

2020-TIOL-383-CESTAT-MUM

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH, MUMBAI
COURT NO. II**

**Customs Miscellaneous Application (COD) No. 85573 of 2019
in C/Cross/85571 of 2019 (on behalf of Respondent) in
Customs Appeal No. 86356 of 2013**

Arising out of Order-in-Original No. 76/2012/CAC/CC(E)/YG/GR.VII, Dated: 30.11.2012
Passed by Commissioner of Customs (Export), New Custom House, Mumbai

**Date of Hearing: 17.01.2020
Date of Decision: 05.02.2020**

**COMMISSIONER OF CUSTOMS (EXPORT)
MUMBAI, NEW CUSTOM HOUSE, BALLARD ESTATE
MUMBAI - 400001**

Vs

**M/s INDO RAMA SYNTHETICS INDIA LTD
THE METROPOLITAN, 6TH FLOOR, EAST WING, BKC, BANDRA (E)
MUMBAI - 400051**

WITH

**Customs Miscellaneous Application (COD) No. 86432 of 2019
(on behalf of Appellant) in
Customs Appeal No. 88062 of 2019**

Arising out of Order-in-Original No. 76/2012/CAC/CC(E)/YG/GR.VII, Dated: 30.11.2012
Passed by Commissioner of Customs (Export), New Custom House, Mumbai

**M/s INDO RAMA SYNTHETICS INDIA LTD
A-31, MIDC INDUSTRIAL AREA, BUTIBORI, NAGPUR-441122**

Vs

**COMMISSIONER OF CUSTOMS (EXPORT-I)
MUMBAI, NEW CUSTOM HOUSE, BALLARD ESTATE
MUMBAI - 400001**

Appellant Rep by: Shri Akhilesh Kangsia, Adv.

Respondent Rep by: Shri Kishori Lal, Principal Commissioner, AR

CORAM: S K Mohanty, Member (J)

Sanjiv Srivastava, Member (T)

Cus - Condonation of delay - The assessee filed an appeal against the subject O-i-O and filed the present application with it - The assessee claimed to not have received a copy of the impugned order and that the Revenue posted the same at the wrong address.

Held: The first of the two applications is not maintainable since the assessee gave no reason to condone a delay of 45 days in filing cross objections - Hence the present application for CoD cannot be entertained - Regarding the other application, it is seen that the appeal was filed within the limitation period prescribed - Taking any other view would amount to review of the earlier order passed which is beyond the power vested by the statute in tribunal - Hence the second application is infructuous: CESTAT

Applications disposed of

MISCELLANEOUS ORDER NOS. M/85113-85115/2020

Per: Sanjiv Srivastava:

The matters listed before us are in respect of two applications for condonation of delay filed by M/s Indo Rama Synthetics (I) Ltd. These applications for condonation of delay have been filed for-

a. C/COD/85573/2019: Condoning the delay in filing Cross Objection (C/CROSS/85571/2019) to the Appeal No C/86356/2013 filed by the revenue, challenging certain portion of the order in original No 76/2012/CAC/CC(E)/YG/G.VII dated 30.11.2012. (delay sought to be condoned is about 17 Months)

b. C/COD/86432/2019: Condoning the delay in filing appeal No C/88062/2019 challenging order in original No 76/2012/CAC/CC(E)/YG/G.VII dated 30.11.2012. (delay sought to be condoned is 2513 days.)

2. The facts leading to the above mentioned two applications for condonation of delay are stated as follows:

- Commissioner of Customs (Export) Mumbai has vide the impugned order held as follows:

- Against the impugned order, Revenue preferred the appeal C/86356/2013 which was communicated to the respondents by the registry vide its letter dated 0.06.2014.

- Revenue filed an application for early hearing in the matter which was numbered C/EH/92783/17-Mum. Thus application was forwarded by the registry to the respondents vide letter dated 15.09.2017, and also stating that application for early hearing is listed for hearing on 12.10.2017.

- On 12.10.2017, the respondents were represented by the Ms Rhea Jha, Advocate, when bench passed the following order.

"Notice is hereby issued to the respondent to cause appearance on 15th November 2017 for disposal of appeal looking into the question of law and huge stake of Revenue is involved. If appellant chooses to cause appearance for hearing he may to do so in person or through his authorized representative. If appellant is absent, the matter shall be decided exparte.

2. With the above direction, miscellaneous application is allowed.

Call on 15.11.2007"

- There after respondents namely M/s Indo Rama Synthetics (I) Ltd filed the cross objections along with the application for Condonation of Delay on 04.11.2019.

- Appellants subsequently filed appeal No C/88062/2019 along with the application for condonation of delay in filing the appeal. The reason for delay in filing the appeal as explained by them in their application is that they had not received the copy of impugned order earlier as the same was posted to wrong address by the revenue and it was only on 09.04.2019 they had received the same. In the matter they filed the appeal on 17.05.2019. Thus from the date of communication of order the appeal has been filed within time.

3. We have heard Shri Akhilesh Kangsia, Advocate for the Applicant and Shri Kishori Lal, Principal Commissioner, Authorized Representative for the revenue.

4. Learned Advocate for the Applicant submitted that the cross objections filed by them should be considered as part of paper book filed by them in the appeal filed by them and he would not be pressing for the application of condonation of delay in that matter. He further stated that CESTAT has vide Interim Order No 258/2019 dated 15.10.2019, admitted the appeal filed by them by taking the date of receipt of impugned order as 09.04.2019. Hence this application for condoning the delay has become infructuous.

5. Learned Authorized Representative opposed the application for condoning the delay in filing appeal stating that order was sent by speed post to the Applicant and the same has not been returned back by the postal authorities as undelivered. Simultaneously the impugned order was also displayed on the notice board of the Custom House, which is also a mode of delivery as provided by Section 153 of Custom Act, 1962. He further added stating that impugned order was part of the appeal papers sent by registry to the applicants in 2014, hence it cannot be said that they were not aware of the impugned order and could not have filed this appeal in time. Hence the huge delay of 2513 from the date of order, in filing this appeal has not be explained by the applicant. The application for condonation of delay needs to be dismissed.

5. We have considered the submissions made along with the applications for condonation of delay.

6. C/COD/85573/2019 in C/86356/2013: Counsel for applicant has submitted that he is not pressing for this application and the cross objections filed separately. In the present case facts also suggest that appeal along with all the papers was in possession and knowledge of the applicant if not earlier at least on 12.10.2017, when the application of early hearing filed by the revenue was heard in presence of the counsel for the applicants. No satisfactory reason has been given for the delay in filing the Cross Objections beyond permitted period of 45 days from that date. Hence we hold that this application for condonation of delay is not maintainable.

7. C/COD86432/2019 in C/88062/2019: In the present case we observe that this tribunal has vide its **interim order No 258/2019 dated 15.10.2019** held as follows:

"5. We find that the Department has claimed to have issued the order-in-original on 30.11.2012. No proof has been placed on record. The order sent by speed post has not been returned as un-delivered, thus necessitating it to be displayed on the notice board as per Section 153 of Customs Act, 1962. Following the principle of law laid down by Hon'ble Bombay High Court in the case of Camron International (supra), we are of the view that compliance of Section 153 of Customs Act, 1962 has not been made in the present case in delivering/communicating the impugned order to the Appellant. In the circumstances, the date of communication is considered as 09.04.2019 when the order was sent to the Appellant in response to RTI application. Consequently, the appeal is filed in time. Defect Memo discharged. Appeal entertained and will be heard in due course."

Thus tribunal has itself recorded that the date of communication of impugned order is 09.04.2019 in the above referred order, and proceeded to discharge the defect memo and entertain the appeal. That being so the appeal has been filed by the appellant on 17.05.2009 within the period prescribed for filing the appeal. Any other view to be taken by this Bench will amount to review of the earlier order passed which is beyond the power vested by the statue in tribunal. Since we hold that appeal has been filed within time, this application for condonation of delay is infructuous and hence not maintainable.

8. In view of the discussions as above-

i. C/COD/85573/2019 and C/CROSS/85571/2019 are dismissed.

ii. C/COD/86432/2019 in Appeal No C/88062/2019 is infructuous as the appeal has been filed in time. The COD application is dismissed as infructuous.

(Order pronounced in the open court on 05.02.2020)

(Paras are numbered as per the original text: **Editor**)

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