IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: C/493/2010

[Arising out of Order-in-Appeal No: 73/2010/MCH/AC/Gr.VA/2010 dated 30th March 2010 passed by the Commissioner of Customs (Appeals), Mumbai – I .]

For approval and signature:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Dr Suvendu Kumar Pati, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	Yes
2.	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	Yes
3.	Whether Their Lordships wish to see the fair copy of the Order?	:	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	:	Yes

B E Billimoria & Co Ltd … ***Appellant***

versus

Commissioner of Customs (Import)
Mumbai …***Respondent***

<u>*Appearance*</u>*:*

Shri Prashant Patankar, Consultant for appellant

Shri KM D'Souza, Assistant Commissioner (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Dr Suvendu Kumar Pati, Member (Judicial)

Date of hearing: 23/01/2019
Date of decision: 23/01/2019

ORDER NO: A/85174 / 2019

Per: C J Mathew

In this appeal of M/s B E Billimoria & Co Ltd against order-in-appeal no. 73/2010/MCH/AC/Gr.VA/2010 dated 30th March 2010 of Commissioner of Customs (Appeals), Mumbai – I, it is submitted by Learned Consultant that there was a delay of twenty one days beyond the sixty days that was statutorily permitted for filing of appeal against order of original authority, received by them only on the 29th December 2018, and that the delay occurred primarily owing to their belief that they were entitled to a period of ninety days without seeking condonation. The disposal off the appeal by the first appellate authority without reference to the merits of the issue is, therefore, assailed.

2. We have heard Learned Authorised Representative.

3. It is seen that the impugned order has not gone into the merits in the appeal against the order of the original authority which was

dismissed solely on the ground that the appeal had not been filed within the statutorily prescribed period of sixty days in section 128 of Customs Act, 1962. The first appellate authority is empowered to entertain appeals that are filed up to thirty days beyond the prescribed deadline on sufficient cause. The appellant has been candid enough to admit to erroneous interpretation of the provisions which should have been judicially, and judiciously, tested for application of discretion. The expression ‘prevented by sufficient cause’ in the said section requires inadequacy of cause to be brought on record which does not appear to have been considered.

4. Considering the submissions, we find that the condonation of delay should have been permitted and the appeal disposed off on merit. We, therefore, set aside the impugned order and remand the matter back to the first appellate authority for doing so.

(Pronounced in Court)

(Dr Suvendu Kumar Pati)
Member (Judicial)

(C J Mathew)
Member (Technical)

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