CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

Customs Appeal No. 85315 of 2021

(Arising out of Order-in-Appeal No. MUM-CUS-PK-IMP-60/2020-21 dated 15.12.2020 passed by the Commissioner of Customs (Appeals), Mumbai-I.)

M/s. Hind Offshore Pvt. Ltd. ....Appellant
I-C, Ground Floor, Wakefield House,
Narottam Morarji Road, Ballard Estate,
Mumbai, Maharashtra – 400 001.

VERSUS

Commissioner of Customs, Mumbai Import -I ....Respondent
New Customs house, Ballard
Estate, Mumbai, Maharashtra – 400 001.

APPERANCE:

Ms. Tridipa Banerjee, Advocate for the Appellant
Shri Ramesh Kumar, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85588/2022

Date of Hearing: 08.06.2022
Date of Decision: 08.06.2022

PER: DR. SUVENDU KUMAR PATI

Order passed by the Commissioner of Customs (Appeals), Mumbai-I refusing relief to the appellant, on the ground that the same is hit by period of limitation prescribed under Section 128 of the Customs Act, is assailed in this appeal.

2. We have heard submissions from both sides and perused the case record. Before arriving at any decision, it is worth reproducing

the relevant portion of the order passed by the Commissioner (Appeals) in para 12 of his order dated 15.12.2020. It reads:-

> *"12. From the provisions of Section 128(1) of Customs Act 1962, it is clear that appeals are to be filed within 60 days of communication of orders which is extendable by a further period of up to 30 days if the Commissioner(Appeals) is satisfied that the appellants are prevented by sufficient cause from filing appeals within 60 days. Since the time allowed for filling appeal is 60 days.* ***I find that the importer instead of challenging the assessment dt. 29.3.2017, had chosen to request the Group to provide them with a copy of the finally assessed B/Entry only on 5.1.2018, which was provided to them on 12.1.2018. Thereafter, the Appellants have filed an appeal on 5.4.2018. Thus there is delay of 372 days in filing this appeal.*** *As mentioned above, the Commissioner (Appeals) has power to condone delay of only up to 30 days in filling appeal under Section 128(1) of the Customs Act, 1962."*
>
> (*Highlighted to emphasise*)

Further he has reproduced para 42 & 43 of the judgment of Hon'ble Supreme Court passed in the case of *ITC Ltd. Vs. CCE Kolkata [2019 (368) ELT 216 (SC)]*. The same is also extracted below:-

> *"42. It was contended that no appeal lies against the order of self-assessment. The provisions of Section 128 deal with appeals to the Commissioner (Appeals). Any person aggrieved by any decision or order may appeal to the Commissioner (Appeals) within 60 days. There is a provision for condonation of delay for another 30 days. The provisions of Section 128 are extracted hereunder:*
>
> *"128. Appeals to [Commissioner (Appeals)]. (1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a [Principal Commissioner of Customs or Commissioner of*

> *Customs] may appeal to the [Commissioner (Appeals)] [within sixty days] <u>from the date of the communication to him of such decision or order"</u>:*
>
> (*Underline to emphasise*)
>
> *Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days*
>
> *43. As the order of self assessment is nonetheless an assessment order passed under the Act, obviously it would be appealable by any person aggrieved thereby. The expression 'Any person' is of wider amplitude. The revenue, as well as assessee, can also prefer an appeal aggrieved by an order of assessment. It is not only the order of reassessment which is appealable but the provisions of Section 128 make appealable any decision or order under the Act including that of self-assessment. The order of self-assessment is an order of assessment as per section 2(2), as such, it is appealable in case any person is aggrieved by it."*

The provisions of Section 128 of the Customs Act as extracted above would clearly indicate that limitation would be counted from the date of communication to him (person aggrieved) of such decision or order. Secondly, the ratio of the above referred judgment also indicates that order of assessment/re-assessment is an appealable order. This being the facts on record and the provision of law, the service of copy of the order on dated 12.01.2018 is supposed to be taken as the date of communication of the order, in which event the delay was only of 18 days concerning which satisfactory explanation in the delay condonation petition was afford by the Appellant as has been noted by the Commissioner (Appeals) in para 7 of his order i.e.

Order-in-Appeal under challenge. Additionally the order passed by the First Appellate Authority under RTI Act, 2005 on dated 22.10.2021, being taken as additional piece of evidence since in the nature of public documents, clearly reveal that date of communication of order was 12.01.2018 and the Respondent-Department had never been in the practice of issuing copy of finally/provisionally assessed bill of entry to anyone, as the same has been uploaded in their website link (para 4 of the order of the appellate authority).

3. This being the facts on record, we are of the considered opinion that communication of the decision/order was made on 12.01.2018 and the date of uploading in the link provided by the Respondent-Department, cannot be taken as date of communication of the order besides the fact that dispute concerning non-availability of the order in the said link is also noticeable in the RTI order dated 22.10.2021. Moreover, no Court would presume such a document uploaded in the website as genuine unless it is a public document containing seal and signature of the public authority or its certified copy that would meet the requirement of Section 79 of the Indian Evidence Act. We, therefore, consider it appropriate to allow the appeal and remand the matter back to the Commissioner of Customs (Appeals), Mumbai-I to pass an order in conformity to the dictate of Section 128A(4) of the Customs Act. Hence the order.

ORDER

4. The appeal is allowed and the order passed by the Commissioner of Customs (Appeals), Mumbai-I vide Order-in-Appeal No. MUM-CUS-PK-IMP-60/2020-21 dated 15.12.2020 is hereby set aside, as the same is within the condonable period of limitation prescribed under Section 128 of the Customs Act, 1962. The appeal is remanded back to the Commissioner (Appeals) for re-hearing in terms of the observation made above.

(Pronounced in open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

Prasad