CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH

CUSTOMS APPEAL NO: 85324 OF 2016

[Arising out of Order-in-Appeal No: MUM-CUSTM-SMP-203 & 204/2015-16 dated 13/11/2015 passed by the Commissioner of Customs (Appeals), Mumbai – I.]

Sai Mehar Industries
C-1 Shining Star, Daulat Nagar, Santacruz
Mumbai - 400052 ... ***Appellant***

versus

Commissioner of Customs (Appeals)
Mumbai I
New Customs House, Ballard Estate, Mumbai – 400001 ***...Respondent***

APPEARANCE:

Shri Harsh Choudhary, Advocate for the appellant

Shri Bipin Jadhav, Deputy Commissioner (AR) for the respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO: 86358/2026

DATE OF HEARING: 26/10/2026
DATE OF DECISION: 26/10/2026

PER: DR. SUVENDU KUMAR PATI

We have heard both sides and the appeal is taken up for order.

2. Learned Counsel for the appellant submits that because of change of address of their office, which they could not intimate to the adjudicating authority but made necessary changes in the Departments IEC system as well as in other documents including in filing of bills of entry for subsequent imports, they were not in receipt of the order of final assessment passed on 27/03/2012 but got certified copy of the order on 18/02/2013 through their request letter dated 20/01/2013 and thereafter, filed the appeal on 17/04/2013 which was well within the period of limitation but Learned Commissioner (Appeals) had observed that, because the appellant did not intimate about the change of address, they had displayed the order in public notice board of the department which was to be considered as service for which filing of the appeal nearly after an year is hit by the period of limitation, which he is not empowered to condone. He further submits that such an observation is erroneous for the reason that the relevant provision for service of order during the year 2012 indicates that it has to be delivered in person or by registered post or by speed post and when it was not served, then only it can be placed in the notice board and that the Tribunal had made an observation in the order passed by the Larger Bench dated 10/07/2006 in Appeal No. C/662/2005 that such display on the notice board cannot be held to be sufficient unless dispatch of order by speed-post/registered post with valid proof of service is available, for which the order passed by the Commissioner (Appeals) only on the ground of limitation is required to be set aside.

3. Learned Authorized Representative objects to such submission and takes us to the letter given by the appellant itself on 28/01/2013 (inadvertently mentioned as 2012) in which they have acknowledged to have received the notice through their CHA on 09/01/2013 and appeal having been filed on 17/04/2013 was admittedly filed beyond the period of 90 days prescribed for filing of such appeal with condonation request and therefore, the order passed by the Commissioner (Appeals) cannot be treated as irregular that needs no interference by the Tribunal.

4. We have taken note of the submissions and have gone through the appeal paper-book. Before giving our findings on the issue, we prefer reproduce para 11 of the impugned order passed by the Commissioner (Appeals) on 13/11/2015, which reads as hereunder:

> *'11. In the present case it is seen that the Order-in Original was duly dispatched to the appellant at the address on records i.e. M/s Saimehar Industries, 201, Dalaal Chambers, New Marine Lines Mumbai-400020. The appellants have admitted to the fact that they had not intimated the department about the change of address, during the personal hearing held on 12.07.2013 before the Commissioner (Appeals). Further, the Order-in Original was also duly displayed on the notice board of the Custom House as per the provisions of Section 153(b) of the Customs Act. Therefore, I hold that the Order-in-Original had been duly served on the appellant.'*
>
> (underlined to emphasise)

5. While going through the above observation made by the Commissioner (Appeals), it is very much clear that the address in which the order-in-original was dispatched was appellant's old address but concerning change of address that during personal hearing held on 12/07/2013 the Commissioner (Appeals) himself was informed by the appellant that there was change of address of appellant's office taken place and the said order does not reveal as to when the order-in-original was received by the Appellant or received by someone else or it was returned back from the postal department apart from the fact that the date on which it was displayed on the notice board has not been mentioned in the said order, as reveals from the above reproduced paragraph. Hence, in the absence of any concrete proof regarding date of serving of order on the appellant, we are of the view that on the basis of written request the appellant had received the order on 18/02/2013 and the same has to be considered as service of copy of the order-in-original for the purpose of computation of limitation. Therefore, the appeal is supposed to be treated as being filed before the Commissioner (Appeals) within the stipulated period of limitation.

5.1. Further, the Commissioner (Appeals) had not passed the order on the merit of the appeal on the issue involved therein as has been commanded under Section 128(4) of Customs Act, 1962 that requires him to pass an order in writing stating the points for determination, the decision thereon and the reasons for such

decision, since he had dismissed the appeal only on the ground of limitation. Therefore, there is requirement of re-hearing of the matter by Commissioner (Appeals) *de novo* by accepting the appeal to have been filed within the stipulated period of time as prescribed under Section 128 (1) of Customs Act, 1962. Hence the order.

ORDER

6. The appeal is allowed by way of remand to the Commissioner (Appeals) for hearing afresh with due notice to the parties and for that purpose the impugned order passed by the Commissioner (Appeals) is hereby set aside.

(Dictated and Pronounced in Open Court)

(DR. SUVENDU KUMAR PATI)
Member (Judicial)

(P. ANJANI KUMAR)
Member (Technical)

**/as*