IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I

APPEAL No. C/85707/2013

(Arising out of Order-in-Appeal No. 925/MCH/AC/Refund(Exp)/2012 dated 21.11.2012 passed by Commissioner of Customs (Appeals), Mumbai-I)

Sapna Enterprises **Appellant**

Vs.

Commissioner of Customs (Export), Mumbai **Respondent**

Appearance:

Shri Stebin Mathew, Advocate, for appellant
Ms. P.V. Sekhar, Joint Commissioner (AR), for respondent

CORAM:

Hon'ble Dr. D.M. Misra, Member (Judicial)
Hon'ble Mr. Sanjiv Srivastava, Member (Technical)

Date of Hearing: 25.01.2019
Date of Decision: 25.01.2019

ORDER No. **A/85218/2019**

Per: Dr. D.M. Misra

This is an appeal filed against order-in-appeal No. 925/MCH/AC/Refund(Exp)/2012 dated 21.11.2012 passed by Commissioner of Customs (Appeals), Mumbai-I.

2. Briefly stated the facts of the case are that the appellant had filed refund claim of 4% SAD amounting

to Rs.27,71,594/- paid at the time of import in terms of Notification No.102/2007 dated 14.9.2007. Alleging that the refund claim was filed beyond the period stipulated in the said notification, the same was rejected. Aggrieved by the said order, the appellant filed appeal before the learned Commissioner (Appeals) who, in turn, rejected their appeal observing that the appeal was filed with the office of the Commissioner (Appeals) after 96 days from receipt of the order by the appellant and there was a delay of 36 days in addition to the statutory limit of 60 days as provided under Section 128 of the Customs Act, 1962. Hence, the present appeal.

3. Learned Advocate for the appellant has submitted that the learned Commissioner (Appeals) in the impugned order has considered the date of communication as 13.4.2011, but in fact the order was issued to them on 03.05.2011. Further, the 'note sheet' in the appeal file obtained from the office of the Commissioner (Appeals) through RTI, revealed that there was a mention in the note sheet that the delay was only 27 days. The learned Advocate submits that since the delay is less than 30 days and within the condonable limit, therefore, the matter may be remanded to the learned Commissioner (Appeals) to consider the issue on merit afresh.

4. Learned AR for the Revenue fairly submits that the order was communicated to the appellant after 3rd May 2011 and from the date of communication, the appeal was filed involving a delay of 27 days.

5. We find that the learned Commissioner (Appeals) has erroneously observed that there was a delay of 36 days in filing the appeal before her and dismissed the appeal accordingly. From the record, we find that the delay was 27 days and within the condonable period prescribed under Section 128 of the Customs Act, 1962. In the result, the impugned order is set aside and the appeal is allowed by way of remand to the learned Commissioner (Appeals) to consider the application seeking condonation of delay and thereafter proceed with the matter.

6. Appeal is allowed by way of remand.

(Pronounced in court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. D.M. Misra)
Member (Judicial)

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