.

10. Accordingly we set aside the impugned order and remand matter back to the Ld. Commissioner (Appeal) to decide the issue on merit within 60 days of receipt of this order after affording of reasonable opportunity of being heard to the appellant.

11. Appeal is disposed of by way of remand.

(Dictated and pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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