CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Excise Condonation of Delay Application No.70017 of 2020
(On behalf of the Appellant)
AND
Excise Stay Application No.70016 of 2020
(On behalf of the Appellant)
In
Excise Appeal No.70016 of 2020

(Arising out of Order-in-Appeal No.MRT/EXCUS/000/APPL-MRT/ 130-131/2019-20 dated 26.08.2019 passed by Commissioner, CGST (Appeals), Meerut)

Commissioner, Central Goods & Service Tax, Meerut **.....Appellant**
(Division-II, Muzaffarnagar)

VERSUS

M/s R.A. Castings Pvt. Ltd., **....Respondent**
(7th KM Stone, Meerut Road, Muzaffarnagar (U.P.)

APPEARANCE:

Shri A.K. Choudhary, Authorized Representative for the Appellant
Absent for the Respondent

CORAM: **HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)**
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70046/2024

DATE OF HEARING : 31.01.2024
DATE OF DECISION : 31.01.2024

SANJIV SRIVASTAVA:

The present appeal has been filed by the Revenue along with an application for Condonation of delay in filing the appeal. On going through the records, it is observed that the impugned order was reviewed by the concerned committee of Chief Commissioner beyond the prescribed period of three Months from the date of receipt of the order. As such the impugned order has been reviewed beyond the said period could not have been appealed against in terms of Section 35E which provides as follows:-

> ***"Section 35E. Powers of Committee of Principal Chief Commissioners of Central Excise or Chief Commissioners of Central Excise or Principal Commissioners of Central Excise or Commissioner of Central Excise to pass certain orders.-***
>
> *(1)--------------------------------*
>
> *(2)--------------------------------*
>
> ***(3) Every order under sub-section (1) or sub-section (2), as the case may be, shall be made within a period of three months from the date of communication of the decision or order of the adjudicating authority.***
>
> ***[Provided that the Board may, on sufficient cause being shown, extend the said period by another thirty days.]"***
>
> ***(4)------------------***

2. It is seen that as per proviso to Sub-Section (3) only the Board has power to condone the delay in reviewing the order beyond three Months and no other Authority could have condoned the said delay. The tribunal also has no authority to condone this delay. Revenue has filed a letter dated 11.01.2024 stating as follows:-

FILED IN COURT ON
31 JAN 2024
ADV/AR
CESTAT ALLAHABAD

कार्यालय सहायक आयुक्त
केन्द्रीय वस्तु एवं सेवाकर, मण्डल-I
आवास विकास कॉलोनी सर्क्युलर रोड, मुजफ्फरनगर
OFFICE OF THE ASSISTANT COMMISSIONER
CENTRAL GOODS & SERVICE TAX, DIVISION-I.
Awas Vikas Colony, Circular Road, Muzaffarnagar-2510010
फोन नं/.Phone No. 0131-2970068, /मेल-ई ,E-Mail-cgstmzn1@gmail.com

C. No.7(10)Legal/MZN-I/Misc.Reports/02/2021/Pt./764 Dated: 11.01.2024

To,

The Superintendent (AR)
O/o The Commissioner (AR)
Custom, Excise and Service Tax Appellate Tribunal (CESTAT),
Allahabad- 211001

Subject:- Condonation of delay in filing of Review order in respect of CCE Meerut Vs R.A. Casting, CESTAT Excise Stay Application No E/70016/2020 & Excise Condonation of Delay No 70017/2020, in Excise Appeal No 70016/2020- Reg.

Please refer to your letter C.No.E/70016/2020/01 dated 05.01.2024 received on email on 10.01.2024.

The case file of review branch of CGST Meerut Commissionerate has been perused. It has been found that:

The OIA No. MRT/EXCUS/000/Appl-MRT/130-131/2019-20 dated 26.08.2019 was received in the office on 04.09.2019. There were different opinions of both commissioners of committee to accept the order or not; therefore the opinion of the Chief Commissioner was sought. He on 17.12.2019 opined that the appeal may be filed. But in this process the appeal period of 03 months was lapsed.

According to the Board Circular/ Instruction F.No. 390/Review/49/2017-JC dated 29.09.2017 any extension of time period must be sent to the board at least 21 days prior to last date of review. The 21 days period (prior) was also lapsed before the approval of the Chief Commissioner. Hence, this office was not in the position to apply in Board to extend the time limit.

However, the committee of the commissioners duly sought permission from the Chief Commissioner to file the appeal along with condonation of delay which was due to the locations of committee members at different places. In view of the above facts, it is again requested that the case may be decided on the merits.

Yours faithfully,

11/01/24

Assistant Commissioner
Central Goods & Services Tax
Division-I, Muzaffarnagar

3. From the provisions of act reproduced above we are of the view that the Chief Commissioner has no authority to condone such delay or permit the committee of Commissioners to review

the order beyond a stipulated period of three months. The provisions for review are to be construed very strictly as has been held by various authorities including the Hon'ble Supreme Court in the case of **MM Rubbers. [(1991) 55 ELT 289 (SC)] ,** wherein following has been held:-

> *"Thus if the intention or design of the statutory provision was to protect the interest of the person adverse- ly affected, by providing a remedy against the order or decision any period of limitation prescribed with reference to invoking such remedy shall be read as commencing from the date of communication of the order. But if it is a limitation for a competent authority to make an order the date of exercise of that power and in the case of exercise of suo moto power over the subordinate authorities' orders, the date on which such power was exercised by making an order are the relevant dates for determining the limitation. The ratio of this distinction may also be found- ed on the principle that the Government is bound by the proceedings of its officers but persons affected are not concluded by the decision.*
>
> *Section 35E comes under the latter category of an au- thority exercising its own powers under the Act. It is not correct to equate the Board, as contended by Sri Gaurishan- kar Murthy, to one of the two parties to a quasi-judicial proceeding before the Collector and the Board's right under Section 35E to the exercise of the right of appeal by an aggrieved assessee from an order passed to its prejudice. The power under Section 35E is a power of superintendence conferred on a superior authority to ensure that the subor- dinate officers exercise their powers under the Act correct- ly and properly. Where a time is limited for the purposes by the statute, such power, as under Section 33A(2) of the Indian Income-tax Act, 1922 referred to in Muthia Chettiar (supra), should be exercised within the specified period from the date of the order sought to be reconsidered. To hold to the contrary would be inequitable and will also introduce uncertainties into the administration of the Act for the following reason. There appears to be no provision in the Act requiring the endorsement, by a Collector, of all orders passed by him to the Board. If there is such a prac- tice in fact or requirement in law, the period of one year from the date of the order is more than adequate to ensure action in appropriate cases particularly in comparison with the much shorter period an assessee has within which to exercise his right of appeal. If, on the other hand, there is no such requirement or practice and the period within which the Board can interfere is left to depend on the off- chance of the Board coming to know of the existence of a particular order at some point of time, however, distant, only administrative chaos can result. We are, therefore, of the opinion that the period of one year fixed under sub- section (3) of Section 35E of the Act should be given its literal meaning and so construed the impugned*

direction of the Board was beyond the period of limitation prescribed therein and therefore invalid and ineffective. For the foregoing. reasons we are of the view that the Tribunal was right in holding that the application before them was out of time."

4. This application for Condonation of delay has been filed without any jurisdiction and authorization. Tribunal does not have any power to consider and condone this delay so the same is dismissed. Appeal and Stay application also are dismissed.

(Dictated and pronounced in open court)

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

Nihal