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

REGIONAL BENCH - COURT NO.2

**Customs Appeal No.76340 of 2019**

(Arising out of Order-in-Appeal No.CUS(PREV)/SILIGURI(CCP)/82/2019 dated 28.03.2019 passed by Commissioner of Customs (Appeals), Kolkata.)

**Shri Deshraj Agarwal**
(C/o. Punam Chand Jain, 64, Burtolla Street, Kolkata-700007.)

**...Appellant**

*VERSUS*

**Commissioner of Customs, Siliguri**

**.....Respondent**

(C.R. Building, Haren Mukherjee Road, Hakimpara, Siliguri-734001.)

**<u>APPEARANCE</u>**

Shri Punam Chand Jain & Mrs. Mala Jain, Consultants for the Appellant (s)
Shri Tariq Suleman, Authorized Representative for the Revenue

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

**<u>FINAL ORDER NO. 75904/2025</u>**

DATE OF HEARING : 09.04.2025
DATE OF DECISION : 09.04.2025

**Per : R. MURALIDHAR :**

We find that the Commissioner(Appeals) has dismissed the Appeal filed by the Appellant on the ground that it was filed on 91$^{st}$ day, whereas the Commissioner(Appeals) has power to condone a delay of only 30 days after 60 days.

2. The Ld.Consultant appearing for the Appellant submits that in order to come to this conclusion, the Commissioner(Appeals) has taken the date of Order-in-Original, i.e. 18.11.2015 as the date of serving the OIO on the Appellant. She submits that the Appellant has actually received the same on 30.11.2015. If this date is taken as the date of

receipt, then the delay would be only to the extent of 17 days. She fairly concedes that the Appellant is not in a position to show any proof to the effect that they have received it on 30.11.2015, since they have not preserved the postal enevelope.

3. However, we find force in the argument of the Appellant that the on the date of Order-in-Original itself, it could not have been possible for the Adjudicating authority to hand over the same to the Appellant. We find from the details given at Page 29 of the Order in Original that for dispatch details has been signed by the Supdt.(Adjn) on 20.11.2015 and the same was dispatched on 23.11.2015. Therefore, the question of the appeal being filed with a delay of more that 90 days would not arise. We hold that the appeal has been filed within the condonable period and accordingly, we condone the same and remand the matter to the Commissioner (Appeals).

4. The Commissioner(Appeals) is directed to hear the Appeal on merits and conclude the proceedings within 3 months from the date of receipt of this communication.

5. Appeal stands remanded thus.

(Dictated and pronounced in the open Court.)

Sd/
**(R. MURALIDHAR)**
**MEMBER (JUDICIAL)**

Sd/
**(RAJEEV TANDON)**
**MEMBER (TECHNICAL)**

**sm**