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

APPEAL No.ST/70116/2018-CU[DB]

(Arising out of Order-in-Appeal No. 255/ST/Alld/2017 dated 24/10/2017 passed by Commissioner of Central Excise & Customs (Appeals), Allahabad)

M/s Vikash Electricals Works, **Appellant**

Vs.

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

Appearance:

Ms Vanashri Dubey, Advocate for Appellant
Shri Pawan Kumar Singh, Supdt (AR), for Respondent

CORAM:

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

Date of Hearing : 28/02/2019
Date of Decision : 28/02/2019

FINAL ORDER NO-**70502 / 2019**

Per: Archana Wadhwa

After hearing both the sides, we find that Commissioner (Appeals) has rejected the assessee's appeal on the ground of limitation as also on the ground of nonobservance of the provisions of Section 35F.

2. We note that as per facts on record the order impugned before Commissioner (Appeals) was passed on 25.09.2012 and as per the records maintained by the office of the Original Adjudicating Authority, the same was dispatched on 25.09.2012.

Appeal their against was filed on 30.03.2016 along with an application for condonation of delay.

3. While rejecting the appeal as barred by limitation. The Commissioner (Appeals) has observed as under:-

> *"It is further observed that in their appeal memo (Form ST4), against the column of 'Date of communication of the decision or order appealed against', they have mentioned 'Not known. Got copy of order from the drawer of the expired worker on 26.02.2016', whereas in their application for condonation of delay, they are mentioning that they got the copy of the impugned Order on 11.03.2016. Further, the check list filed along with the appeal shows that against the column of 'Date of receipt of order', they have mentioned 'Not ascertainable' and also attested copy of the impugned Order enclosed with the appeal, shows that the same was attested by the Superintendent, Range-1, Renukut, Distt. Sonebhadra (U.P.) on 17.03.2016."*

4. Learned Advocate appearing for the appellant submits that the different date reflected in the appeal filed before Commissioner (Appeals) are on account of typographical error committed by the advocate who prepared the appeal. However, she clarifies that the order was retrieved from the drawer on 26.02.2016. As such appeal filed on 30.03.2016 should be treated as having been filed well within the period of limitation.

5. After hearing the learned A.R., we note that the date of 26.02.2016, as disclosed by the appellants themselves is the date when they retrieved the copy of the order from the drawer of the expired worker. This fact itself leads to inevitable conclusion that the order was received by the assessee prior to the said date and

was kept in the drawer and was taken out only on 26.02.2016. In such a scenario, the date of recovery of the order from the drawer of the employee, who had since expired, cannot be treated as date of receipt of the order. Admittedly, the order was received by them much prior to the said date, inasmuch as there is no evidence on record to reflect that the order dispatched on 30.09.2013 was received back by the Revenue as undelivered. As such, we agree with the learned Commissioner (Appeals) that the appeal filed on 30.03.2016 against an order on 30.09.2013 is hopelessly barred by limitation.

6. Further, we note that the legal issue as to whether the Commissioner (Appeals) can condone the delay beyond the period prescribed in the Act stands decided against the assessee in the case of M/s Singh Enterprises V/s Commissioner of Central Excise, Jamshedpur reported at 2008 (221) E.L.T. 163 (S.C.). As such, we find no reasons to interfere in the impugned order of the Commissioner (Appeals). Accordingly, appeal filed by the appellant is rejected.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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