CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

SERVICE TAX Appeal No. 10079 of 2017-DB

[Arising out of OIA-CCESA-VAD-APP-II-VK-298-2016-17 dated 17/10/2016 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I(Appeal)]

D K M Precision Engineer .... **Appellant**
71 Gidc, Ichhapore Road,
Surat Hazira Road,
Surat, Gujarat

VERSUS

C.C.E. & S.T.-Surat-ii .... **Respondent**
New C.Ex Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat- 395001

APPEARANCE :
Ms Shweta Garge, Advocate for the Appellants
Shri Ajay K Samota, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

DATE OF HEARING/ DECISION: 05.12.2023

FINAL ORDER NO. 12754/2023

RAMESH NAIR :

In the impugned order, the Learned Commissioner (Appeals) dismissed the appeal on the ground of time bar, the appeal was filed belatedly by delay of 17 days before the Commissioner (Appeals) though the appellant filed COD application but no proper reason was given.

2. Ms. Shweta Garge, Learned Counsel appearing on behalf of the appellant submits that since earlier there were time period 3 Months for filing appeal before the Commissioner (Appeals), the appellant was under impression that appeal should be filed within the 3 months. Therefore, the appeal was filed within 77 days, accordingly, the delay occurred. She submits that this Tribunal in various decisions has condoned the delay before the Commissioner (Appeals). Therefore, she prayed that the delay before

Commissioner (Appeals) may be condoned and appeal be remanded for deciding on merit.

3. Shri Ajay Kumar Samota, Learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. On careful consideration of the submission made by both the sides and perusal of record, we find that there is delay of 17 days before the Commissioner (Appeals). The law provides for condonation of 30 days of delay by the Commissioner (Appeals). In the interest of justice, we are of the view that the appellant cannot be deprived of their right to peruse the appeal on merit.

5. Accordingly, in our view the delay is condonable. Hence, the impugned order is set aside. Matter is remanded to the Commissioner (Appeals)to decide a fresh, on merit.

(dictated and pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

Raksha