# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
# MUMBAI

WEST ZONAL BENCH, MUMBAI

**Customs Appeal No. 88292 of 2019**

(Arising out of Order-in-Appeal No. 763 (CWC Kalamboli)/2017(JNCH)/Appeal-II) dated 31.10.2017 passed by the Commissioner of Customs (Appeals-II), JNCH, Nhava Sheva, Mumbai-II.)

**M/s. Ishanika Impex Pvt. Ltd.** ........Appellant
**No.11, Shamshakt Co. Op. Housing Society Ltd.,**
**Nehru Nagar, Kangurmarg East, Mumbai – 400 042**

*VERSUS*

**Commissioner of Customs, Nhava Sheva-V** ........Respondent
**JNPT, Customs House, Nhava Sheva,**
**Dist.- Raigad, Maharashtra – 400 707**

**APPERANCE:**

None for the Appellant
Shri D.S. Maan, Dy. Commissioner, Authorised Representative for the Respondent

CORAM:

**HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)**

**FINAL ORDER NO. A/85848 / 2022**

Date of Hearing: 02.09.2022
Date of Decision: 02.09.2022

None for the Appellant.

2. Written request for providing facility for virtual hearing to the learned Counsel for the Appellant is received at this end but in CESTAT, after re-opening of the Court post Covid pandemic, only physical hearing is granted as per Circular issued by the Head Office,

New Delhi. Alternative request for taking a decision by accepting written submission of the Appellant is made. The content of the written submissions could not be understood due to improper sentence structure. The gist that can be made out from the said written note is that Commissioner (Appeals) had dismissed the Appellant's appeal filed before him on the ground of limitation since there was delay of 23 days in filing appeal and no delay condonation petition was filed. Appellant had apparently not appeared before the Commissioner (Appeals) as could be inferred from the starting sentence of para 2. It reads:

> *"The Appellant did not hear from the Commissioner (Appeals) even after two years from the date of appeal."*

There seems to be no irregularity in the order passed by the learned Commissioner (Appeals) as such discretion can only be exercised for sufficient reason.

3. Photocopy of a postal receipt is annexed to the written submissions. It reveals that it was addressed to the Commissioner of Customs (Appeals) and dispatched on 06.09.2016 by one Mr. Hari Radhakrishnan. No correlation between the sender and the Appellant company is indicated in the written submission nor the date of receipt at the Commissioner (Appeals) is furnished alongwith postal proof except that it has been stated that Postal Department won't have taken 41 days to deliver the letter sent by the Appellant by speed post.

4. Condonation of delay by the Commissioner (Appeals) is a discretionary power that can only be exercised favourably in the event sufficient cause is shown for such delay. Therefore, in the absence of proof of delivery of appeal memo allegedly sent through the Postal Department by the Appellant, interference by this Tribunal in the order passed by the Commissioner (Appeals) is uncalled for.

5. Hence, the appeal is dismissed and the order passed by the Commissioner of Customs (Appeals-II), JNCH, Nhava Sheva, Mumbai-II vide Order-in-Appeal No. 763 (CWC Kalamboli)/2017(JNCH)/Appeal-II) dated 31.10.2017 is hereby confirmed,

(Dictated & pronounced in open Court)

**(Dr. Suvendu Kumar Pati)**
**Member (Judicial)**

*Prasad*