

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CUSTOM APPEAL (CAPL) NO.1 OF 2021

M/s India Trade Links,
 A Proprietary Concern,
 Having office at Cotton Market Square,
 Near Loha Pul, Nagpur Through its Proprietor
 Shri Baljinder Singh s/o Inderjit Singh Nayyar,
 Aged about 49 years, Occ. Business,
 R/o. Cotton Market Square, Loha Pul, Nagpur.

...APPELLANT

...V E R S U S...

1. Union of India,
 Through Ministry of Finance,
 New Delhi.
2. The Customs, Excise and Service Tax
 Appellate Tribunal, 3rd, 4th and 5th Floor,
 Jai Centre, 34 P. D'Mello Road, Masjid
 Bunder (E), Mumbai-400 009.
3. The Commissioner of Customs,
 NS-II, JNCH, Nhava Sheva,
 Taluka Uran, Raigad,
 Maharashtra – 400 707.

...RESPONDENTS

 Ms Soumya Choube, Advocate h/f Shri S.N. Chichbankar, Advocate for appellant.
 Ms Meghna Munshi, Advocate for respondent no.1.
 Shri S.N. Bhattad, Advocate for respondent no.3.

CORAM : A.S. CHANDURKAR AND
PUSHPA V. GANEDIWALA, JJ.

DATED :- JANUARY 03, 2022.

ORAL JUDGMENT : (PER : PUSHPA V. GANEDIWALA, J.)

Admit. Heard finally Adv. Ms. Saumya Chaube for the
 appellant, Adv. Ms. Meghna Munshi for respondent No. 1 and Adv.
 Shri. S. N. Bhattad for respondent No. 3.

2. This is an appeal under Section 130 of the Customs Act preferred against an order dated 01.04.2021 passed by the Member(Judicial) Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Mumbai in Customs Appeal No. 88046/2019. On 29.11.2021, this Court issued notice to the respondent No.1 and 3 for final disposal on the following substantial questions of law.

“(i) Whether the Tribunal was justified in deciding the appeal in absence of counsel for the appellant?”

“(ii) Whether the delay of 75 days was not liable to be condoned?”

3. Before the learned Member of the Tribunal, the appellant had challenged the order dated 24.10.2018 passed in Appeal No.1630 (CRC-SAD-II) 2018 (JNCH)/ Appeals-II by the Commissioner of Customs(Appeals), JNCH, Mumbai-II alongwith an application for condonation of delay of 75 days caused in preferring the appeal.

4. The learned Member (Judicial) of the Tribunal dismissed the application for condonation of delay mainly for the reasons mentioned in para 4, which reads thus:

“4. I find that even though the applicant has attempted to make a case that it is the negligence of the first Consultant resulting into delay, however, the said plea has not been supported by any evidence by way of providing the name of the second Consultant nor the dates when it was initially given to the first Consultant and also when the draft copy of the appeal was given by the second Consultant for filing the appeal. Since the grounds explaining the inordinate delay is vague, hence, it does not warranted condonation.”

5. The main grievance of the appellant is that without hearing the appellant the impugned order came to be passed.

6. Learned counsel Shri S.N. Bhattad while supporting the impugned order submitted that the reasons for causing delay has not been sufficiently explained by the appellant and hence appeal being devoid of any merit, is liable to be dismissed.

7. We have considered the rival contentions and perused the impugned order so also the annexures.

8. At the outset, a perusal of the impugned order would reflect that in the absence of the appellant or his counsel, the impugned order came to be passed. The reason for the delay as contended by the appellant is that his earlier counsel failed to

prefer an appeal within the prescribed period of limitation and therefore the appellant handed over the papers to the second counsel for preferring the appeal. The learned Member of the Tribunal found the reasons for delay to be vague and not sufficiently explained. It is not disputed that the impugned order of rejection of application for condonation of delay came to be passed on merit behind the back of the appellant or his counsel. The impugned order does not mention about any opportunity of hearing was granted to the appellant. In our considered view, such order rejecting the application on merit behind the back of the appellant could not have been passed by the learned Member. At the most the matter could have been posted for dismissal in default. It appears that the learned Member has not followed the basic principles of natural justice in passing the impugned order.

9. In our considered view, had the opportunity of hearing been granted to the appellant, the appellant would have satisfied the queries of the learned Member of the Tribunal. In the absence of appellant the impugned order came to be passed. In any case, the appeal has not been decided on merits. One opportunity needs to be given to the appellant to argue his case on merits. We find substance in the submission of the learned counsel for the appellant. Therefore, we allow the application for

condonation of delay and condone the delay caused in preferring the appeal before the Tribunal by quashing and setting aside the impugned order dated 01.04.2021. Accordingly, we answer both the questions. We remand the matter before the learned Member (Judicial) of the Tribunal to decide the appeal on merits.

9. The appeal stands allowed in the above terms and disposed of. In the circumstances, no order as to costs.

JUDGE

JUDGE

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