FAX : 0532-2400149 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 15/09/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/71022/2017-SM[BR] dated 11/09/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	ST/70886/2016	**Santosh Kumar & Brothers** G-35,hindalco Company,renukoot SONEBHADRA UP
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Allahabad 38...M G MARG...CIVIL LINES, ALLAHABAD, UTTAR PRADESH-211001

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Copy To
3Advocate(s) / Consultant(s):

V. Lakshmi Kumaran, ALD
3/1A/3 OPP AUTO SALES,Above
the Office Of Blue Dart/DHL
Courier, COLVIN ROAD, LOHIA
MARG ALLAHABAD-211001

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 LAWCRUX Advisors Pvt. Ltd., LAW House. 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
Old Red Building, 38 M.G. Marg, Civil Lines, Allahabad – 211 001

COURT NO. II

DATE OF HEARING : 11/09/2017.
DATE OF DECISION : 11/09/2017.

Service Tax Appeal No. 70886 of 2016 (SM)

[Arising out of the Order-in-Appeal No. 278/ST/APPL-ALLD/LKO/2016 dated 06/04/2016 passed by The Commissioner (Appeals), Central Excise & Service Tax, Lucknow.]

M/s Santosh Kumar & Brothers Appellant

Versus

CCE & ST, Allahabad Respondent

Appearance

Shri Harishikesh, Advocate – for the Appellant.

Shri Gyanendra Tripathi, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri Ashok Jindal, Member (Judicial)**

Final Order No. 71022/2017 Dated : 11/09/2017

Per. Ashok Jindal :-

The appellant is in appeal against the impugned order wherein learned Commissioner (Appeals) has dismissed the appeal as time barred.

2. The brief facts of the case are that the adjudication order was received by the appellant on 28th February, 2014 whereas the appeal was filed before the learned Commissioner (Appeals)

on 29^{th} May, 2014. The learned Commissioner (Appeals) dismissed the appeal as time bar as same is filed beyond the time limit prescribed under Section 85 (3) of the Finance Act, 1994, wherein it has been prescribed that appeal is to be filed before learned Commissioner (Appeals) is 2 months and the learned Commissioner (Appeals) can condone the delay of one month, if same has been explained satisfactory. Therefore, it was held that the appeal is filed beyond the prescribed time limit and the same is dismissed. Aggrieved by this order, the present appeal is before me.

3. Heard the parties considered the submission.

4. The facts of the case have not been disputed by the appellant that the adjudication order was received by the appellant on 28^{th} February, 2014 whereas the appeal was filed before the learned Commissioner (Appeals) on 29^{th} May, 2014. The sole ground taken by the appellant in their appeal that they have filed the appeal within 3 months, therefore, the delay is to condoned.

5. After taking into account of the defence taken by the appellant, I find that as per Section 85 (3) of the Finance Act, 1994 w.e.f. 29^{th} May, 2014, against the adjudication order, the appeal can be filed before the learned Commissioner (Appeals) within two months and time limit can be extended by another one month, if reasons cause for delay has been explained satisfactorily.

6. In the impugned order the learned Commissioner (Appeals) hold that appeal has been filed beyond the time limit. As per Section 85 (3) of the Finance Act, 1994 appeal be filed within two months and same can be extended by one month. Admittedly, the period of limitation in this case ends on 28th April 2014 and same can be extended upto 28th May 2014. Admittedly, the appeal has been filed on 29th May, 2014.

7. In that circumstances, as it is an admit fact that appeal was filed before the learned Commissioner (Appeals) beyond the prescribed time limit as per Section 85 (3) of the Act, therefore, I hold that appeal filed by the appellant is barred by limitation. Accordingly, I do not find any infirmity with the impugned order, the same is upheld. The appeal filed by the appellant is dismissed.

(Dictated and pronounced in open court.)

Sd/-

(Ashok Jindal)

Member(Judicial)

PK

प्रमाणित प्रति/Certified True Copy
27/09/17
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
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