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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 1<sup>st</sup> June, 2023*

+ **CUSAA 45/2023**

COMMISSIONER OF CUSTOMS -AIRPORT  
AND GENERAL

..... Appellant

Through: Mr. Satish Aggarwala, Senior  
Standing Counsel, Indirect  
Taxes, Department of Revenue  
with Mr. Gagan Vaswani and  
Mr. Vishal Singh, Advs.

versus

M/S. BERGEN ENGINES INDIA  
PVT. LTD.

..... Respondent

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**  
**HON'BLE MR. JUSTICE AMIT MAHAJAN**

**VIBHU BAKHRU, J. (Oral)**

**CM APPL. 30825/2023**

1. For the reasons mentioned in the application, the same is allowed and the delay in re-filing the appeal is condoned.
2. The application stands disposed of.

**CM APPL. 30826/2023**

3. Exemption allowed, subject to all just exceptions.
4. The application stands disposed of.

**CUSAA 45/2023**

5. The Revenue has filed the present appeal impugning an order



dated 28.09.2022, passed by the learned Customs Excise & Service Tax Appellate Tribunal ('CESTAT'), rejecting the Revenue's application (Application No. 50612/2022) seeking condonation of delay in filing the said appeal.

6. The Revenue had filed the said appeal before the learned CESTAT assailing the Order-in-Appeal dated 06.10.2017, whereby the Commissioner of Customs (Appeals) had rejected the Revenue's appeal against the Order-in-Original dated 17.12.2014.

7. The controversy before the Adjudicating Authority related to the evaluation of the goods imported by the respondent from related foreign suppliers. After a detailed examination, the Adjudicating Authority found that although the foreign suppliers were related to the respondent in terms of Rule 2(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the value declared by the respondent (importer) was not influenced by their relationship.

8. The Adjudicating Authority held that the value declared in the invoices be accepted as transaction value under Rule 3(3)(a) of the Valuation Rules, 2007 subject to usual checks and scrutiny.

9. The Adjudicating Authority also specified that the said order was based on the written submissions and the documents submitted by the respondent. And, directed that if there was any change, error or omission in the said documents, the same was required to be brought to the notice of the concerned Branch.

10. The Revenue appealed the said Order-in-Original before the Appellate Authority [Commissioner of Customs (Appeals)] under Section 129D(2) of the Customs Act, 1962. However, the said appeal



was rejected by the Order-in-Appeal dated 06.10.2017.

11. The Revenue lodged an appeal against the said Order-in-Appeal before the learned CESTAT on 18.01.2018. However, the said appeal was defective according to the Registry of the learned CESTAT. The Defect Notice dated 06.02.2018 was issued to the appellant (Revenue). This was followed by another Notice dated 05.03.2018 and the appellant was afforded an opportunity to clear the defects.

12. However, the appellant failed and neglected to clear the defects. Consequently, the Registry returned the appeal to the Revenue under cover of the letter dated 08.05.2018.

13. There is some controversy as to whether the Defect Notices were received by the concerned department. According to the Registry of the learned CESTAT, all notices were correctly addressed and dispatched. The appellant denies knowledge of the same.

14. However, there is no dispute that the letter dated 08.05.2018, under cover of which the appeal was returned to the Revenue, was received. The said letter clearly indicated that the appeal was being returned for the reason that the defects had not been removed till that date.

15. Despite, the receipt of the said letter, the Revenue did not take any expeditious steps for curing the defects or re-lodging the appeal.

16. The Revenue, once again, filed an appeal on 10.02.2022 impugning the Appellate Order dated 06.10.2017. Admittedly, after a delay of four years and nineteen days. Thus, the appellant also sought the following prayer:

*'b) delay of 4 years 19 days in filing the appeal filed by the petitioner before the CESTAT may kindly be condoned;'*



17. The appeal was taken up by the learned CESTAT on 23.08.2022 and the learned CESTAT found that the appellant had not sufficiently explained the reasons for the delay in filing the appeal. Accordingly, the learned CESTAT granted liberty to the appellant to file a better application. Availing the benefit of the said liberty, the appellant had filed an affidavit attempting to justify the delay.

18. The impugned order indicates that the learned Tribunal examined the explanation provided by the Revenue and found the delay to be unjustified.

19. Much of the reasons for the delay were attributed to inter-departmental communication. Further, part of the delay was also sought to be explained on the ground that the Revenue had written letters to the Registry of the learned CESTAT attempting to ascertain the status of the appeal.

20. The learned CESTAT, after examining the said letters found, on the basis of the communications dated 23.11.2020 and 17.12.2020, that the Deputy Commissioner of Customs (Review) had admitted that on verbal enquiries, information was provided that the appeal papers had been returned back to that office by the Registry of the CESTAT.

21. The learned CESTAT held that once the Deputy Commissioner of Customs (Review) had become aware that the appeal had been returned back, at least at that stage, he could have taken steps for filing a fresh appeal, however, the appeal was filed much belatedly on 10.02.2022.

22. The learned CESTAT has, accordingly, concluded that there were no justifiable reasons for the delay in filing the appeal after the same was returned as defective.



23. We find that the impugned order is well reasoned and cannot be faulted.
24. Clearly, no substantial questions of law arise in the present appeal.
25. The appeal is, accordingly, dismissed.

**VIBHU BAKHRU, J**

**AMIT MAHAJAN, J**

**JUNE 1, 2023**  
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