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

APPEAL No. ST/70760-70764/2017 &
ST/70370/2018-CU[DB]

(Arising out of Order-in-Appeal No. 217-222/ST/APPL/LKO/2017 dated 08/09/2017 passed by Commissioner of Customs, GST & Central Excise (Appeals), Lucknow)

M/s Satish Chandra Mishra (In Appeal No. ST/70760 & 70763/2017) &
Smt. Kalpana Mishra (In Appeal No. ST/70764/2017 & 70370/2018)
Shri Kapil Mishra (In Appeal No. ST/70761-70762/2017) Appellant

Vs.

CCE & ST, Lucknow (In All Appeals) Respondent

Appearance:

Request for Adjournment, for Appellant
Shri Gyanendra Kumar Tripathi, Deputy Commissioner (AR),
for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 14/02/2019

FINAL ORDER NO. **70285-70290/2019**

Per: Archana Wadhwa

After rejecting the request for adjournment, we proceed to decided all the appeals itself, in as much as, the disputed issue stands decided by the Hon'ble Supreme Court. On going through the impugned order of Commissioner (Appeals), we find that he has rejected all the appeals on the issue of time bar by observing that the order impugned before him was passed on 31/03/2017 and was communicated to the appellants on 28/04/2017. Appeals against the same appellant filed on 25/08/2017 as also by some of the appellants on 05/09/2017 i.e. after the lapse of period of three months. He has further observed that in terms of the provisions of Section 85(3A) of the Finance Act, 1944 the appeal is required to be filed within a period of two months from the date of receipt of the decision. Commissioner (Appeals) has powers to further condone the delay of one month, on being satisfied that the appellant was prevented by sufficient cause from presenting the appeal. After a period of three months, he has no jurisdiction to condone the delay.

2. We find that the said issue i.e. whether the Commissioner (Appeals) has powers to condone the delay beyond the period prescribed under the Act or not, stands decided by the Hon'ble Supreme Court in the case of Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur reported as 2008 (221) ELT 163 (SC). It stands held by the Hon'ble Supreme Court that Commissioner (Appeals) has no powers or jurisdiction to condone the delay beyond the period of one month. As such, we note that the impugned order suffers from no infirmity.

3. We have also gone through the grounds of appeal. The appellants have neither contested the date of receipt of the impugned order nor the date of filing of the appeals before Commissioner (Appeals). Their only ground that they were prevented by sufficient reasons in filing the appeal well within the time and reliance stands placed upon various decisions

indicating the condonation of delays. However, we note that the said decisions referred to the appeals filed before other Authorities like Tribunal, etc., which have unlimited powers to condone the delay. The dispute in the present appeals relates to condonation of delay in filing the appeals before Commissioner (Appeals). The legal issue that he has no powers to condone the delay beyond one month is finally settled by the Hon'ble Supreme Court in the above referred judgment. As such, by following the same, we find no justifiable ground to interfere in the impugned order of Commissioner (Appeals). Accordingly, all the appeals are rejected.

(Dictated in Court)

Sd/-	Sd/-
(Anil G. Shakkarwar)	**(Archana Wadhwa)**
Member (Technical)	**Member (Judicial)**

Ansari