

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

**Customs Appeal No.77480 of 2019**

Arising out of Order-in-Appeal No.KOL/CUS(A/P)/AA/1808/2018, Dated: 17.09.2018  
Passed by Commr. (Appeals) of Customs, Kolkata

**Date of Hearing: 03.02.2020  
Date of Decision: 03.02.2020**

**M/s INDIAN UNION MICA COMPANY  
COURT ROAD, GIRIDIH-815301, JHARKHAND**

**Vs**

**COMMISSIONER OF CUSTOMS (ADMN. & AIRPORT)  
KOLKATA, 15/1 STRAND ROAD, KOLKATA-700001**

**Appellant Rep by:** Ms Rakhi Purnima Paul, Adv.

**Respondent Rep by:** Shri S Guha, AR

**CORAM:** S S Garg, Member (J)  
P Venkata Subba Rao, Member (T)

**Cus -** By the impugned order, the Commissioner (Appeals) had dismissed the appeal being time barred because the same was filed after a period of 112 days whereas it should have been filed within 60 days and moreover the Commissioner (Appeals) has got power to condone delay only upto 30 days - Division Bench of the High Court of Calcutta condoned the delay subject to payment of pre-deposit of Rs.50,000/- and directed the Tribunal to decide all the points on merits - Since the appeal had been dismissed by the Commissioner (Appeals) on time bar without going into the merits of the case, Bench is of the considered view that this case needs to be remanded back - appeal is allowed by way of remand as appellant has already complied with the direction of the High Court: CESTAT [para 6, 7]

**Matter remanded**

**Case law cited:**

***Singh Enterprises Vs. CCE., Jamshedpur - 2007-TIOL-231-SC-CX... Para 2***

**FINAL ORDER NO. 75222/2020**

**Per: S S Garg:**

The present appeal is directed against the impugned order dated 17.09.2018 passed by Commissioner (Appeals), whereby the Commissioner (Appeals) has rejected the appeal of the appellant as time barred without going into the merits of the case.

2. Briefly stated the facts of the case are that the appellants are engaged in the business of processing, manufacturing and exporting of Mica products in different parts of the world and carrying on business as partners of Indian Union Mica Company (IUMC) under partnership firm. The appellant filed shipping bills through EDI System of the Customs Authorities and makes payment of export cess on the basis of the challan generated out of the said system. During the period from April, 2012 to March, 2013, the ICES of the authorities was accepting payment of export cess during export of cargo by sea under the H.S.Code 25.25 and 68.14 and all such payments for cess by sea were paid by the appellant, but while exporting the cargo by air during the said period, the appellants were unable to make payment of export cess under the said Code, because the said Code was not accepting payment of such export cess. This particular fault in the system was followed up to the Customs authorities, but due to technical fault in the system, cess could not be paid. Subsequently, the demand cum show-cause notice under Section 28 of the Customs Act, 1962, was received by the appellant asking the appellant to deposit an amount of Rs.5,77,091/- along with interest as applicable under Section 28AA of the said Act for the said period within 15 days of receipt of notice. The said demand was raised invoking extended period of limitation. After following due process, the original authority confirmed the demand along with interest. Aggrieved by the said order, the appellant filed appeal before the Commissioner (Appeals). The said appeal was filed after a period of 112 days and the Commissioner (Appeals) dismissed the said appeal as time barred because the delay under Section 128 of the Customs Act, 1962, can be condoned by the

Commissioner (Appeals) upto 30 days beyond 60 days. But in the present appeal, there was a delay of 22 days after the statutory period. Accordingly, by relying on the decision of the Hon'ble Supreme Court in the case of *Singh Enterprises Vs. CCEx., Jamshedpur reported in 2008 (221) ELT 163 (S.C.) = 2007-TIOL-231-SC-CX*, the Commissioner (Appeals) held that he cannot condone the delay beyond 30 days and consequently, dismissed the appeal as time barred. Thereafter, the appellant filed a *Writ Petition bearing W.P.No.24965 of 2018* before the Hon'ble High Court of Calcutta and the Single Judge of the Hon'ble High Court dismissed the said Writ Petition vide its Order dated 13th December, 2018. Aggrieved by dismissal of the Writ Petition by the Single Judge, the appellants filed appeal before the Division Bench of the Hon'ble High Court of Calcutta, wherein the Hon'ble Calcutta High Court directed, in the event, the appellant filed an appeal before the Customs, Excise & Service Tax Appellate Tribunal (CESTAT) against the order of the Commissioner (Appeals) dated 17th September, 2018, after making a pre-deposit of Rs.50,000/- (Rupees fifty thousand only) by September, 2019. The Tribunal will admit it condoning the delay and hear out the same on all points.

3. Heard both sides and perused the records.

4. The Ld.Counsel appearing on behalf of the appellants, submitted that the impugned order dismissing the appeal as time barred, is not sustainable in law. She further submits that the show-cause notice was issued by invoking extended period of limitation, but there are no allegations in the show-cause notice alleging the suppression of facts with intent to evade payment of duty. She further submitted that the customs cess could not be paid by the appellant because of fault in the system. She further submitted that the entire demand in the present case is barred by limitation. She also submitted that once the Hon'ble High Court, condone the matter on payment of Rs.50,000/-, the matter needs to be remanded back with a direction to decide the matter on merits.

5. On the other hand, the Ld.D.R. for the Revenue, defended the impugned order and reiterated the findings of the impugned order.

6. After considering the submission of both sides and on perusal of materials on record, we find that by the impugned order, the Commissioner (Appeals) has dismissed the appeal being time barred because the same was filed after a period of 112 days whereas it should have been filed within 60 days and the Commissioner (Appeals) has got power to condone upto 30 days. The Division Bench of the Hon'ble High Court of Calcutta, has condoned the delay and directed us to decide all the points on merits. Since the appeal has been dismissed by the Commissioner (Appeals) on time bar without going into the merits of the case, we are of the considered view that this case needs to be remanded back to the Commissioner (Appeals) to decide the issue on merit without going into the question of limitation since the Hon'ble High Court of Calcutta has already condoned the delay on payment of Rs.50,000/- and the appellant has already complied with the direction of the Hon'ble High Court.

7. Appeal is accordingly allowed by way of remand.