

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.1

Customs Appeal No.75634 of 2021

(Arising out of Order-in-Appeal No.Kol/Cus (Prev.)/DINHATA/AKR/25/2021 dated 07.01.2021 passed by Commissioner (Appeals) of Customs, Kolkata)

Smt. Suparna Karmakar

APC Roy Road, Baman Para, Kharabari, Coochbihar-736101

Appellant

VERSUS

Commissioner of Customs (Prev.), Kolkata

15/1, Strand Road, Kolkata-700001

Respondent

APPEARANCE :

Shri R.N.Bandopadhyay, Advocate for the Appellant

Shri Tariq Sulaiman, Authorized Representative for the Respondent

CORAM:

HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)

FINAL ORDER NO...77195/2023

DATE OF HEARING : 05.10.2023

DATE OF DECISION : 05.10.2023

Per Ashok Jindal :

The appellant has filed this appeal against the impugned order wherein the Id.Commissioner (Appeals) dismissed the appeal as barred by limitation.

2. During the course of hearing, the Id.Counsel for the appellant drew my attention that they have gone before the Hon'ble High Court of Calcutta and the Hon'ble High Court has dismissed their Writ Petition to avail alternative remedy available to them vide order dated 20.07.2021. Thereafter, they have filed this appeal before this Tribunal.

3. The facts of the case are that the adjudication order was passed on 31.07.2019. Against the said order, the appellant filed an appeal before the Id.Commissioner (Appeals) on 28.11.2019. The Id.Commissioner (Appeals) has dismissed the appeal as barred by limitation as the appeal has been filed beyond the prescribed period

under Section 128 (1) of the Customs Act, 1962. Against the said order, the appellant is before us.

4. Today, when the matter was called, the Id.Counsel for the appellant drew my attention to the order of the Hon'ble High Court dated 20.07.2021 where it is stated that the Hon'ble High Court has condone the delay in filing the appeal before the Ld.Commissioner (Appeals). I have gone through the order passed by the Hon'ble High Court, which is extracted herein below :

20.07.2021
p.b.
Sl. No.1.

W.P.A. 986 2021

Suparna Karmakar
Vs.
Union of India & Ors.
(Via Video Conference)

Mr. Sagar Bandopadhyay,
Mr. Abhishek Banerjee.
.....for the petitioner.

Mr. K. K. Maiti,
Mr. Tapan Bhanja.
.....for the Customs Authority.

In this matter, the petitioner has challenged the impugned seizure order dated 20th November, 2017 and the impugned show-cause notice dated 26th April, 2018 and the adjudication order dated 31st July, 2019 by filing this writ petition in April, 2021.

It appears from record that the petitioner has challenged the impugned order of adjudication after considering the case of the petitioner both on merit and on the point of limitation and on the ground of delay and by discussing the matter in detail in its order. The petitioner could not deny that the aforesaid impugned order dated 7th January, 2021 is an appealable order. The petitioner himself has admitted in course of submission that the order of the authority is appealable but he could not file the appeal in time. Petitioner wants this Court to condone

the delay in filing the appeal before the Appellate authority. Apart from the above fact, this writ petition was filed in April, 2021 and he wants this Court to grant him relief of not giving effect to the seizure order passed on 20th November, 2017 and show-cause notice issued on 25th April, 2018 and the order of the adjudicating authority dated 31st July, 2019 without explaining as to what prevented him from challenging the aforesaid impugned seizure order of 2017 and notice dated 25th April, 2019 before the writ court immediately if at all those orders and notices were illegal. Even the present order dated 7th January, 2021 is also an appealable order.

Considering the facts as appears from record and in view of the availability of alternative remedy to the petitioner by way of appeal under the statute, I am not inclined to entertain this writ petition and, accordingly, this writ petition is dismissed without calling for affidavits. Dismissal of this writ petition, however, will not prevent the petitioner from availing the alternative remedy before the appropriate forum in accordance with law and the appellate authority will decide the case on its own merit and strictly in accordance with law.

Accordingly, W.P.A. 986 of 2021 is dismissed.

(Md. Nizamuddin, J.)

On going through the above order passed by the Hon'ble High Court, I find that that the Hon'ble High Court has never condoned the delay in filing the appeal before the Id.Commissionere (Appeals) and only the observation is that they are entitled to avail an alternative remedy against the impugned order. In that circumstances, the delay is not condoned by the Hon'ble High Court in filing the appeal before the Id.Commissioner (Appeals).

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5. Further, I find that as per Section 128 of the Customs Act, 1962, they have filed appeal beyond the condonable period.
6. In that circumstances, I do not find any infirmity in the impugned order and the same is upheld.
7. In the result, the appeal filed by the appellant is dismissed.

(Dictated and pronounced in the open court)

Sd/-
(Ashok Jindal)
Member (Judicial)

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