CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 89869 of 2013

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-162/13-14 dated 23.09.2013 passed by the Commissioner of Customs (Appeal), Mumbai-Zone III)

M/s Cipla Ltd **.... Appellant**
L. D. building Mehra Industrial Estate,
Asha Usha Compound, L.B.S. Marg,
Vikroli (West), Mumbai-400 079.

Versus

Commissioner of Customs ACC & Import-Mumbai **.... Respondent**
Air Cargo Complex Sahar,
Andheri (E), Mumbai-400099.

Appearance:

Shri Dhananjay Seturaj, Advocate for the Appellant

Shri Sydney D'Silva, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85684/2022

Date of Hearing: 08.08.2022
Date of Decision: 08.08.2022

Per: S.K. MOHANTY

Heard both sides and perused the records.

2. The learned Commissioner (Appeals), in this case, has dismissed the appeal filed by the appellant on the ground that there was delay of 24 days in filing the appeal before him. Insofar as filing of appeal before the Commissioner (Appeals) is concerned, Section 128 of the Customs Act, 1962 has mandated that the appeal should be preferred within a period of sixty days from the date of communication of the impugned order. Further, in the proviso clause appended to Section 128 *ibid,* it has also

been mandated that the Commissioner (Appeals) is empowered to condon the delay, if the appeal is filed within a further period of thirty days, beyond the normal period of sixty days from the date of receipt of the impugned order by the appellant. Since, in the present case, there is delay of only 24 days, the office of the Commissioner (Appeals) should have pointed out such delay to the appellant for filing of the delay condonation application. It is an admitted fact on record that no such defect memo has been issue in this case to the appellant. In view of the fact that the appeal was filed by the appellant within the condonable period prescribed under statute, we are of the opinion that the matter should go back to the learned Commissioner (Appeals) for consideration of reason of delay in late filing of appeal and for a decision whether, the delay can be condoned or not. If he is satisfied that there is sufficient reason for condoning the delay, then as per consideration of such application, the appeal be entertained on the basis of available records and the submissions to be made by the appellant. The appellant is also directed to file delay condonation application before the office of the Commissioner (Appeals).

3. In the result, appeal is allowed by way of remand to the Commissioner (Appeals). Needless to say, that the appellant should be given personal hearing before deciding the matter afresh.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

Sinha/ys