(2023) 04 CESTAT CK 0015

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No.40873 Of 2013

Commissioner Of Customs (Exports) APPELLANT

Vs

M/S. TVS Interconnect Systems Ltd RESPONDENT

Date of Decision : 10-04-2023

Acts Referred:
Customs Act, 1962 — Section 129D, 129D(3)

Citation : (2023) 04 CESTAT CK 0015

Hon'ble Judges : Sulekha Beevi C.S., Member (J), Ajit Kumar, Member (T)

Bench : Division Bench

Advocate : D. Jaishankar

Final Decision : Dismissed

Judgement

1. The above appeal is filed by the Department against the order passed by the Commissioner (Appeals) who dismissed the appeal filed by the Department on the ground of limitation.

2. Brief facts are that the respondent filed the refund claim for refund of 4% special additional duty in terms of Notification No.102/2007-Cus dated 14/09/2007. After due process of law, the original authority sanctioned the refund claim. Against such order, the Department had filed the appeal before the Commissioner (Appeals). However it was observed by the Commissioner (Appeals) that though order was passed by the refund sanctioning authority on 16.06.2010 and despatched on 28.06.2010, the Review Authority has passed Review Order only on 12.10.2020 which is beyond the period of three months as required under Sub Section (3) of Section 129D of Customs Act, 1962. The appeal was thus dismissed as time barred without going to the merits of the case.

3. The learned AR Shri R. Rajaraman appeared for the Department and reiterated the grounds of appeal.

4. The learned counsel Shri D. Jai Shankar appeared for the respondent. It is submitted that in para 5,6 and 7, the Commissioner (Appeals) has discussed the

reasons for dismissing the appeal filed by the Department as time barred. The Department had not produced any evidence to show the date on which the Reviewing Authority received the Order-in-Original. However, in the present appeal it is stated that the Reviewing Authority had received the order only on 14.07.2010 and that therefore the review order passed on 12.10.2010 is well within time. The learned counsel submitted that the said contention is only an afterthought. It is discussed by the Commissioner (Appeals) that even after repeated request the Department did not respond by giving the date on which the order was received by the Reviewing Authority. There is a delay in passing the review order and therefore the Commissioner (Appeals) has correctly dismissed the appeal.

5. Heard both sides.

6. On perusal of the Order-in-Original it is seen hand written on the first page of the Order-in-Original that the date of receipt of the order by the Review Cell is 14.07.2010. The Commissioner (Appeals) has discussed in the impugned order that even after repeated requests the Department did not furnish the date on which the original order was received by the Reviewing Authority. The discussion made by Commissioner (Appeals) in para 4,5 and 6 is reproduced as under:

"4. I have carefully gone through the case records and written submissions made by the Respondent. From the records, it is seen that though the order was signed on 16.6.2010 by the LAA, the same was prepared and dispatched on 28.6.2010, but the review order was passed on 12.10.2010. Hence, there was a delay of 15 days over and above the stipulated time of 3 months. Before going into the merits of the case it is seen that the procedures laid down under Section 129 D ibid was not followed. According to 129D(3) reads as follows::

"[(3) Every order under sub-section (1) or sub-section (2), as the case may be, shall be made within a period of three months from the date of communication of the decision or order of the adjudicating authority.]"

5. From the appeal filed before me, I find that the O-in-O was reviewed and order was passed by the Jurisdictional Commissioner of Customs beyond the stipulated period for such review as mandated under the Customs Act, 1962. The delay by which the review order was passed by the reviewing authority was 15 days approximately. The above delay was noticed based on the facts and figures available as such from the appeal papers filed before me by the department. In order to find out whether actually any delay exist in passing the review order, the original case files were called for from the department yielded no result. The repeated request in calling for the case files proved futile.

6. The question of limitation was decided by me on the above basis with the available dates, which appears latest among the date of passing of the order, dispatch date of the order or the date on which the job number / O-In-O number was generated. I am totally not satisfied the way the department responds for the appeal filed by them. The way they filed the appeal and treated the same

makes a mockery of this forum. The reviewing authorities at least could have lessened my burden by mentioning the exact date of receipt of the original orders in their review orders. Such an action by the reviewing authorities would have helped me to take a proper and just decision on merits instead of stumbling on the limitation aspect."

7. The very same facts and issue came up for consideration before this Tribunal and vide Final Order No.40203-40205/2023 dated 27.03.2023, in which it was observed as under:

"11. We do not understand what prevented the Department from submitting before the Commissioner (Appeals) that the Order-in-Original was received by the Review Cell on the respective dates on which they have stated in the grounds of appeal. As there is no evidence to substantiate the contention of the Department that the Order-in-Original was received on such dates by the Review Cell and as there is no reason to dis-believe the findings of the Commissioner (Appeals) that there was no evidence as to the date on which Order-in-Original was received by the Reviewing Authority, the strong inference that can be drawn is that there is a delay in passing the review orders in these appeals.

12. As discussed we cannot accept the contention of the Department that the orders were received by the Reviewing Authority only on 10.02.2010/16.04.2010/14.07.2010. We find no grounds to interfere with the observation and findings of the Commissioner (Appeals)."

8. From the foregoing, we do not find any ground to take a different view. The impugned order sustained. The appeal filed by the Department is dismissed.

