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

Appeal No. E/87892 & 87898/2018

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-377/2017-18 dated 29.09.2017 passed by the Commissioner of Central Excise (Appeals), Pune-I).

M/s Lean Automation Equipments (P) Ltd.	Appellant

Vs.

Commissioner of Central Excise, Pune-I	Respondent

Appearance:

Shri Harish Bindumadhavan, Advocate	for Appellant
Shri Sanjay Hasija, Supdt. (AR)	for Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)

Date of Hearing: 30.01.2019

Date of Decision: 30.01.2019

ORDER NO. **A/85248-85249/2019**

Per: Dr. D.M. Misra

Heard both sides.

2. These two appeals are filed against Order-in-Appeal No. PUN-EXCUS-001-APP-377/2017-18 dated 29.09.2017 passed by the Commissioner of Central Excise (Appeals), Pune-I.

3. At the outset, learned Advocate for the appellants submits that even though there was a delay of 5 days, inadvertently no condonation application was filed before the learned Commissioner (Appeals). Learned Advocate has further submitted that before the learned Commissioner (Appeals) they appeared and argued the matter on merit, nut no defect memo was issued nor it was pointed out during the course of hearing that there was a delay of 5 days so as to provide the opportunity to them to explain the cause for delay. Explaining the reason for delay, he submits that there was communication gap between the client and the concerned Advocate in preparing the draft appeal and filing thereafter resulted into delay of 5 days. Further since the Advocate did not know the date of filing of the appeal after preparing of draft, therefore, no formal condonation application was filed seeking condoning of the delay. He prays that the matter may be remanded to the learned Commissioner (Appeals), so as to enable them to file a proper application seeking condonation of delay and argue the matter on merit.

4. Learned AR for the Revenue has no objection in remanding the matter back to learned Commissioner (Appeals) for decision on merit.

5. I find that delay occurred in filing appeal before the learned Commissioner (Appeals) is within condonable limit as prescribed under Section 35(1) of the Central Excise Act, 1944. Prima facie, the explanation furnished by the appellant for the delay before the learned Commissioner (Appeals) seems to be reasonable. However, a proper application seeking condonation in this regard

need to be filed before the learned Commissioner (Appeals), which the learned Advocate undertakes to file. In the interest of justice, therefore, I am of the view that the appellant be provided an opportunity to file proper application seeking condonation of the delay before the learned Commissioner (Appeals). The learned Commissioner (Appeals) after considering the said application, if any filed by the appellant shall decide it, and merit of the case thereafter accordingly. Needless to mention that a reasonable opportunity be provided to the appellant to defend their case. All issues are kept open.

6. Appeals are allowed by way of remand.

(Dictated and pronounced in Court)

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

Sinha