Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

EXCISE Appeal No. 10024 of 2018 - DB

(Arising out of OIA-VAD-EXCUS-003-APP-40-17-18 dated 15/06/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Aayush Apparel **........Appellant**
2nd Phase, Plot No.165-b3, Near Tata Motor Engineering,
VAPI, GUJARAT

VERSUS

Commissioner of C.E & S.T.-Valsad **......Respondent**
Third Floor, Adarashdham Building,
Vapi-Daman Road, Vapi, Gujarat
Gujarat, 396191

APPEARANCE:
None for the Appellant
Shri Rajesh K Agarwal, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR

Final Order No. 11953/2024

DATE OF HEARING/DECISION: 03.09.2024

RAMESH NAIR

In the impugned order Ld. Commissioner (Appeals) has rejected the appeal only on the ground of time bar, without going into merit, on the fact that the appeal was filed after 1 year and the Commissioner (Appeals) has power to condone only 30 days after the normal period of 60 days.

2. Shri Rajesh K Agarwal, Ld. Superintendent (AR) pointed out that there is admitted delay beyond 90 days, therefore, the appeal was rightly rejected as the Commissioner has no power to condone the delay after 90 days.

3. On perusal of record, we find that there is no dispute that the appellant have filed the appeal after 1 year, therefore, Commissioner (Appeals) has dismissed the appeal on the ground of time bar under Section 35 of the Central Excise Act, 1944. We find that as per the Hon'ble Supreme

Court Judgment in the case of Singh Enterprises 2008 (221) E.L.T. 163 (S.C.) and also the Jurisdiction High Court judgment in the case of D R Industries Ltd 2008 (229) E.L.T.24 (Guj.) the Commissioner (Appeals) has no power to condone more than 30 days. Therefore, being a sacrosanct provision for condonation of only 30 days as per Section 35 of the Central Excise Act, the appeal was rightly rejected by the Commissioner (Appeals) on the ground of time bar. Therefore, there is no reason to interfere in the impugned order.

4. Hence, the impugned order is upheld, appeal is dismissed.

(Dictated and Pronounced in open Court)

RAMESH NAIR
MEMBER (JUDICIAL)

C L MAHAR
MEMBER (TECHNICAL)

Bharvi