

2020-TIOL-341-CESTAT-MUM

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

Customs Appeal No. 85374 of 2019

Arising out of Order-in-Appeal No.MUM-CUSTM-PAX-APP-835/2018-19, Dated: 30.11.2018
Passed by the CC(Appeals), Mumbai

**Date of Hearing: 10.01.2020
Date of Decision: 10.01.2020**

**Ms TAHOORUNNISA
NO.363, 13TH CROSS ROAD, RASHAD NAGAR
GOVINDPURE MAIN AC POST BANGALORE - 560045**

Vs

**COMMISSIONER OF CUSTOMS, (AIR PORT)
MUMBAI, CHHATRAPATI SHIVAJI INTERNATIONAL AIRPORT
MUMBAI**

Appellant Rep by: None

Respondent Rep by: Shri R N Deshpande, AC (AR)

CORAM: D M Misra, Member (J)

Cus - Delay of 587 days in filing appeal before Commissioner(A) - Commissioner(A) noted that u/s 128 of the Customs Act, 1962, the appeal is required to be filed within 60 days from the date of communication of the order and a delay of 30 days is condonable by the Commissioner(A); that the statute prescribes a maximum limit of 90 days for filing appeal; that the Commissioner(A) does not have the power to condone the delay beyond 30 days in addition to the 60 days prescribed under the Act - accordingly the appeal was rejected by the Commissioner(A) and the appellant has filed an appeal before the CESTAT contending that the order was passed in a mechanical manner.

Held:

Commissioner (Appeals) is vested with the power to condone the delay upto a maximum period of 30 days in addition to the statutory limit of 60 days for filing an appeal, therefore, the Commissioner (Appeals) was justified in rejecting the appeal as not maintainable - issue is already settled by Supreme Court in the case of Singh Enterprises Vs CCE Jamshedpur - [2007-TIOL-231-SC-CX](#)

- no reason to disturb the order of Commissioner(A), hence appeal is rejected: CESTAT [para 3, 4]

Appeal rejected

Case law cited:

***Singh Enterprises Vs CCE Jamshedpur* - [2007-TIOL-231-SC-CX](#)... Para 2**

FINAL ORDER NO. A/85028/2020

Per: D M Misra:

None present for the Appellant. There is a written communication on behalf of the Appellant filed by the Advocate on 09.01.2020, taken on record, accepting the fact that there is a delay of 587 days in filing the appeal before the learned Commissioner (Appeals). In the said application, the learned Advocate has contended that the learned Commissioner (Appeals) has mechanically rejected their appeal without analysing the reasons explained in the application seeking condonation of delay. He submits that the appeal be disposed on merit.

2. The learned A.R. for the Revenue submits that before the learned Commissioner (Appeals) the Appellant has accepted the delay of 587 days in filing the appeal. The learned Commissioner (Appeals), taking note of the fact that under Section 128 of Customs Act, 1962, the appeal is required to be filed within 60 days from the date of communication of the order, and 30 days thereafter explaining the reasons for the delay in filing the appeal. In other words, the Statute prescribes maximum limit of 90 days for filing appeal. Hence, the Commissioner (Appeals) does not have the power to condone the delay beyond 30 days in addition to 60 days prescribed under the Act. In support, the learned A.R. for the Revenue refers to the judgment of Hon'ble Supreme Court in the case of ***Singh Enterprises Vs CCE Jamshedpur - 2008 (221) ELT 163 (SC) = [2007-TIOL-231-SC-CX](#)***

3. I find that undisputedly the appeal was filed before the learned Commissioner (Appeals) with the delay of 587 days from the date of communication of the order. I find force in the contention of the learned A.R. for the Revenue that the Commissioner (Appeals) is vested with the power to condone the delay upto a maximum period of 30 days in addition to the statutory limit of 60 days for filing an appeal. Therefore, the Commissioner (Appeals) was justified in rejecting the appeal as not maintainable. Needless to emphasize that the issue is settled by Hon'ble Supreme Court in the case of Singh Enterprises Vs CCE Jamshedpur (supra).

4. Following the same, I do not find merit in the appeal and reason to disturb the order of the learned Commissioner (Appeals). Consequently, the appeal is rejected.

(Dictated and pronounced in the open court)

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