CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>ALLAHABAD</u>

REGIONAL BENCH - COURT No.II

Service Tax Appeal No.70667 of 2024

(Arising out of Order-in-Appeal No.MRT/EXCUS/000/APPL-MRT/08/2024-25 dated 19/04/2024 passed by Commissioner (Appeals) Central Goods & Services Tax, Meerut)

M/s The U.P. Homeguard Commandant, ...Appellant

(Patel Nagar, New Mandi, Muzaffarnagar-251001)

VERSUS

Commissioner of Central Excise &

CGST, Meerut-I ....Respondent

(Mangal Pandey Nagar,
Opposite Chaudhary Charan Singh University, Meerut)

<u>APPEARANCE:</u>

Representative for the Appellant
Shri Santosh Kumar, Authorised Representative for the Respondent

CORAM: HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70245/2026

DATE OF HEARING : 29 July, 2026
DATE OF DECISION : 29 July, 2026

<u>SANJIV SRIVASTAVA:</u>

This appeal is directed against Order-in-Appeal No.MRT/EXCUS/000/APPL-MRT/08/2024-25 dated 19/04/2024 passed by Commissioner (Appeals) Central Goods & Services Tax, Meerut. By the impugned order following has been held:-

"Accordingly, the appeal No. 75-ST/APPL-MRT/MRT/2023-24 dated 21.12.2023 filed by M/s The U.P. Homeguard Commandant, Patel Nagar, New Mandi, Muzaffarnagar, 251001, is dismissed in above terms as being time barred. The Order-in- Original No. 63/ADC/MEERUT/2016 dated

30.05.2016 passed by Additional Commissioner, CGST the Commissionerate, Meerut is upheld."

2.1 We have heard the Authorised representative appearing for the appellant and Shri Santosh Kumar learned Authorized Representative appearing for the revenue.

3.1 We have considered the impugned order along with the submissions made in appeal and during the course of arguments.

3.2 We find that the issue involved in the present appeal is with respect of condonation of delay in filing the appeal by the Commissioner (Appeal). In the present case the appeal has been filed as observed by the Commissioner (Appeals) after more than seven years after the receipt of the order of Original Authority. Section 85 (3A) of the Finance Act, 1994 provides as follows:

> ***"SECTION 85. Appeals to the Commissioner of Central Excise (Appeals).—***
>
> *(3A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 receives the assent of the President, relating to service tax, interest or penalty under this Chapter :*
>
> *Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month."*

In terms of the above, it is observed that the appeal was to be filed before the Commissioner (Appeals) within two months from the date of the receipt of the Order-in-Original by the appellant. As per the proviso Commissioner (Appeals) has been granted the power to condone delay of one month in filing the appeal on sufficient cause being shown. In the present case, the appeal was filed before the Commissioner (Appeals) after more than seven years from the date of receipt of Order-in-Original. Hence, Commissioner (Appeals) has rightly held that appeal was filed beyond the prescribed period of limitation and has dismissed the same on this ground alone.

3.2 This issue is squarely covered by the decision of Hon'ble Supreme Court in the case of M/s Singh Enterprises [2008 (221) E.L.T. 163 (SC)], wherein it has been held that Commissioner (Appeals) could not condone the delay beyond the 30 days in filing the appeal before him, relevant part of the said decision are reproduced bellow for ready reference:-

> ***"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."*

3.3 In case of Pathapati Subba Reddy (Died) By L.Rs. & Ors. [Order dated 08.04.2024 in Special Leave Petition (Civil) No. 31248 Of 2018] after considering the past precedence Hon'ble Supreme Court has held as follows:

26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient

cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.

3.4 In case of Glaxo Smith Kline Consumer Health Care Ltd. [2020 (36) G.S.T.L. 305 (S.C.)] Hon'ble Supreme Court observed as follows:

> ***19**. Arguendo, reverting to the factual matrix of the present case, it is noticed that the respondent had asserted that it was not aware about the passing of assessment order dated 21-6-2017 although it is admitted that the same was served on the authorised representative of the respondent on 22-6-2017. The date on which the respondent became aware about the order is not expressly stated either in the application for condonation of delay filed before the appellate authority, the affidavit filed in support of the said application or for that matter, in the memo of writ petition. On the other hand, it is seen that the amount equivalent to 12.5% of the tax amount came to be deposited on 12-9-2017 for and on behalf of respondent, without filing an appeal and without any demur - after the expiry of statutory period of maximum 60 days, prescribed under Section 31 of the 2005 Act. Not only that, the respondent filed a formal application under Rule 60 of the 2005 Rules on 8-5-2018 and pursued the*

same in appeal, which was rejected on 17-8-2018. Furthermore, the appeal in question against the assessment order came to be filed only on 24-9-2018 without disclosing the date on which the respondent in fact became aware about the existence of the assessment order dated 21-6-2017. On the other hand, in the affidavit of Mr. Sreedhar Routh, Site Director of the respondent-company (filed in support of the application for condonation of delay before the appellate authority), it is stated that the company became aware about the irregularities committed by its erring official (Mr. P. Sriram Murthy) in the month of July, 2018, which pre-supposes that the respondent must have become aware about the assessment order, at least in July, 2018. In the same affidavit, it is asserted that the respondent-company was not aware about the assessment order, as it was not brought to its notice by the employee concerned due to his negligence. The respondent in the writ petition has averred that the appeal was rejected by the appellate authority on the ground that it had no power to condone the delay beyond 30 days, when in fact, the order examines the cause set out by the respondent and concludes that the same was unsubstantiated by the respondent. That finding has not been examined by the High Court in the impugned judgment and order at all, but the High Court was more impressed by the fact that the respondent was in a position to offer some explanation about the discrepancies in respect of the volume of turnover and that the respondent had already deposited 12.5% of the additional amount in terms of the previous order passed by it. That reason can have no bearing on the justification for non-filing of the appeal within the statutory period. Notably, the respondent had relied on the affidavit of the Site Director and no affidavit of the concerned employee (P. Sriram Murthy, Deputy Manager-Finance) or at least the other employee [Siddhant Belgaonker, Senior Manager

(Finance)], who was associated with the erring employee during the relevant period, has been filed in support of the stand taken in the application for condonation of delay. Pertinently, no finding has been recorded by the High Court that it was a case of violation of principles of natural justice or non-compliance of statutory requirements in any manner. Be that as it may, since the statutory period specified for filing of appeal had expired long back in August, 2017 itself and the appeal came to be filed by the respondent only on 24-9-2018, without substantiating the plea about inability to file appeal within the prescribed time, no indulgence could be shown to the respondent at all."

3.5 Accordingly, we do not find any merits in this appeal filed by the appellant.

4.1 Appeal is dismissed.

(Dictated and pronounced in open court)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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