IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I
APPEAL No. ST/55998/2013-CU[DB]

(Arising out of Order-in-Appeal No. 343-ST/LKO/2012 dated 30/07/2012 passed by Commissioner, Customs, Central Excise & Service Tax (Appeals), Lucknow)

M/s Ashirwad Constructions Co. **Appellant**

Vs.

Commissioner (Appeals), Customs, Central Excise & Service Tax, Lucknow **Respondent**

Appearance:

Shri G.S. Bisht (Advocate) for Appellant
Shri Sandeep Kumar Singh (Dy. Commr.) AR for Respondent

CORAM:

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

Date of Hearing : 29/06/2018
Date of Decision : 29/06/2018

FINAL ORDER NO **71278 / 2018**

Per: Archana Wadhwa

After hearing both the sides duly represented by Shri G.S. Bisht (Advocate) for the appellant and Shri Sandeep Kumar Singh (Dy. Commr.) AR for the respondent, we note that Commissioner (Appeals) had rejected the appeal on the point of limitation by observing that the appeal stands filed after the normal period of three months provided for filing an appeal as also even after the extended period of three months for which the Commissioner (Appeals) is empowered to condone the delay. It is further seen that when the said order was challenged before the Tribunal, Tribunal vide its Final Order No. 70807/2016 dated 19.08.2016 decided the issue on merits and remanded the matter for fresh consideration in the light of the Supreme Court's decision in the case of Larson & Tubro and others vs. Commissioner of Central Excise reported at 2015 (39) S.T.R. 913 (S.C.). The said order was challenged by the Revenue before the Hon'ble Allahabad High Court, who vide its order dated 04.04.2017 set aside the order of the Tribunal by observing that inasmuch as the Commissioner (Appeals) had not decided the matter on merits and has dismissed the appeal as barred by limitation, the Tribunal has to first decide as to whether the appeal was filed before the Commissioner (Appeals) within the limitation period or not.

2. Accordingly the matter stands fixed today and we have heard both the sides duly represented by Shri G.S. Bisht ld. Advocate for the appellant and Shri Sandeep Kumar Singh ld. AR for the Revenue.

3. As per facts on record, an order was passed by the Original Adjudicating Authority on 30.11.2010 which was admittedly received by appellant on 01.12.2010. However, instead of filing direct appeal against the said order before the Commissioner (Appeals) within the period of limitation, the appellant filed rectification of mistake application before

Original Adjudicating Authority in terms of the provisions of Section 74 of Chapter V of the Finance Act, 1994. The said ROM was rejected by the Original Adjudicating Authority vide his order dated 15.02.2012. Thereafter, appeal was filed before Commissioner (Appeals) on 19.07.2012, which stands rejected by him as barred by limitation vide the present impugned order.

4. Admittedly if the date of receipt of the Order-in-Original is taken as 01.12.2010, the appeal filed by the appellant on 19.07.2012 is beyond the period for filing appeal as well as beyond the powers of Commissioner (Appeals) to condone the delay upto three months. The law i.e., as to whether the Commissioner (Appeals) has jurisdiction to condone the delay beyond the condonable period provided under the Statute stands declared by the Hon'ble Supreme Court in the case of M/s. Singh Enterprises Vs CCE Jamshedpur reported at 2008 (221) E.L.T. 163 (SC).

5. However, the situation in the present appeal is different. After receipt of Order-in-Original, the appellant filed a rectification of mistake application before the Adjudicating Authority in terms of Section 74 of the Finance Act, 1994. The said Section provides for filing of such rectification applications within the period of two years and admittedly the ROM was filed by the assessee within the said period i.e., 16.08.2011. The same was rejected by the authority on

15.02.2012, which order was challenged before the Commissioner (Appeals).

6. The issue as to whether the date of the original order has to be taken as the relevant date for the purpose of computing the limitation or the date on which the ROM Order was passed, has to be considered as the relevant date. We find that the issue stands considered by the Tribunal in the case of Sree Lotus Exports vs. Commissioner of Central Excise, Trichy reported at 2011 (24) S.T.R. 444 (Tri. Chennai) and in the case of United Corporation vs. Commissioner of C. EX. Chandigarh reported at 2016 (41) S.T.R. 494 (Tri. Del.), it stands held that the time period of filing appeal has to be reckoned from the date of rejection of ROM Application. If that be so the relevant date would be 15.02.2012 and the appeal filed on 19.07.2012 would be within the powers of Commissioner (Appeals), for condoning the delay if any. As such we set aside the impugned Order-in-Appeal and remand the matter to Commissioner (Appeals) to decide the limitation aspect afresh after taking into consideration the above two referred decision of the Tribunal and if the delay is condoned, to decide appeal on merits.

6. Appeal is thus allowed by way of remand.

(Dictated and pronounced in Court)

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

Ankit