CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86794 OF 2014

[Arising out of Order-in-Appeal No: 456 (GR.II-G)/2014(JNCH)/IMP-437 dated 10th February 2014 passed by the Commissioner of Customs (Appeals), Mumbai–II.]

Prasad Enterprises
2948 Bhagat Singh Street No.3, Chuna Mandi
Paharganj, New Delhi … ***Appellant***

versus

Commissioner of Customs (Import)
Jawaharlal Nehru Customs House, Nhava Sheva
Uran, District Raigad - 400 707 ***…Respondent***

APPEARANCE:

Shri Ashok Singh, Advocate for the appellant

Shri Deepak Sharma, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 87546/2024

DATE OF HEARING:	21/11/2024
DATE OF DECISION:	21/11/2024

PER: C J MATHEW

The limited issue in this appeal of M/s Prasad Enterprises, against order[1] of Commissioner of Customs (Appeals), Mumbai – II, is the dismissal of challenge to the order of the original authority, enhancing the value of 60 metric tons of 'LDPE polymer' imported *vide* bill of entry no. 841528/20.07.2007, at the threshold on the ground that appeal had been filed beyond the sixty days stipulated in section 128 of Customs Act, 1962 and that the reasons adduced in application for condonation of delay were not convincing.

2. We have heard Learned Counsel for the appellant and Learned Authorized Representative

3. The order of the original authority dated 5th February 2013 was appealed against on 3rd May 2013 which was well short of ninety days from the date of issue of the order impugned within which the dispute was open to disposal on merit subject to condonation of delay beyond sixty days by the first appellate authority. Upon filing of the appeal before the first appellate authority, application for condonation of delay had also been included seeking indulgence of discretion as certain happenings in the personal life of the appellant and personal life of the counsel for the appellant had prevented filing in time.

4. The delay of twenty three days in filing of the appeal was not without some explanation but the first appellate authority failed to record factual finding thereof to controvert submissions brought on

[1] [order-in-appeal no. 456 (GR.II-G)/2014(JNCH)/IMP-437 dated 10th February 2014]

record. It was, therefore, inappropriate on the part of first appellate authority to avoid exercise jurisdiction confirmed under section 128 of Customs Act, 1962 declining to dispose off the appeal on merits.

5. In order to rectify the deficiency, we set aside the impugned order and remand the matter back to the first appellate authority to dispose off the appeal on merits.

6. Appeal is, thus, allowed by way of remand.

(Operative part of the order pronounced in the open court on 21st November 2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*