CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

Customs Appeal No. 85866 of 2024

[Arising out of Order-in-Appeal No. 279 to 300(Gr.IIG)/2024(JNCH)/Appeals dated 29.02.2024 passed by the Commissioner of Customs (Appeals), Mumbai-II.]

M/s. Mahadhan Agritech Ltd. ....Appellant
Plot K-1, Part 1-2, Plot K-7 & K-8,
MIDC Industrial Area, Taloja,
Taluka- Panvel, Dist.-Raigad – 410 208

VERSUS

Commissioner of Customs, Nhava Sheva–I ....Respondent
Jawaharlal Nehru Customs House,
Nhava Sheva, Tal.-Uran,
Dist.-Raigad, Maharashtra – 400 707

APPERANCE:

Shri Anil Mishra, Advocate for the Appellant
Shri Krishna Azad, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 86681/2025

Date of Hearing: 10.10.2025
Date of Decision: 10.10.2025

PER: BENCH

We have heard on the appeal from both the sides.

2. Learned Counsel for the Appellant submits that for certain contingency as there was a change of price on delivery, they had filed application under Section 149 of the Customs Act but inadvertently they filed their appeal before the Assessing Officer as Adjudicating Authority, instead of the Commissioner (Appeals). All their appeals were filed before the Assessing Officer within the stipulated time as noted in page 5 table drawn in the appeal memo but as because appeal was supposed to be preferred before the Commissioner (Appeals) against such as assessment order, they had to withdraw the appeal on 19/04/2023 so as to enable them to file the appeal before the

appropriate forum on the next day and they did so. He also submits that in view of the clear finding of Hon'ble Supreme Court in the case of *M.P. Steel Corporation Vs. Commissioner of Central Excise,* as reported in *2015 (4) TMI 849 (SC),* by taking the spirit of the Indian Limitation Act, computation of period of limitation is to be done on the basis of exclusion of time spent in prosecuting the matter before a wrong forum, as contemplated under Section 14 of the Indian Limitation Act and by deducting the said period of 253 days appeal can be stated to have been filed well within the condonable period of limitation as available with the Commissioner (Appeals) and this appeal being rejected solely on the ground of limitation, matter can be remanded back for *de novo* hearing of the appeal, after condoning delay at this end in exercise of Appellate power vested with this Tribunal.

2. Learned Authorised Representative objects to such submission on the ground that issue has been squarely settled by the Hon'ble Supreme Court in the case of Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur as reported in (2008) 3 SCC 70 wherein there is a clear finding that Commissioner (Appeals) can’t go beyond the statutory limit of 90 days as prescribed and therefore, no irregularity can be noticeable in the order passed by the Commissioner (Appeals) that needs interference by this Tribunal.

3. We have gone through the appeal paper book, submissions made by both sides and the relied upon judgments on the issue. We are of the view that there is a difference between computation of period of limitation and codonation of delay as has been explained by Hon'ble Supreme Court in the case of *M.P. Steel Corporation*, *cited supra* and for the purpose of computation it was directed by Hon'ble Supreme Court to take the spirit of provisions contained in Section 4 to Section 24 of the Indian Limitation Act that could be applied in dealing with condonation period. Section 14 of the said act clearly stipulates that for the period in which matter has been prosecuted before a wrong forum, the said period has to be excluded from the period of computation while dealing with limitation aspects.

4. We, accordingly exclude the period of 253 days during which time matter was before the Adjudicating Authority/Assessing Officer and take note of the fact that after exclusion of that period, the appeal has to be treated as being filed within the period of limitation. We, therefore, are of the view that when appeal was filed before the Commissioner (Appeals) well within the stipulated time he has to pass an order in compliance with Section 128(A)(4) that dictates that while disposing of the appeal, the Commissioner (Appeals) shall state in writing the points for determination, the decision thereon and the reasons for such decision and therefore, the matter is required to be remanded back to the Commissioner (Appeals) for a *de novo* hearing and passing of orders in compliance with Section 128(A)(4) of the Customs Act. To remove technical difficulty also, we condone delay of 253 days in filing the appeal before the Commissioner (Appeals), in exercise of our appellate power, though there is no formal requirement of doing so, as has been held in the above referred judgment. Hence the order.

THE ORDER

4. The appeal is allowed by way of remand to Commissioner (Appeals) for *de novo* hearing, after condoning delay of 253 days at this end, who shall dispose of the appeal within a period of six months with due notice to the parties. Accordingly, the order passed by the Commissioner of Customs (Appeals), Mumbai-II *vide* Order-in-Appeal No. 279 to 300(Gr.IIG)/2024(JNCH)/Appeals dated 29.02.2024 is set aside for the said purpose.

(Dictated and pronounced in the open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Prasad