CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Custom Appeal No. 85004 of 2020

(Arising out of Order-in-Appeal No. MUM-CUSTM-AXP-APP-506/1920 dated 19.09.2019 passed by the Commissioner of (Appeals), Mumbai-III)

M/s Anish India Export **.... Appellant**
ICE No. 588076899 19-20 Udyog Vihar, Phase IV,
Gurgaon, Harayana-122015.

Versus

Commissioner of Customs-Mumbai **.... Respondent**
(Air Cargo Export)
CBK(XOS) ACC, Air Cargo Complex, Andheri, Mumbai-400099.

Appearance:

Smt Vijaykumari, Shipping Manager for the Appellant

Shri Ram Kumar, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85257/2023

Date of Hearing: 10. 02.2023
Date of Decision: 27.02.2023

Per: Anil G. Shakkarwar

Present appeal is arising out of impugned Order-in-Appeal dated 20.09.2019 through which learned Commissioner (Appeals) has rejected the appeal as time barred. Aggrieved by the said order, the appellant is before this Tribunal.

2. Brief facts of the case are that the appellants are exporters and exported goods under claim of rebate. Proceedings were initiated against the appellant for recovery of drawback for failure to produce evidence of receipt of export proceeds in foreign exchange.

3. Heard Smt. Vijaykumari, Shipping Manager of the appellant. She has submitted that they had never received a copy of show-cause notice nor a copy of Order-in-Original. Only when their subsequently consignment were stopped from export under an alert issued, they came to know about the said proceedings. Subsequently, they obtained from records, a copy of the Order-in-Original and filed an appeal.

4. The learned AR has submitted that Order-in-Original is dated 27.03.2018 and the appeal was filed on 21.06.2019. Since the appeal was filed beyond 90 days prescribed under Section 128 of the Customs Act, 1962, the learned Commissioner (Appeals) has rightfully rejected it as time barred.

5. I have carefully gone through the submissions made by both the sides and records of the case. I find that the learned Commissioner (Appeals) has reproduced Section 153 of the Customs Act, 1962, which provides for services of order or decision. I find that it is provided that the order etc. should be served by sending it by registered post or by such courier as may be approved by the Commissioner and if it is not possible to serve the order etc. in the said manner, then by affixing it on notice board of the Custom House. The learned Commissioner (Appeals) has held that the filing of appeal was time barred. However, on which date the concerned Order-in-Original was sent by registered post to the appellant or on which date the said Order-in-Original was affixed on the notice board of the Custom House, has not been stated in the impugned order. I, therefore, do not find the impugned order to be reasonable because the date from which period of 90 days is reckoned with is missing. I, therefore, set

aside the impugned order and remand the matter to the appellate authority to decide the issue on merit.

6. In above terms, the appeal is allowed by way of remand.

(Order pronounced in open court on 27.02.2023)

(Anil G. Shakkarwar)
Member (Technical)

Sinha