CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>ALLAHABAD</u>

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70486 of 2023

(Arising out of Order-in-Appeal-NOI-EXCUS-001-APP-193-23-24, dated - 07/08/2023 passed by Commissioner (Appeals) CGST, Noida)

M/s District Cooperative Bank Ltd. **.....Appellant**
(Railway Road, Saharnpur
Saharanpur, Uttar Pradesh 247001)

VERSUS

Commissioner, CGST, Meerut **....Respondent**
(Opposite C.C.S.University, Mangal Pandey Nagar,
Meerut, Uttar Pradesh 250002)

<u>APPEARANCE:</u>

Request for adjournment for the Appellant
Ms. Chitra Srivastava, Authorized Representative for the Respondent

CORAM: **HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

FINAL ORDER NO<u>.-70148/2025</u>

DATE OF HEARING : 25.03.2025
DATE OF DECISION : 25.03.2025

<u>SANJIV SRIVASTAVA:</u>

This appeal is directed against the -in-Appeal-NOI-EXCUS-001-APP-193-23-24, dated-07/08/2023 passed by Commissioner (Appeals) CGST, Noida. By the impugned order following has been held:-

> *"6. Without discussing the core of issue, ab initio, I would like to discuss whether the instant appeal has been filed with in the prescribed time period. I observe that the appeal has been filed by the appellant on 30.12.2022 against the Order-in-Original No.26/AC/ST/SRE/2022 dated 30.06.2022 In their appeal as filed by the appellant in Format ST-4 at Sl. No. 4 against the description "date of communication of the decision or order appealed against to the appellant", the appellant has mentioned the date of receipt as 29.07.2022.*

6.1 I observe that the relevant provisions of Section 85 of the Finance Act, 1994, as are related to the issue, read as under :-

"SECTION 85. Appeals to the [Commissioner) of Central Excise (Appeals). [(1) Any person aggrieved by any decision or order passed by an adjudicating authority subordinate to the Principal Commissioner of Central Excise or Commissioner of Central Excise] may appeal to the Commissioner of Central Excise (Appeals).

3A) An decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 receives the atsent of the President, relating to service tax, interest or penalty under this Chapter:

Provided 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."

6.2 A plain reading of the above provisions of law reveals that in the Service tax matters the appeal is to be filed within 02 months of the receipt of the order of the adjudicating authority. In deserving case such period of appeal may be extended by further one month by the Commissioner (Appeals).

6.3 Juxtaposition to the legal position supra in the instant case the order of the adjudicating authority was admittedly received on 29.07.2022 and against this the appeal was to be filed with the Commissioner (Appeals) within the period of 60 days i.e. up to 29.09.2022. Even if the appellant's submissions are considered and a further period of one month is allowed after condoning the delay of 30 days as per the proviso to Section 85(3A) of the Act, even then the appeal was to be filed by 29.10.2022. However, the appeal has been filed on 30.12.2022 i.e. after 3 months and one days of the last date of filing of appeal as mandated by the statute.
6.4 I find that there is no provision in the finance Act under which the further delay of three month and one day can be condoned. The provisions of Section 85 of the Finance Act are absolute provisions of law and there are no legislative provisions authorizing condonation of delay of a period greater then 30 days. I also find that the appellant's submission that the delay has occurred on account of the fact that the appellant was unable to file the appeal due to non filing of appeal by their C.A. in time. Further, there is no provision in law to transcend and surpass the statutory limit

> *of maximum condonable period of 30 days are there to enable me to condone the delay of three months and one day in filing the appeal. In view of the above discussion I hold that the instant appeal of the appellant is time barred and the delay of three months and one day cannot be condoned.*
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> *6.5 I find that the issue whether Commissioner (Appeals) can condone a delay of a period beyond 30 days, came up for decision before the Supreme Court in Singh Enterprises vs. CCE, Jamshedpur. The Supreme Court examined the provisions of Section 35 of the Central Excise Act, 1944 and observed that, the delay can be condoned in accordance with the language of the Statute which confers power on the Appellate Authority to entertain the appeal by condoning the delay only up to 30 days after expiry of 60 days, which is normal period for preferring the appeal. The Hon'ble Apex Court held that the Commissioner and High Court were justified in holding that there was no power to condone the delay after expiry of 30 days period and that the provisions of the Limitation Act would not be applicable.*
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> *6.6 As the Supreme Court in Singh Enterprises has categorically held that, any delay beyond the extended period of thirty days after expiry of normal period of sixty days, cannot be condoned since the Statue does not permit and the provisions of Section 5 of the Limitation Act, 1963 would not apply. The decision of the Supreme Court in Singh Enterprises is binding."*

2. The Appellant have filed this appeal challenging the above order which has been passed following the decision of the Hon'ble Supreme Court in the case of **M/s Singh Enterprises V/s Commissioner of Central Excise, Jamshedpur 2008 (221) E.L.T. 163 (SC)**. Though the Appellant has made a request for adjournment, I find that the issue is in very narrow compass and could be decided on the basis of the facts/evidences available on record. Accordingly, the appeal has been taken up for decision.

3. In their appeal, Appellant has challenged the impugned order stating as follows:-

1.1 That the Commissioner (Appeals) has dismissed the appeal on the ground of limitation.

He has written the Order of Adjudicating Authority was received on 29.7.2022 and appeal before Commissioner (Appeals) was to be filed within 60 days i.e. upto 29.9.2022. The condonation of delay of 30days as per proviso to Section 85 (3A) of the Act, the appeal was to be filed by 29.10.2022. However, the appeal has been filed on 30.12.2022 i.e. after three months & one day of the last date of filing of appeal as mandated by the statutes. He has further written that the appellant's submission that the delay occurred on account of CA, as CA has not filed in time.

It is submitted, before dismissing the appeal on the ground of limitation, the Commissioner (Appeals) should have granted personal hearing to the appellant which has not been done. Therefore, there is denial of principles of natural justice and on this ground alone, the Order of the Commissioner (Appeals) is liable to be quashed.

In support of above, kind attention is invited to the judgement of Hon'ble High Court of Gujarat in the case of Hitech Sweet Water Technologies Pvt. Ltd. Vs State of Gujarat reported in 2023 (72) G.S.T.L. 243 (Guj.) wherein it has been held Adjudication order - Natural Justice - Impugned orders were passed without affording opportunity of hearing Petitioner contended that by mistake they had indicated in reply to show cause notice that personal hearing was not required while it could put its case properly in response to SCN Competent authority was ready to give personal hearing to petitioner - HELD: Principles of natural justice was not complied as personal hearing was not afforded to petitioner Impugned order was to be set aside - Authority concerned were to give personal hearing after which matter is to be decided afresh - Section 73 of Central Goods and Services Tax Act, 2017 - Section 73 of Gujarat Goods and Services Tax Act, 2017. [paras 5 and 5.1]

1.2 That the learned Commissioner (Appeals) before dismissing the appeal on limitation, should have taken into consideration the merits of the case also as the appellant in their appeal has made detailed submission that on merits the confirmation of demand of service tax is also not sustainable. In support of above, kind attention is invited to the judgement of Hon'ble High Court of Madras in the case of Executive Officer Kaveripattinam Selection Grade Town Panchayat, Krisgnagiri Vs CCE, Appeals, Salem reported in 2022 (379) E.L.T. 332 (Mad.) wherein it has been held - Appeal to Commissioner (Appeals) - Failure to comply with condition of mandatory pre-deposit under provisions of

Central Excise Act, 1944 and delay of 1 year and 30 days in filing appeal HELD: Appeal filed by aggrieved persons ought to be decided in merits on all circumstances - If reasons stated for delay, acceptable, then Courts may consider the same and condone delay by providing opportunity to aggrieved persons and adjudicate issues on merits and in accordance with law In instant case, appeal filed beyond period of limitation because Writ Appeal was pending before Division Bench of High Court during relevant point of time and pre-deposit not made by petitioner as Bank Accounts of petitioner were frozen In view of factum established, impugned order rejecting appeal, quashed - Petitioner directed to comply with condition of pre-deposit as contemplated under Central Excise Act, within period of four weeks from date of receipt of copy of order In event of receiving appeal, respondent shall entertain appeal and dispose of appeal on merits and in accordance with law and by affording opportunity to all parties concerned Article 226 of the Constitution of India. (paras 5, 6, 7, 8]

1.3 That the Show Cause Notice dated 31.12.2020 was given to the Chartered Accountant (consultant of the bank) for preparing & filing reply. The appellant bank was not aware of whether any reply has been filed by the CA or not. The date of personal hearing fixed for 24.3.2022, 6.4.2022 & 2.6.2022 were conveyed to the CA for attending the same before the Adjudicating Authority. The Chartered accountant, Shri Pratiyush Jain has not informed the bank whether he has attended the hearing or not. In such a situation, appellant may not be fastened with the liability of tax & penalty for the mistake/fault committed by the Chartered Accountant. It is further submitted, in the matter hand, no effective personal hearing has been granted by the Adjudicating Authority, therefore there is denial of principles of natural justice. Hence, the Order is bad in law and liable to be set-aside.

1 That Shri Pratiyush Jain Chartered Accountant vide letter dated 13.7.2022 filed reply to SCN to which the Adjudicating Authority vide letter 19.7.2022 informed the applicant that in the matter, Order dated 30.6.2022 has been passed, they may file appeal to the learned Commissioner (Appeals).

It is pertinent to mention here that though the Order dated 30.6.2022 has been passed in the matter but it was not in the knowledge of the appellant and the order dated 30.6.2022 has been served on 29.7.2022 on the appellant. It appears the Order has been passed in a back date without considering reply dated 13.7.2022 filed by the appellant.

1.3.2 That the appellant vide letter No.2051 dated 1.8.2022 enclosed a copy of the Order dated 30.6.2022 (served on 29.7.2022) to Shri Pratiyush Jain, Chartered Accountant for filing appeal against the said Order but the Chartered Accountant neither filed the appeal in time nor informed the appellant upto which time the appeal can be filed with condonation of delay. On asking by the appellant in mid of December 2022, it has came to their knowledge that the appeal has not been filed by the said Chartered Accountant. The appellant bank immediately contact another counsel for filing appeal who advised them to make pre-deposit of 7.5% of demand of tax confirmed for filing appeal, so that the appeal be filed. On making pre-deposit, the appeal has been prepared and filed with the assistance of counsel/advocate.

In above situation, the appeal may kindly be admitted and heard as delay in the matter has been caused by the Chartered Accountant without proper advising the appellant in the matter. Thus, there has been sufficient cause of delay in filing appeal for which appellant may not be fastened with service tax, intt. & penalty and appeal may kindly be heard on merits. In support of above, the appellant referred & relied the following judgments:-

- *Raj Construction Co. Vs Commissioner (Appeals) of CE, Jaipur-I reported in 2021 (55) G.S.T.L. 156 (Tri.. Del.*
- *CCE, Mumbai Vs P.N. Writer and Co. Pvt. Ltd. reported in 2019 (367) E.L.T. 778 (Bom.)*
- *f Yapp India Automotive Systems Pvt. Ltd. Vs CCE & ST, Pune-I reported in 2019 (365) E.L.T. 109 (Tri. Mumbai)*

4. Heard Ms. Chitra Srivastava learned Departmental Representative for the Revenue.

5. I find that the fact of the receipt of the order is not in dispute. It is not even the case of the Appellant that the Order of the Adjudicating Authority was not received by the Appellant on 29.07.2022 and Appeal was to be filed within 60 days i.e. up to 29.09.2022. The Commissioner (Appeals) chould have condoned the delay further by one month i.e. upto 29.10.2022. However, the Appeal was filed before the Commissioner (Appeals) on or after that date. That being so Commissioner (Appeals) has rightly held that in view of the Hon'ble Supreme Court decision in

the case of Singh Enterprises he could not have condoned the delay and dismissed the Appeal.

6. As I find that Appellant had filed the appeal before the Commissioner (Appeals) beyond the period which could have been condoned by the Commissioner (Appeals) as per Section 35 of the Central Excise Act. Judgment relied upon by Commissioner (Appeals) has clearly laid down that Commissioner (Appeals) has no Authority to condone the delay beyond 30 days. That being so by application of the said provision of the Central Excise Act and the decision of the Hon'ble Supreme Court in the order of Singh Enterprises [2008(221) ELT 163 (SC)] holding as follows, I do not find any merits in this appeal:

> *"8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of Statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the Statute. The period upto which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Indian Limitation Act, 1963 (in short the Limitation Act) can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the Appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days time can be granted by the appellate authority to entertain the appeal.*
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> *The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act.*
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> *The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period.*

9. Learned counsel for the Appellant has emphasized on certain decisions, more particularly, I.T.C.s case (supra) to contend that the High Court and this Court in appropriate cases condoned the delay on sufficient cause being shown.

10. Sufficient cause is an expression which is found in various statutes. It essentially means as adequate or enough. There cannot be any straitjacket formula for accepting or rejecting the explanation furnished for delay caused in taking steps. In the instant case, the explanation offered for the abnormal delay of nearly 20 months is that the Appellant concern was practically closed after 1998 and it was only opened for some short period. From the application for condonation of delay, it appears that the Appellant has categorically accepted that on receipt of order the same was immediately handed over to the consultant for filing an appeal. If that is so, the plea that because of lack of experience in business there was delay does not stand to be reason. I.T.C.s case (supra) was rendered taking note of the peculiar background facts of the case. In that case there was no law declared by this Court that even though the Statute prescribed a particular period of limitation, this Court can direct condonation. That would render a specific provision providing for limitation rather otiose. In any event, the causes shown for condonation have no acceptable value. In that view of the matter, the appeal deserves to be dismissed which we direct."

7. In case of Pathapati Subba Reddy (Died) By L.Rs. & Ors. [Order dated 08.04.2024 in Special Leave Petition (Civil) No. 31248 Of 2018] after considering the past precedence Hon'ble Supreme Court has held as follows:

26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

(i) ***Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;***

(ii) ***A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;***

(iii) *The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;*

(iv) ***In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the***

substantial law of limitation contained in Section 3 of the Limitation Act;

(v) *Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;*

(vi) ***Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;***

(vii) ***Merits of the case are not required to be considered in condoning the delay; and***

(viii) *Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.*

8. Appeal is dismissed.

(Operative part of the order is pronounced in open court)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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