IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOMS APPEAL NO. 14 OF 2018

M/s. Pams Industries .. Appellant

v/s.

The Commissioner of Customs (Appeals) ..Respondent

Mr. Nikhil Wable I/b M/s. Jayakar & Partners for the appellant
None for the respondent

CORAM : M.S. SANKLECHA &
RIYAZ I. CHAGLA, J.J.

DATED : 22nd OCTOBER, 2018.

P.C.

1. This appeal under Section 130 of the Customs Act, 1962 (the Act) challenges the order dated 7th October, 2014 passed by the Customs, Excise and Service Tax Appellate Tribunal (Tribunal).

2. Mr. Wable, learned Counsel appearing in support of the appeal urges only the following questions of law for our consideration :-

> *(i) Whether in the facts and circumstances of the case and in law, was the Tribunal justified in upholding the order of the Commissioner of Customs (Apeals) in dismissing the appellant's appeal to it as time barred, particularly when the appellant had*

sufficient cause for not filing the appeal within the time?

3. In terms of Section 128(1) of the Act, the time to file an appeal from the order of the Assistant Commissioner of Customs to the Commissioner Customs (Appeals) is the period of 60 days with a further period of 30 days to file an appeal, which on sufficient cause being shown, which is condonable by the Commissioner of Customs (Appeals). It is an undisputed position before us that the appellant filed an appeal from the order dated 22nd November, 2004 of the Asst. Commissioner of Customs to the Commissioner of Customs (Appeals) on 7th August, 2012 i.e. after lapse of almost 6 years and 8 months. Thus, the Commissioner of Customs (Appeals) by order dated 4th March, 2013 dismissed the appeal as time barred.

4. Being aggrieved with the order dated 4th March, 2013 of the Commissioner of Customs (Appeals), the appellant filed an appeal to the Tribunal. By the impugned order dated 7th October, 2014, the Tribunal dismissed the appellant's appeal. This by placing reliance upon the decision of the Supreme Court in ***Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur, 2008 (221) E.L.T. 163*** wherein it has been held that the Commissioner (Appeals) had no

power to condone the delay in filing an appeal to Commissioner of Central Excise (Appeals) beyond the aggregate period of 90 days as provided in Section 35 of the Central Excise Act, 1944, which is *para materia* to the Section 128(1) of the Act. This on the principle that the Section 5 of the Limitation Act 1963 is not applicable to the proceedings before the authorities under the Excise and Customs Act.

5. In fact, this Court in ***Parsi Dairy Farm Vs. Assistant Commissioner of Central Excise, 2015(320) E.L.T. 376*** had an occasion to consider an identical issue and it upheld the dismissal of appeal on the ground that the Central Excise Law and the Customs Law are the special laws and, therefore Section 5 of the Limitation Act, 1963 providing for condoning the delay is not applicable.

6. In the face of the binding decision of the Supreme Court in Singh Enterprises (supra), the question as framed does not give rise to any substantial question of law. Thus, not entertained.

7. Accordingly, appeal is dismissed.

(RIYAZ I. CHAGLA, J.) **(M.S. SANKLECHA, J.)**