IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL Nos. E/70416-70423/2018-EX[SM]

(Arising out of Order-in-Appeal No. NOI-EXCUS-002-APP-1506-1513-17-18 dated 29/12/2017 passed by Commissioner (Appeals), Central Goods & Service Tax, Noida)

M/s Lutian Equipments & Forge Pvt. Ltd. **Appellants**

Vs.

Commissioner of Central Excise, Ghaziabad **Respondents**

Appearance:

None for Appellant
Shri Sandeep Kumar Singh (Dy. Commr.) AR for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

Date of Hearing : 10/07/2018
Date of Decision : 10/07/2018

FINAL ORDER NOs. - **71372-71379/2018**

Per: Archana Wadhwa

On matter being called neither anybody appeared nor is there any adjournment request in spite of notice of hearing having been sent well in advance. Accordingly, I have heard learned A.R. appearing for the Revenue and have gone through the impugned order of Commissioner (Appeals). As the issue involved in all the appeals is the same and inasmuch as all the appeals arise from the same impugned order of Commissioner (Appeals), I proceed to decide all the appeals together.

2. I find that challenge in the present appeal is the imposition of penalty of Rs.5,000/- (Five thousands) imposed in each appeal under Rule 27 of the Central Excise Rules, 2002 for late filing of ER-1 Returns during the period July, 2014 to October, 2015. However, Commissioner (Appeals) has not decided the appeal on merits but has rejected the same on the issue of time bar, inasmuch there was a delay of 65 days in filing the appeal before him. While disposing the COD Application filed by the appellant, the Appellate Authority has observed that there was no justifiable reason for the delay in filing the appeals. Accordingly, he rejected the appeals as barred by limitation.

3. I find that admittedly, there was a delay of 65 days in filing the appeals before Commissioner (Appeals). This fact does not stand contested by the appellant in their memo of appeal. As such irrespective of the fact as to whether there was a justifiable reason or not for the delay, it is seen that Commissioner (Appeals) has no power to condone the delay beyond 30 days in terms of the provisions of Section 35 of the Central Excise Act.

The issue stands decided by the Hon'ble Supreme Court in the case of Singh Enterprises vs. CCE, Jamshedpur reported at 2008 (221) E.L.T. 163 (SC) and many subsequent decisions of the High Courts and the Tribunal. As such, I find that as Commissioner (Appeals) was not having any power to condone the delay of 65 days, appeals stand rightly rejected by him as barred by limitation. Accordingly, no interference is called for in the impugned orders and all the appeals are rejected.

(Dictated & Pronounced in Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Lks