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

REGIONAL BENCH - COURT NO. 2

SERVICE TAX Appeal No. 10649 of 2023-SM

[Arising out of Order-in-Appeal No. VAD-EXCUS-001-APP-173-2023-24 dated 18.02.2023 passed by Commissioner (Appeals) CGST & Central Excise, Vadodara]

Sukhdham Upvan **.... Appellant**

Aditya Villa and Heights, Near Narayan Vidyalaya
Road, Waghodia, Road, Vadodara-390035

VERSUS

Commissioner, CGST & Central Excise, Vadodara **.... Respondent**

Commissioner, CGST & Central Excise, Vadodara-I,
GST Building, Race Course Circle, Vadodara – 390007

APPEARANCE :

Shri Ajay Banerjee, Advocate for the Appellant
Shri Himanshu Nachane, Superintendent (AR) for the Revenue.

CORAM:

HON'BLE DR. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)

DATE OF HEARING /DECISION : 29.07.2026

FINAL ORDER NO. 10474/2026

DR. AJAYA KRISHNA VISHVESHA :

Learned Counsel for the appellant Shri Ajay Banerjee and learned AR for the department Shri Himanshu Nachane, Superintendent are present. I have heard the arguments from both the sides.

2. Learned Counsel for the appellant submitted that appellant were engaged in providing services of Construction of residential complex and were holding Service Tax registration. In GST era, they were holding GST Registration. Based on the intelligence gathered by DGCEI (DGGI), Vadodara, an inquiry was initiated against appellant wherein it was observed

that the appellant was engaged in evasion of Service Tax on the value of taxable services provided by them in respect of their project viz. "SUKHDHAM UPVAN" developed at TP No.40, Narayan Vidyalay Road, Kapurai, Waghodia-Dabhoi Ring Road, Waghodia Road, Vadodara-390025. On the basis of investigation carried out, it appeared that the appellant failed to pay the Service Tax of Rs. 46,12,173/- on the "Construction Services" provided by them and Rs.3,31,904/- on the freight/transportation expenses, during the period April, 2015 to June, 2017. After investigation, a Show Cause Notice dated 04.06.2020 was issued demanding Service tax of Rs.49,44,077/- (including cess), interest thereon and penalty under various provisions of the Finance Act, 1994. The said Show Cause Notice was adjudicated vide Order-in-Original dated 31.03.2021 confirming the demand along with interest and penalty upon the appellant.

2.1 Being aggrieved with the said Order-in-Original, the appellant filed appeal before the learned Commissioner (Appeals), under Section 85 of the Finance Act, 1994, on 13.10.2022. While deciding the appeal, it was found by learned Commissioner (Appeals) that the impugned order was issued on 31.03.2021 and the same was received by one of the partners of the appellant on 14.06.2021. However, the appeal in terms of Section 85 of the Finance Act, 1994 was filed on 02.02.2023. Tho proviso to Section 85(3A) of the Finance Act, 1994 provides that – "the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month".

2.2 Learned Counsel for the appellant further submitted that Hon'ble Supreme Court has passed order dated 10.01.2022 in Miscellaneous Application No. 21 of 2022 directing that the order dated 23.03.2020 is restored and in continuation to subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, the period from 15.03.2020 to 28.02.2022 shall stand excluded for the purposes of limitation, as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings. It has also been directed that "in cases where limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022, In event, the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply. The learned Commissioner, in the impugned order, taking into consideration Hon'ble Supreme Court's above mentioned judgment, has mentioned that the appeal was required to be filed within 90 days from 01.03.2022, i.e. by 30.05.2022. However, the appeal was filed on 02.02.2023 which is delayed by more than eight months and the same is time barred. The Commissioner (Appeals) can condone the delay upto one month only and he cannot condone the delay beyond one month. With these observations the learned Commissioner rejected the appeal as time-barred.

2.3 Learned Counsel for the appellant further submitted that the impugned order was passed in the COVID period. There was no cooperation made by the working partner Shri Darpan Shah who was indulging in fraudulent activities and has totally mis-managed the accounts of the appellant firm ever since April 2020 and as a result he has been in judicial custody ever since August 2022. The order was passed on 31.03.2021 and there was no limitation applicable till 01.03.2022. Even later, the appellant firm being managed for taxation matters by the working partner Shri Darpan Shah who was indulging in fraudulent activities and other partners had no knowledge of the instant order since the project execution was already over. Only when the recovery proceedings were initiated by the jurisdictional CGST authorities, the appellant being partner having 11% share came to know that there was such demand order pending recovery against the appellant firm.

2.4 Learned Counsel for the appellant further submits that the impugned order itself is ex-parte in nature and has not been passed following the principles of natural justice as far as the undersigned partner or other unrelated partners are concerned. The working partner has deliberately left this litigation unattended and has tried to post the recovery of dues on unrelated partners with the ulterior criminal motive to avoid the huge liability. The other partners had regularly paid their portion of GST liability out of the total income to the working partner during the project execution but now it is apparent that the working partner has siphoned off all the funds to his benefit which has also landed him in judicial custody after August 2022 and recently was released on bail.

2.5 Learned Counsel further submits that the appellant came to know about the impugned order only on 29.12.2022 when the bank freezed appellant's account and intimated to the department about freezing all the accounts of the appellant. He prayed that considering the circumstances narrated above, the delay may be condoned and the appeal may be allowed by way of remand to the Adjudicating Authority.

3. Learned AR reiterates the impugned order passed by learned Commissioner (Appeals).

4. After hearing both the sides and after perusal of record, I am of the view that in view of the submissions made by the learned Counsel for the appellant in the grounds of appeal, it appears that the appellant had no

knowledge about the impugned order before 29.12.2022 and he came to know about the impugned order and demand only on 29.12.2022 when all the bank accounts of the appellant were freezed. He filed the appeal on 02.02.2023 after 34 days. Therefore, in these circumstances, it appears proper that the delay in filing the appeal before Commissioner (Appeals) is liable to be condoned.

5. Consequently, the delay is condoned. The appeal is allowed by way of remand to the learned Commissioner (Appeals) for deciding the appeal on merits after affording fair opportunity of hearing to the appellant and the department.

(Order dictated and pronounced in the open court)

(Dr. Ajaya Krishna Vishvesha)
Member (Judicial)

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