

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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75218 of 2021

(Arising out of Order-in-Appeal No. KOL/CUS(CCP)/AKR/853/2020 dated 08.12.2020 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

Susanta Kumar Sahoo

Proprietor of M/s. Kalinga Minerals,
Golagaon, Pankpal, P.O.: Jakhapura,
District: Jajpur, Orissa, PIN – 755 026

: Appellant

VERSUS

Commissioner of Customs (Preventive)

Custom House, 15/1, Strand Road, Kolkata – 700 001
(O/o. Assistant Commissioner of Customs, Banskopa, Durgapur)

: Respondent

APPEARANCE:

Shri Nilotpall Chowdhury, Advocate, for the Appellant

Shri Tariq Sulaiman, Authorized Representative, for the Respondent

CORAM:

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

FINAL ORDER NO. 76915 / 2025

DATE OF HEARING / DECISION: 16.07.2025

ORDER:

The appellant has filed this appeal against the Order-in-Appeal No. KOL/CUS(CCP)/AKR/853/2020 dated 08.12.2020 wherein the Ld. Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001 has dismissed the appeal filed before him by the appellant herein on the ground that the appellant had filed the said appeal after the expiry of 60 days in violation of Section 128 of the Customs Act, 1962; the appellant had not filed any request for condonation of the delay. The appeal thus has been rejected on the ground of time-bar by the Ld. Commissioner (Appeals).

2. During the course of hearing, the Ld. Counsel appearing on behalf of the appellant submits that there was no delay in filing the said appeal before the Ld. Commissioner (Appeals) in this case. He submits that the Order-in-Original issued on 22.02.2017 has been received by them on 01.03.2017. In support of this, the Ld. Counsel for the appellant has submitted evidence of endorsement of the date "01.03.2017" as date of delivery by the postal authorities. It is therefore his contention that the said appeal filed by the appellant, on 28.04.2017, is within the time-limit of sixty days available for filing an appeal before the Commissioner (Appeals) and accordingly, there was no delay in filing the said appeal before the Ld. Commissioner (Appeals) in this case.

3. The Ld. Authorized Representative of the Revenue reiterated the findings in the impugned order.

4. Heard both sides and perused the appeal records.

5. I find that in the present case, the Id. appellate authority has dismissed the appeal filed by the appellant on the ground that the said appeal had been filed beyond the period of sixty days as prescribed under Section 128 of the Customs Act, 1962. However, on verification of the documents, I find that the Order-in-Original issued on 22.02.2017 was delivered to the appellant only on 01.03.2017. In this regard, I observe that the appellant has produced evidence of delivery by the postal authorities. The evidence submitted by the appellant clearly indicates that the Order-in-Original was received by the appellant only on 01.03.2017. Therefore, I take note

of this date i.e., "01.03.2017" as the date of actual delivery of the Order-in-Original.

5.1. As the appellant has filed the said appeal before the Ld. Commissioner (Appeals) on 28.04.2017, I hold that the appellant has filed the said appeal within the time-limit specified under Section 128 of the Customs Act, 1962 and there is no delay in filing the said appeal before the Ld. Commissioner (Appeals).

6. In view of the above, I set aside the impugned order and remand the matter to the Commissioner (Appeals), for deciding the issue on merits. The Id. appellate authority is directed to follow the principles of natural justice and arrive at a decision within a period of three months from the date of receipt of this Order.

7. The appeal is disposed of by way of remand.

(Dictated and pronounced in the open court)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd