CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Custom Appeal No. 86471 of 2014

(Arising out of Order-in-Appeal No.465(Gr.IV)/2014(JNCH)/IMP-444 dated 12.02.2014 passed by Commissioner of Customs (Appeals) Mumbai-II, JNCH, Nhava Sheva)

S.R. Electrosteel Pvt. Ltd. **.... Appellant**
Z-64,OKHLA Industrial Area,
Phase-II, New Delhi -110020.

Versus

Commissioner of Customs, Nhava Sheva **.... Respondent**
Jawaharlal Nehru Custom House,
Post Uran, District Raigad, Sheva 400 707.

APPEARANCE:

None for the Appellant

Shri Ranjan Kumar, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85033/2025

Date of Hearing : 06.01.2025
Date of Decision: 06.01.2025

Per: S.K. MOHANTY

None appeared for the appellant, despite issuance of notice by the Registry. Heard learned Authorized Representative for the Revenue.

2. We find that the appeal was listed for hearing on 14.05.2024 and 17.09.2024 and in both the occasions, the matter was adjourned, since nobody appeared on behalf of the appellant. Further, we have also perused the letter dated 08.05.2024 addressed by the appellant to the Deputy Registrar of the Tribunal, requesting for deciding the appeal, based on the merits of the case. Since, the appellant have not specifically made any request for adjournment of hearing of the appeal, on the basis of available records and with the assistance of learned Authorized Representative for Revenue, the appeal is being taken up for hearing and disposal today, on merits.

3. The learned Commissioner of Customs (Appeals), Mumbai-II vide the impugned order dated 12.02.2014 has rejected the appeal filed by the appellant on the ground of limitation. In the said order, the learned Commissioner (Appeals) has held that communication of the adjudication order should be construed as 17.06.2013, on which the goods were cleared from Customs and that since the appeal was preferred on 01.11.2013, the same is barred by limitation of time in terms of Section 128 of the Customs Act, 1962.

4. Insofar as filing of appeal before the Commissioner (Appeals) is concerned, sub-section (1) of Section 128 *ibid* provides that any decision or order passed by any officer of Customs, lower in rank than a Principal Commissioner or a Commissioner of Customs, may be appealed against before the Commissioner (Appeals) within sixty days from the date of communication to him of such decision or order. The *proviso* clause appended to Section 128 *ibid*, provides for the discretion to the Commissioner (Appeals) for entertaining the appeal, if the same is presented within a period of further thirty days (beyond the statutory time frame of sixty days). In the present case, since the original order was communicated to the appellant on 17.06.2013, the statutory time limit of sixty days provided under Section 128 *ibid* expired on 16.08.2013 and the further period of thirty days thereafter also expired on 16.09.2013. Since the present appeal was preferred by the appellant on 01.11.2013, the same is clearly barred by limitation of time and the Commissioner (Appeals) being the creature under the statute, is not empowered to condone the delay in late filing of appeal before him. Insofar as the limitation aspect for filing of appeal before the Learned Commissioner (Appeals) is concerned, the law is well settled in the case of *Singh Enterprises Vs. Commissioner of C. Ex., Jamshedpur* – 2008 (221) E.L.T.163 (S.C.). We find that the appellant had not adduced any evidence to show that the date of receipt of the adjudication order was not on the date as mentioned in the impugned order. Thus, in absence of any specific substantiation to prove the actual date of receipt of the original order, we have no hesitation but to accept the date of receipt of adjudication order as 17.06.2013, which has been considered by the learned Commissioner (Appeals) in the impugned order.

5. In view of the above, we do not find any merits in the appeal filed by the appellant and dismiss the same solely on the ground of limitation provided under Section 128 *ibid*.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM