CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Customs Early Hearing Application No. 86765 of 2025

in

Customs Appeal No. 87078 of 2024

(Arising out of Order-in-Appeal No. MUM-CUS-TK-IMP-159/2023-24-NCH dated 29.12.2023 passed by Commissioner of Customs (Appeals), Mumbai Zone I)

Fugro Survey India Pvt Ltd …..**Appellant**
Fugro House, D 222, 30 TTC Indl Area,
MIDC, Nerul, Navi Mumbai

Vs.

Commissioner Customs-Import-Mumbai Import-I …..**Respondent**
New Custom House, Ballard Estate,
Mumbai

APPEARANCE:

Shri K V P Singh, Consultant for the appellant
Shri Deepak Sharma, Authorised Representative for the respondent

CORAM: **Hon'ble Mr C J Mathew, Member (Technical)**
Hon'ble Mr Ajay Sharma, Member (Judicial)

FINAL ORDER No: 86381/2025

DATE OF HEARING: 25-09-2025
DATE OF DECISION : 25-09-2025

Per: Coram

This application seeks 'out of turn' disposal of appeal no. C/87078/2024 against order[1] of Commissioner of Customs (Appeals), Mumbai Zone I.

2. Learned Consultant for applicant submitted that the issue before us lies within a narrow compass as dismissal of appeal by the first appellate authority is solely on grounds of delayed filing of appeal and not on merits. He submitted that delay in filing of appeal was occasioned by having had initial recourse to refund claim which was, subsequently, withdrawn and substituted with challenge to assessment.

3. We have heard Learned Authorised Representative.

4. Considering the submission made, we allow this application and, with consent of both sides, take up the appeal itself for disposal.

5. We have herad Learned Counsel for appellant and Learned Authorised Representative.

6. The appeal was filed in accordance with the decision of the Hon'ble Supreme Court, in *ITC Ltd v. Commissioner of Central Excise, Kolkata IV [2019 (368) ELT 216]*, requiring that refund claim must necessarily be preceded with challenge to assessment. They had, accordingly, filed appeal before Commissioner of Customs (Appeals),

[1] order-in-appeal no. MUM-CUS-TK-IMP-159/2023-24-NCH dated 29th December 2023

Mumbai Zone I which was, however, within the statutory ceiling of 90 days from date of assessment but beyond the ordinarily permitted period of 60 days. We find from the records that the first appellate authority, despite being informed that they had pursued refund remedies which was withdrawn on advice of customs authorities, had not considered their justified case for condonation.

7. We are of the opinion that the first appellate authority had erred in disregarding the facts and circumstances set out above. We, accordingly, restore the appeal before Commissioner of Customs (Appeals), Mumbai Zone I to decide the issue on merits.

8. Appeal allowed by way of remand.

(Dictated and pronounced in open Court)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

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