



Aadrikaa Law Offices (ALO)- IDT Tax / Arbitration / Litigation

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CESTAT Kolkata Sets Aside Refund Demand



This Article has been written by Shri Ravi Shekhar Jha, Advocate based in New Delhi. The views expressed are based on his interpretation of the law. He can be reached at his email id intelconsul@gmail.com or on his Mobile +91-9999005379.

In a significant ruling, the Customs, Excise, and Service Tax Appellate Tribunal (CESTAT), Eastern Zonal Bench, Kolkata, has delivered justice to M/s. Puyang Refractories Group Company (India) Pvt. Ltd. by setting aside the impugned order demanding a refund amount of Rs. 11,64,043/-. The case, which revolved around procedural lapses and delayed issuance of a Show Cause Notice, highlights the importance of adhering to legal timelines and ensuring proper communication in adjudication processes.

Background of the Case

The appellant, M/s. Puyang Refractories Group Company, was sanctioned a refund of Rs. 11,64,043/- on 17.11.2014. However, the Department later initiated proceedings to recover the refunded amount, alleging it was erroneously granted. A Show Cause Notice was issued on 05.06.2017, nearly two and a half years after the refund was sanctioned. Subsequently, the adjudicating authority confirmed the demand.

The appellant contended that they were unaware of the proceedings as the Show Cause Notice and the Order-in-Original were not received by them. It was only upon receiving a recovery letter in March 2019 that they requested a copy of the Order-in-Original, which was provided on 07.03.2019. Acting promptly, the appellant filed an appeal on 22.04.2019. However, the Commissioner (Appeals) dismissed the appeal, citing a delay in filing beyond the prescribed ninety-day period.

CESTAT's Observations

The Hon'ble Tribunal carefully examined the facts and arguments presented by both sides. Key observations included:

1. **Benefit of Doubt to the Appellant:** The Tribunal noted that the Department failed to provide a Speed Post reference number for the alleged communication of the Order-in-Original in December 2017. This lack of evidence led the Tribunal to grant the benefit of doubt to the appellant, holding that the appeal was filed within the permissible timeline after receiving the Order-in-Original in March 2019.
2. **Extended Period Provisions:** The Tribunal found merit in the appellant's argument that the Department could not invoke the extended period provisions for issuing the Show Cause Notice. The protective demand was raised more than two and a half years after the refund was granted, which was deemed excessive and unjustified.

Final Ruling

In a decisive move, the Tribunal set aside the impugned order and allowed the appeal filed by the appellant. The ruling emphasized that the Department's delay in issuing the Show Cause Notice and its failure to provide adequate proof of communication undermined its case. The appellant was declared eligible for consequential relief as per law.

Key Takeaways

1. **Timely Communication is Crucial:** The case underscores the importance of proper and timely communication by authorities to ensure fairness in adjudication processes.
2. **Adherence to Legal Timelines:** The ruling highlights that extended period provisions cannot be invoked arbitrarily, and procedural delays can weaken the Department's case.
3. **Benefit of Doubt:** When evidence is inconclusive, the benefit of doubt must be granted to the affected party, ensuring justice prevails.

Conclusion

The CESTAT Kolkata's ruling is a victory for M/s. Puyang Refractories Group Company and a reminder of the importance of procedural integrity in tax and customs matters. This case serves as a precedent for similar disputes, reinforcing the need for authorities to act within prescribed timelines and maintain transparency in their actions.

Source: CESTAT Kolkata

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

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 75239 of 2021

(Arising out of Order-in-Appeal No. KOL/CUS(Port)/AKR/28/2021 dated 08.01.2021 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. Puyang Refractories Group Company (I) P. Ltd. : Appellant

FD-320, Shop No. 2, Sector-III, Salt Lake,
Kolkata – 700 106

VERSUS

Principal Commissioner of Customs (Port)

Custom House, 15/1, Strand Road,
Kolkata – 700 001

: Respondent

APPEARANCE:

Shri S. Chatterjee, Advocate, for the Appellant

Shri S. Chakravorty, Authorized Representative, for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 77439 / 2025

DATE OF HEARING / DECISION: 18.09.2025

ORDER: [PER SHRI R. MURALIDHAR]

The appellant was sanctioned a refund of Rs.11,64,043/- vide Refund Order No. 4105/2014 ARS dated 17.11.2014. Thereafter, the Department initiated another proceeding towards erroneously refunded amount vide Show Cause Notice F. No. S107-3513/14ARS(Port) dated 05.06.2017. After due process, the adjudicating authority confirmed the demand.

1.1. The appellant filed their appeal before the Ld. Commissioner (Appeals) on 22.04.2019, on the ground that the Order-in-Original passed by the Joint Commissioner of Customs, Kolkata on 15.12.2017

was not received by them. However, the Ld. Commissioner (Appeals), vide the Order-in-Appeal No. KOL/CUS(Port)/AKR/28/2021 dated 08.01.2021 has dismissed the appeal filed by the appellant on the sole ground that the appeal was filed belatedly after ninety days.

1.2. Being aggrieved, the appellant is before us.

2. The Ld. Advocate appearing on behalf of the appellant submits that the Show Cause Notice dated 05.06.2017 was not received by the appellant, as is evidenced under paragraph 19 of the Order-in-Original. Therefore, it is his submission that they could not file their reply to the same before the adjudicating authority. It is submitted that subsequently, they were not aware that the ex-parte Order-in-Original had been passed by the adjudicating authority since the said Order-in-Original was never received by them; thereafter, when they received the recovery letter, they submitted a letter to the jurisdictional authorities on 04.03.2019, stating that they have not received the Order-in-Original and requesting for one more copy of the same. He submits that the Assistant Commissioner of Customs, Custom House, Kolkata has, vide letter dated 05.03.2019, after stating that the earlier order was sent by Speed Post on 18.12.2017 (without mentioning any Speed Post EW number), granted one more copy of the Order-in-Original as per their request. The Ld. Advocate for the appellant submits that after receiving the same on 07.03.2019, the appellant has taken immediate steps and filed the appeal on 22.04.2019. Therefore, he submits that there was no delay from their side in filing the appeal before the Ld. Commissioner (Appeals).

2.1. He further takes the stand that the Department could not have invoked the extended period provisions for issuing the Show Cause Notice on 05.06.2017 for the refund granted on 17.11.2014.

3. The Ld. Authorized Representative of the Revenue takes us through the Order-in-Appeal. He submits that the appellant has failed to file the appeal in time; the very fact that the Order-in-Original was sent by Speed Post on 18.12.2017 and was not returned by the postal authorities as "not served" proves that the Order-in-Original was already served on the appellant in December, 2017 itself. Therefore, he submits that the appeal is liable to be dismissed.

4. Heard both sides and perused the appeal papers.

5. We find that based on a specific request of the appellant on 04.03.2019, the Assistant Commissioner of Customs, Custom House, Kolkata issued them a copy of the Order-in-Original on 07.03.2019. Thereafter, the appellant filed the appeal on 22.04.2019. We observe that for the earlier communication of the Order-in-Original vide letter dated 18.12.2017, no Speed Post reference has been given by the Assistant Commissioner. Therefore, the benefit of doubt has to be granted to the appellant.

5.1. Accordingly, we hold that the appeal has been filed in time by the appellant.

6. In the normal course, we would have remitted the matter back to the Ld. Commissioner (Appeals) to hear the same on merits. However, finding that the issue lies in a very short compass, we take up the appeal itself for disposal.

7. We find force in the appellant's submission that the Department cannot take the stand of suppression to invoke the extended period provisions against them when the Show Cause Notice has been issued on account of the protective demand for the refund which was granted on 17.11.2014. We find that the Show Cause Notice was issued only on 05.06.2017, which is after a delay of two and a half years. Therefore, on this ground itself, we set aside the impugned order and allow the appeal filed by the appellant. The appellant would be eligible for consequential relief, if any, as per law.

(Dictated and pronounced in the open court)

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)