CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
REGIONAL BENCH, COURT NO. 5

CUSTOMS APPEAL NO. 87817 OF 2022

(Arising out of Order-in-Appeal No. NGP-EXCUS/000/APPL/212/18-19 dated 31.10.2018 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Nagpur.)

M/S. SPACEWOOD FURNISHERS PVT LTD
T-48, MIDC, HINGUA ROAD, **Appellant**
NAGPUR

Vs.

COMMISSIONER OF CENTRAL EXCISE, NAGPUR **Respondent**
GST BHAVAN, CIVIL LINES,
TELANGKHEDI ROAD,
NAGPUR-440001.

Appearance:
Shri Mahesh Raichandani, Advocate for the Appellant
Shri Deepak Sharma, Dy. Commissioner, Authorised Representative for the Respondent:

CORAM:
HON'BLE Dr. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86317/2025

Date of Hearing : 20.08.2025
Date of Decision: 20.08.2025

Appeal is heard from both the sides.

2. Ld. Counsel for the Appellant submits that in respect of Bill of Entry No. 3056184 dated 31.08.2017, Anti-Dumping duty was imposed on the Importer /Appellant which it had paid on protest and sought for a speaking order to approach the Commissioner (Appeals) but it could not receive any order till appeal period got over for which, it had to prefer Appeal on the basis of dispute concerning classification of goods before the Commissioner (Appeals) with a condonation of delay application seeking condonation of delay of 36 days in filing an appeal and stating the ground of delay as non availability of Speaking order in para-4 of the COD Application but without

regard to the provision of law as developed by Hon'ble Kerala High Court in the case of HDFC Bank Ltd Vs. Union of India cited in *2011 (271) E.L.T. 175 (Ker.)* and Woodstruck Furniture Pvt. Ltd Vs. Union of India cited in 2011(269) E.L.T. 327 (Ker.), wherein it was categorically held that in the absence of speaking order not being passed within 15 days of assessment, since it would be effectively impossible for the appellant to file an appeal, computation of period of limitation should be taken from the date of communication of speaking order and not from the date of assessment of bill of entry, for which the order passed by Commissioner (Appeals) is required to be set aside.

3. Ld. Authorised Representative objects the petition on the ground that assessment was provisional, which is recorded in the order passed by the Commissioner (Appeals) and therefore, appellant could have waited till final assessment is made to challenge the same order and therefore, filing an appeal, taking the assessment of Bill of Entry as the date of passing of order, since was made beyond 60 days and much beyond the 30 additional days available with Commissioner (Appeals) , no interference is required to be made in the order passed by the Commissioner (Appeals).

4. I have perused the case records. It is observed that appellant has categorically noted in its COD application that they have approached the Assistant Commissioner to pass Speaking Order but no such order was passed as could be noticed from the Order of Commissioner (Appeals). I have also not noticed any stipulation that is restricting the appellant to file an appeal against the provisional assessment order. Admittedly Commissioner (Appeals) can not admit the appeal filed beyond the period of

90 days but that 90 days should have been computed from the date of communication of the speaking order supposed to be passed by the Assessing Authority and not from the date of assessment of Bill of Entry, in which no reasoning is cited for imposition of Anti-Dumping Duty. It would be worthwhile to reproduce para-5 of the order passed by the Hon'ble Kerala High Court in both the above referred appeals to arrive at a just decision on the issue.

> *"Going by the Sub-section (5) when assessee objects to the assessment against their claim, the appropriate authority is duty bound to pass a speaking order. Admittedly the 3rd respondent has not done that. After not having performed their statutory duty, the 3rd respondent cannot be heard to contend that because the petitioner has not filed any appeal against the Bill of Entry itself, they cannot now claim for a speaking order for filing an appeal. The decision of the Tribunal referred to by the Assistant Solicitor General is also of no use in this regard, in so far as it does not maintain that the petitioner shall file an appeal against the Bill of Entry despite the non-passing of speaking order.*
>
> *In fact that decision only says that even if without having for a speaking order, the petitioner files an appeal on the basis of Bill of Entry, that would also be maintainable. I am of the opinion that in view of the categoric provision under Section 17(5) it was mandatory on the part of the 3rd respondent to pass a speaking order, in so far as in the Bill of Entry itself the petitioner has registered against such assessment which was followed by Ext. P4.*
>
> *Therefore, the petitioner was perfectly justified in finding for speaking order without which the petitioner cannot know the reasons for the assessment made by the 3rd respondent. In fact the limitation for filing appeal under Section 128 would start only from the date of communication of the decision or order to the petitioner. Clearly Bill of Entry is not a decision or order contemplated under Section 128. It can only be an order under Section 17(5) which has to be a speaking order. When admittedly there is no speaking order passed by the 3rd respondent in this case, the petitioner is entitled to get a speaking order against which he can file an appeal within the period prescribed under Section 128 from the date of communication of the order to them. Therefore, this writ petition is allowed, the 3rd respondent is directed to pass his speaking order in respect of the import in question and serve the same on the petitioner within a period of 15 days from the date of receipt of a copy of this judgment. Needless to say the petitioner would be entitled to file an appeal against that order within the period of limitation of purpose prescribed under Section 128 from the date of communication of that order."*
>
> **2.** *"Though the learned standing counsel appearing for the respondents contended relying on the decision of the Central Excise, Customs, Service Tax Appellate Tribunal in Max India Limited vs. Commissioner of Customs (ICD), New Delhi, 2005 (192) E.L.T. 246, that an appeal would lie from the assessment order passed by the 3rd respondent even if the order is not a speaking order. I am of the opinion that, that cannot be a reason to decline to act in terms of Section 17(5) of the Act. The procedure prescribed in*

> *Section 17(5) can be departed from only in a case where the importer or the exporter, as the case may be, confirms in writing his acceptance of the assessment made by the assessing officer. Section 17(5) was introduced with effect from 13.07.2006, the date on which Act 29 of 2006 came into force. The decision relied on by the learned standing counsel appearing for the respondents was delivered on 31-3.2006, prior to the introduction of Section 17(5) of the Act. In view of the amendment brought about by Act 29 of 2006 the decision relied on by the learned standing counsel can have no application. In such circumstances as the dispute is regarding the value of the goods and the importer has not accepted in writing the assessment of the 3rd respondent, I am of the opinion that the 3rd respondent was bound to pass a speaking order within 15 days from the date of assessment of the bill of entry, namely within 15 days form 10.05.2010. In the instant case, the said period of 15 days has expired. Under Section 128 of the Act an appeal lies from the order of assessment made by the 3rd respondent to the Commissioner (Appeals). The period of limitation prescribed for filing the appeal is 60 days from the date of communication of the order. The Commissioner (Appeals) is also empowered to condone the delay in filing the appeal subject to the condition that the delay does not exceed the period of 30 days. In the instant case no speaking order in terms of Section 17(5) of the Act has been passed till date or communicated to the petitioner. In the view that I have taken it has to be necessarily held that it will be open to the petitioner to challenge the assessment made by the 3rd respondent by filing an appeal within the period of 60 days computed from the date on which a speaking order is passed under Section 17(5) of the Act."*

5. In view of above observation it can be said that appeal was filed within the period of limitation since there was no response received from the Assessing Officer to the request made by appellant, enabling him to file an appeal but Ld. Commissioner had not passed his order in conformity to Section 128A(4) of the Customs Act, 1962 as after admitting the appeal he had heard the matter in its totality and not passed his order stating the points for determination, the decision thereon and the reasons for such decision. It is also a settled principle of law that if appeal is admitted for hearing, disregarding period of delay, then it is to be heard and disposed of in accordance with section 128A(4) of the Customs Act and any period of Limitation is to be taken as a preliminary issue, that should not be dealt at end of litigation.

6. I am, therefore, of the considered view that there is no delay in filing an appeal and erroneous acceptance of date of assessment order as date of Order-in-Original by the Commissioner (Appeals) that would bring the delay to 36 days of passing of the Assessment Order of its communication, can be condoned by this Tribunal in exercise of its appellate power and therefore, the matter is required to be remanded to the Commissioner (Appeals) to pass an order in conformity to Section 128(4) of the Customs Act, 1962 by making further enquiry, if required on the reasoning of assessment itself in conformity to Section 128A(3) of the Customs Act and to dispose of the appeal in accordance with law. Hence the Order;

The Order

7. The appeal is allowed by way of remand to the Commissioner (Appeals) for passing an order as per provision contained in Section 128A(4) of the Customs Act within a period of four months and for the said purpose the order passed by the Commissioner (Appeals) is hereby set aside. Delay, if any, of 36 days, is condoned at this end in exercise of Appellate jurisdiction.

(Order pronounced in the open court on 20.08.2025)

(Dr. SUVENDU KUMAR PATI)
MEMBER (JUDICIAL)

Arti