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

APPEAL No.ST/70037/2018-ST[SM]

(Arising out of Order-in-Appeal No.220/ST/Alld/2017 dated 09/10/2017 passed by Commissioner (Appeals), CGST& Central Excise, Appeal Commissionerate-Allahabad)

M/s Goldee Travels **Appellant**

Vs.

Commissioner of Central Excise& S.T., Allahabad **Respondent**

Appearance:

Shri K. K. Srivastava, (Adv) & Shri Sanjay Agrawal(CA) for Appellant
Shri Sandeep Kumar Singh, Deputy Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr.Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 15/06/2018
Date of Decision : 15/06/2018

FINAL ORDER NO-**71117 / 2018**

Per: Anil G. Shakkarwar

The present appeal is arising out of Order-In-Appeal No.220/ST/Alld/2017 dated 09.10.2017 passed by Commissioner (Appeals), CGST & Central Excise, Appeal Commissionerate-Allahabad.

2. The brief issue involved herein is whether Commissioner (Appeals) has powers to condone delay of more than 2 years in filing appeal before him.

3. The learned Counsel for appellant has submitted that after the Order-In-Original was issued they have deposited the confirmed service tax and only when the recovery notice was received by them, they filed appeal before Commissioner (Appeals) and also contended that they have strong case on merit.

4. Learned A.R. for revenue has submitted that Commissioner (Appeals) does not have any power to condone delay beyond what has been stated in Section 85 of Finance Act, 1994. He further contended that the order passed by the Learned Commissioner (Appeals), rejecting the appeal of appellant on limitation, is sustainable.

5. Having considered the rival contentions and on perusal of records, I find that the Learned Commissioner (Appeals) has observed that Order-In-Original was received by appellant on 28.07.2014 and they filed appeal against the said Order before Commissioner (Appeals) on 03.10.2016. He has further observed that Sub Section (3A) of Section 85 of Finance Act,1994 prescribed a period of 2 months for filling the Appeal before Commissioner (Appeals) and further provided that if Commissioner (Appeals) is satisfied that the appellant was prevented by sufficient cause for presenting the appeal before the aforesaid period of 2 months, Commissioner (Appeals) can allow further period of one month for filling appeal. The Learned Commissioner (Appeals) has held that

within the limitation period the appeal was not filed before him. Therefore, he held that the appeal before him is hit by limitation. On perusal of order passed by Learned Commissioner (Appeals), I find the same to be sustainable. Further, I do not find any reason to interfere with the same.

6. Therefore, I reject the present appeal.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

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