THE HON'BLE SRI JUSTICE SANJAY KUMAR

AND

THE HON'BLE SRI JUSTICE T. AMARNATH GOUD

CUSTOMS AND EXCISE APPEAL No.16 of 2019

JUDGMENT:

This appeal arises under Section 130 of the Customs Act, 1962 (for brevity 'the Act of 1962'). The appellant suffered the Order-in-Original dated 31.12.2015 passed by the Assistant Commissioner of Customs levying penalty upon it under Section 30 of the Act of 1962. The said order was received by the appellant on 02.01.2016. Aggrieved thereby, it preferred an appeal before the Deputy Commissioner of Customs, Air Cargo Terminal, Shamshabad Airport, Hyderabad, on 28.03.2016.

2. Realizing that it had approached the wrong authority, the appellant then preferred an appeal before the Commissioner (Appeals) on 04.04.2016. By order dated 29.11.2016, the Commissioner (Appeals) held that the appeal was filed beyond the period of limitation prescribed under Section 128 of the Act of 1962 and dismissed the same. The matter was then carried in appeal by the appellant to the Customs, Excise and Service Tax Appellate Tribunal, Hyderabad, in File No.C/30155/2017. By order dated 30.05.2018, the tribunal affirmed the decision of the Commissioner (Appeals) and dismissed the appeal on the ground that the appeal had been filed beyond the period of limitation.

3. Perusal of the tribunal's order reflects that the appellant specifically took the plea that it filed an appeal before the Deputy

Commissioner of Customs, in the first instance, under the misconception that the said authority was the appellate authority but having realized it's mistake, it preferred an appeal before the appropriate appellate authority. The tribunal, however, found that this plea was not substantiated with any evidence and on that ground held against the appellant. Though no material seems to have been produced before the tribunal in support of the plea taken by the appellant, the said lapse has been cured in this appeal. The appeal submitted by the appellant before the Deputy Commissioner of Customs, Air Cargo Terminal, Shamshabad Airport, Hyderabad, on 28.03.2016 is now placed on record and the same bears the endorsement of the office of the Deputy Commissioner of Customs, Air Cargo Complex, Shamshabad, Hyderabad, with the date 28.03.2016 in proof of receipt thereof. Therefore, it cannot be doubted, at this stage that the appellant did, in fact, prefer an appeal before the wrong authority on 28.03.2016, as claimed by it.

4. Sri B. Narasimha Sharma, learned counsel for the Customs authorities, fairly concedes that the delay on the part of the appellant in approaching the appropriate appellate authority was only three (3) days in terms of the statutory scheme.

5. If that be so, as it is now brought out that the appellant approached the wrong authority with an appeal within time and it's approaching the appropriate authority thereafter was only with a delay of three (3) days, we are of the opinion that this would not be a case falling within the ambit of the law laid down by the Supreme Court in

SINGH ENTERPRISES v. COMISSIONER OF CUSTOMS AND CENTRAL EXCISE, JAMSHEDPUR[1].

The appeal is accordingly allowed setting aside the order dated 30.05.2018 of the tribunal as well as the order dated 29.11.2016 passed by the Commissioner (Appeals). Appeal No.29 of 2016 – Customs (P) shall stand restored to the file of the Commissioner of Customs and Central Excise (Appeals), the second respondent herein for consideration afresh on merits and in accordance with law. Pending miscellaneous petitions shall stand closed. There shall be no order as to costs.

SANJAY KUMAR, J

T. AMARNATH GOUD, J

June 27, 2019
DSK

[1] 2008 (221) ELT 163