CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH
Court No.5

Customs Miscellaneous Application (EH) No. 85937 of 2024
(On behalf of Appellant)
In Customs Appeal No. 86619 of 2024

(Arising out of Order-in-Appeal No. MUM-CUS-TK-IMP-12/2024-25/NCH dated 16.05.2024 passed by the Commissioner of Customs (Appeals)-I, Mumbai)

Siddhivinayak Impex **Appellant**
Shop No.4, Ground Floor,
48/48, Hira Niwas,
Modi Street, Fort,
Mumbai 400 001.

Vs.

Commissioner of Customs, Mumbai Import -II **Respondent**
New Custom House, Ballard Estate,
Mumbai 400 001.

Appearance:

Shri Hans Raj Garg, Advocate, for the Appellant
Shri Deepak Sharma, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

Date of Hearing: 19.08.2024
Date of Decision: 19.08.2024

FINAL ORDER No. ……85793/2024.

PER: DR. SUVENDU KUMAR PATI

We have heard on the early hearing application from both the sides.

2. Learned counsel for the appellant submitted that their appeal was dismissed by the Commissioner (Appeals) on the ground of limitation as she did not find the reasons stated in the delay condonation application as sufficient to condone the delay of eight days in filing of the appeal but, on perusal of the order passed by Commissioner we have noticed that the order passed by the original adjudicating authority was subsequently amended and corrigendum to the order was issued and the respondent

department itself had acknowledged it in writing before the Commissioner (Appeals) that the original copy of the order-in-original had been issued by Speed Post on 05.10.2023 by EMI No.228194267IN. Admittedly, appeal was filed on 15.12.2023 and learned counsel for the appellant is of the view that they were in receipt of copy of the order on 09.10.2023, but the original order was received by them much later, i.e. on 20.10.2023. He further submitted that they were never in receipt of corrigendum that would make the order complete for the purpose of appeal. His further submission is that early hearing of their appeal is required as the issue is recurring in nature and their subsequent imports are being impacted by the order-in-original that was passed against the appellant and no speaking order was passed by the Commissioner (Appeals) despite the fact that computation of the period of limitation was not done after acknowledging the receipt of corrigendum to the order by the appellant or at least from the date of issue of corrigendum order, which was on 07.12.2023, in which case there is no delay.

3. Learned AR took note of the submissions and he is of the view that the submissions are made on the facts available on record but he objects the petition on the ground that the delay was not adequately explained by the appellant, for which learned Commissioner had not exercised her discretion in condoning the delay.

4. Taking note of the submissions we are of the view that appeal being filed just after a week of passing the corrigendum, it is filed within the stipulated time prescribed. After taking consent from both the sides, we consider it appropriate to allow the early hearing and having regard to the fact that learned Commissioner (Appeals) has not passed the order in conformity with Section 128A(4) of the Customs Act, 1962 we remand the matter to the Commissioner (Appeals) for rehearing after noting our finding that there is no delay in filing the appeal before the Commissioner (Appeals).

5. Accordingly we allow the early hearing application and dispose of the miscellaneous application. We also allow the appeal by way of remand to the Commissioner (Appeals) for determination of the issue in accordance with Section 128A(4) of the Customs Act, 1962 after hearing the parties and accordingly the order passed by her on 16.05.2024 is hereby set aside.

(Order pronounced in the open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

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