CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70786 of 2024

(Arising out of Order in Appeal No.- 77-ST-ALLD-2024, dated -07/02/2024 passed by Principal Commissioner (Appeals) CGST & Central Excise, Allahabad)

Rajindra Singh **.....Appellant**
(5 Ponappa Road, Prayagraj, Uttar Pradesh 211001)

VERSUS

Commissioner, CGST & Central Excise, Allahabad
....Respondent
(38, M.G Marg, Civil Lines, GST Bhawan,
Prayagraj, Uttar Pradesh 211001)

APPEARANCE:

Shri Rajindra Singh for the Appellant
Shri A. K. Choudhary, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.-70602/2025

DATE OF HEARING : 27.08.2025
DATE OF DECISION : 27.08.2025

P. K. CHOUDHARY:

The present appeal is arising out of Order in Appeal No.- 77-ST-ALLD-2024, dated -07/02/2024 passed by Principal Commissioner (Appeals) CGST & Central Excise, Allahabad.

2. Heard both the sides and perused the appeal records.

3. I find that the learned Commissioner (Appeals) has not decided the appeal on merits but has rejected the same on the ground of limitation.

4. I find from the records that the Order-in-Original dated 11.04.2023 was received by the Appellant on 20.04.2023 and accordingly, he was required to file appeal before the First

Appellate Authority within the statutory period of sixty days i.e. on or before 20.06.2023 and thereafter, within the condonable period of thirty days i.e. on or before 20.07.2023. However, the appeal was filed only on 08.09.2023 i.e. much beyond the condonable period of thirty days. Since the learned Commissioner (Appeals) could condone the delay only upto thirty days, he had no option but to reject the appeal before him. The Hon'ble Supreme Court in the case of **Singh Enterprises V/s CCE, Jamshedpur 2008 (221) E.L.T. 163 (S.C)** has held as under:-

> ***"6.****At this juncture, it is relevant to take note of Section 35 of the Act which reads as follows :*
>
> ***"35. Appeals to Commissioner (Appeals). -*** *(1) Any person aggrieved by any decision or order passed under this Act by a Central Excise Officer, lower in rank than a Commissioner of Central Excise, may appeal to the Commissioner of Central Excise (Appeals) [hereafter in this Chapter referred to as the Commissioner (Appeals)] within sixty days from the date of the communication to him of such decision or order :*
>
> *Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.*
>
> *(2) Every appeal under this section shall be in the prescribed form and shall be verified in the prescribed manner."*
>
> ***7.****It is to be noted that the periods "sixty days" and "thirty days" have been substituted for "within three months" and "three months" by Act 14 of 2001, with effect from 11-5-2001.*

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. 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. 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. There will be no order as to costs."*

5. Accordingly, I have no choice but to dismiss the appeal before me.

6. In view of the above discussion, the appeal filed by the Appellant is dismissed.

(Dictated and pronounced in open court)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

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