CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

ALLAHABAD REGIONAL BENCH

Service Tax Appeal No. 70185 of 2021

[Arising out of Order-in-Appeal No. MRT/EXCUS/000/APPL-MRT/19/2021-22 dated 30.04.2021 passed by the Commissioner, Central Goods & Service Tax (Appeals), Meerut]

M/s Arun Enterprises **Appellant**
3/191, Phase-I, Shradhapuri,
Kankar Khera,
Meerut.

Versus

Commissioner, Central Goods & Service Tax **Respondent**
Meerut Range-III,
Division-I, Mangal Pandey Nagar,
Opposite Ch. Charan Singh University,
Meerut.

APPEARANCE:
Shri Jaivir Singh, Advocate for the Appellant
Shri Shashi Shekhar Authorized Representative for the Respondent

CORAM:
HON'BLE MR. P. V. SUBBA RAO MEMBER (TECHNICAL)
HON'BLE MS. RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing : 25.01.2022
Date of Decision: 28.02.2022

Final Order No. 70076/2022

P.V. SUBBA RAO

We have heard learned counsel for the appellant and learned departmental representative and perused the records. The appellant is aggrieved by the order-in appeal[1] dated 30.4.2021 passed by the learned Commissioner (Appeals), Meerut dismissing

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[1] **Impugned order**

its appeal against the order in original dated 31.3.2017 passed by the Assistant Commissioner.

2. A perusal of the impugned order shows that the appeal was dismissed on the grounds of limitation without going into the merits of the case. The appeal before the Commissioner (Appeals) was filed beyond the normal period of limitation of two months and also beyond the one month condonable delay provided in section 85 of the Finance Act, 1994. The appeal before the Commissioner (Appeals) was filed with a delay of 1,325 days with a prayer to condone the delay on the ground that the appellant was in jail from 30.5.2012 to 2.8.2019 and that he was not aware of the legal remedy of filing of appeal as well as due to covid pandemic. This prayer was not accepted by the Commissioner (Appeals) in view of the judgment of Supreme Court in **Singh Enterprises vs CCE Jamshedpur**[2] holding that the statutory limitation for filing appeals before Commissioner (Appeals) under section 35 of the Central Excise Act and the judgment of Calcutta High Court in **Bengal Investments Ltd. vs Assistant Commissioner (TARC) Service Tax-I**[3] holding that the statutory limitation under Section 85 of the Finance Act must be strictly construed.

3. The appeal is on various grounds on merits. As far as the limitation is concerned, the only plea in the appeal is that the appellant was in Meerut jail for 796 days from 23.5.2017 to 30.5.2019. Another 234 days was explained on the ground that the appellant is 'the only son and always under mentally fear for

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[2] **2008(221) ELT 163 (SC)**
[3] **2016 (42) STR, 817 (Cal)**

the life and safety of the life and property along with family members and aged, senior citizen parents and hiding/staying far was from Meerut, in an unknown different places and was not aware about the legal remedy to the Order-in-Original'. Subsequent period of delay was attributed to COVID pandemic.

4. We do not find any substance in any of the above grounds. There is no reason why the appellant could not have filed an appeal before Commissioner (Appeals) while in prison. If one cannot seek any legal remedy because one is in jail, no bail application can ever be filed. In fact, the appellant himself had filed for and was granted bail by the High Court. The facts that the appellant was the only son and that he was afraid for safety of his parents also do not explain why an appeal was not filed within time. If the appellant was involved in a criminal case and had to spend time in jail, he would have had access to lawyers. To say that he was not aware that there was a legal remedy against the order of the Assistant Commissioner is unbelievable. At any rate, neither Section 35 of the Central Excise Act nor Section 85 of the Finance Act, 1994 provide for condonation of delay in filing appeals before Commissioner (Appeals) beyond one month. It has been held by the Supreme Court in Singh enterprises as follows:

> "**6.** At this juncture, it is relevant to take note of Section 35 of the Act which reads as follows :
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> > **Appeals to "35. Commissioner (Appeals). -** Any person aggrieved by any decision or order (1) 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.
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> Every appeal under this section shall be in the prescribed (2) 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. Respectfully following the ratio the judgment of the Supreme Court in **Singh Enterprises,** we find that the impugned order is correct and proper in dismissing the appeal for delay and it calls for no interference. The appeal is dismissed and the impugned order is upheld.

(Pronounced on 28.02.2022)

(P.V.SUBBA RAO)
MEMBER (TECHNICAL)

(RACHNA GUPTA)
MEMBER (JUDICIAL)