CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 89875 of 2014

(Arising out of Order-in-Appeal No. 08/MCH/JC/Gr.IV/2013 dated 02.01.2013 passed by the Commissioner of Customs (Appeals), Mumbai-I)

M/s Divine Impex **.... Appellant**
Ground Floor, Dr. Mahimtura Marg,
Shiv Sadan Building, 154/156,
3rd Kumbharwada Lane,
Mumbai – 400 004

Versus

Commissioner of Customs (Import), Mumbai **.... Respondent**
New Custom House, Ballard Estate,
Mumbai – 400 001

APPEARANCE:

Shri Suyog Bhave, Advocate for the Appellant

Shri C.S. Vinod, Authorized Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86428/2025

Date of Hearing: 08.10.2025

Date of Decision: 08.10.2025

Per: Dr. Suvendu Kumar Pati

We have heard on the appeal that is filed against allegedly erroneous calculation of limitation period for filing appeal before the Commissioner (Appeals).

2. Learned Counsel for the appellant, in providing a date chart, has informed that date of issue of Order-in-Original was 07.02.2012, which was received at their end on 16.02.2012 and they had filed the appeal on 15.05.2012, which was well within the period of limitation available with the condonable limit of the Commissioner (Appeals), but, erroneously he had taken the date of issue of order for the purpose of computation of limitation, whereas the appellant had received the order on 16.02.2012 i.e. after 9 days of the issue of the said order and, therefore, the order is required to be set aside.

3. Learned AR appearing for the Revenue informs that order was also passed *ex par*te but there was no evidence available on record to justify that order was in fact received on 16.02.2012.

4. We have taken note of the submissions. We are of the view that when the order was passed *ex par*te, Appellant could have no knowledge to know about such passing of order and therefore, the date of receipt of the said order after 9 days of its dispatch stated by the Appellant appears to be the valid date of receipt, when no contrary evidence is brought on record by the Respondent-Department to justify receipt of the order prior to the date claimed by the Appellant. We are, therefore, of the view that appeal was filed well within the condonable period available with the Commissioner (Appeals), which he had not exercised judiciously and, therefore, in exercise of power vested with the Appellate Tribunal, we condone the same period of 29 days delay in filing the appeal, that had occasioned due to change of management and change of business of the Appellant, as stated.

5. Taking note of the fact that learned Commissioner (Appeals) should have disposed of the appeal by stating the point for determination, the decision thereon and the reason for such decision as contemplated in Section 128A of the Customs Act, 1962, we feel it appropriate to remand the matter back to the Commissioner (Appeals) for *de novo* hearing of the appeal.

6. Since delay is condoned at this end, the appeal is allowed by way of remand to the Commissioner (Appeals) for a *de novo* hearing and for that purpose, the order passed by him in Order-in-Appeal No. 08/MCH/JC/Gr.IV/2013 dated 02.01.2013 is hereby set aside.

(Dictated and pronounced in open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha