

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.2

Customs Appeal No.76579 of 2018

(Arising out of Order-in-Appeal No.KOL/CUS(PORT)/AA/495/2018 dated 21.02.2018 passed by Commissioner of Customs (Appeals), Kolkata.)

M/s. VOS Technologies (India) Private Limited
(44, Nishant Kunj, Pitam Pura, Delhi-110034.)

...Appellant

VERSUS

Commissioner of Customs (Port), Kolkata

.....Respondent

(15/1, Strand Road, Customs House, Kolkata-700001.)

APPEARANCE

Shri S.C.Ratho, Consultant for the Appellant (s)
Shri M.P.Toppo, Authorized Representative for the Respondent (s)

CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)

FINAL ORDER NO. 75396/2022

DATE OF HEARING : 22 July 2022
DATE OF DECISION : 22 July 2022

P.K.CHOUDHARY :

Heard both sides.

2. I find that the Bill of Entry No.2442605 dated 13.07.2017 was assessed on 14.07.2017 and an Appeal was filed before the First Appellate Authority on 11.10.2017, which was beyond the statutory period of 60(sixty) days. The delay in filing the Appeal is of 89(eighty nine) days. The Ld.Commissioner(Appeals) has observed that the Appellant has not cited any reasons for the delay in filing the Appeal before him and accordingly he dismissed the Appeal as time barred without going into the merits of the case.

3. Ld.Consultant, appearing on behalf of the Appellant before me submitted that a prayer for condoning the delay was filed before the Ld.Commissioner(Appeals), a copy of the same is annexed in the

Appeal Paper Book at pages 23 and 24. Relevant Paragraphs of the COD Application before the Ld.Commissioner(Appeals) are reproduced:-

“2. That the Applicant states that the assessing group without disclosing any evidence arbitrarily enhanced the declared value by 71% SVB load when the facts remains that it was not a related party transaction. The declared value was actual transacted value and hence the appellant is entitled for the refund of the extra duty paid.

3. The duty was paid on 17.07.2017 and the consignment was taken delivery to fulfill the commitment. At that material time the Director was out of station on business trip and hence the matter could not be discussed with him. Only after his return the matter was discussed and it was decided to file an appeal before the Appellate Authority through Kolkata based customs consultant.

4. Thus, due to aforesaid reason, the filing of the appeal has been delayed by 24 days only from the date of payment of duty.

5. The Appellant therefore request to condone the delay caused due to said reason and in case delay is not condoned order passed by the lower authority without taking into considerations of the submissions of the Applicant detailed in the 'Statement of Facts' and 'Grounds of Appeal' enclosed with Appeal memorandum in Form C.A-1 would remain unprotected and the Appellant would be victim of travesty of justice. To get justice, the Applicant sincerely request to condone the delay caused due to aforesaid reason.”

4. On facts as stated above, I find that the Appellant had filed the Appeal beyond the statutory period of 60(sixty) days, but within the condonable period and had also filed a petition explaining the reasons for the delay in filing the Appeal before the Ld.Commissioner(Appeals). On facts as stated above and under the circumstances I condone the delay in filing the Appeal before the Ld.Commissioner(Appeals) and find it appropriate to remand the matter to the Ld.Commissioner(Appeals) to decide on merits without going into the aspect of limitation. Accordingly, the Appeal is allowed by way of remand. Needless to mention a reasonable opportunity of hearing be granted to the

Appellant. All issues are kept open. Both sides are at liberty to place evidences in their favour.

(Dictated and pronounced in the open Court.)

Sd/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

sm