CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO.

Application(s) Involved:

Service Tax Appeal No. 20243 of 2020

[Arising out of Order-in-Appeal No. 39/2019 dated 13/02/2019 passed by the Commissioner of Central Tax, Bangalore-I (Appeals)]

Etisalat Software Solutions Pvt. Ltd.
Room No. 402, Starttopia Hub International
Vinir Tower, BTM Layout, 100 Feet Main Road
Bangalore – 560 062
Karnataka

Appellant(s)

VERSUS

Commissioner of Central Tax, Bangalore East
BMTC Building
Old Airport Road, Domlur,
Bangalore – 560 071
Karnataka

Respondent(s)

Appearance:

Mr. Anirudha R J Nayak, Advocate
No. 41, 3rd Cross, Ulsoor Road
Bangalore – 560 042
Karnataka

For the Appellant

Mr. S. Devarajan, Dy. Commissioner (AR) — For the Respondent

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER

Final Order No. 20407 / 2020

Date of Hearing: 29/07/2020
Date of Decision: 29/07/2020

Per : S.S GARG

The present order will dispose of an application seeking condonation of delay of 289 days. The applicant/appellant has stated in the application that they are working under 100% EOU Software Technology Park Scheme and held a private bonded warehouse Licence and In-bond Manufacturing Sanction Order issued under the Customs Act, 1962. The applicant has filed a refund of input service tax credit used in the export of output services for the period October to December 2013 on 26/12/2014 and thereafter a show-cause notice was issued and after following the due process, the Order-in-Original was passed rejecting the refund. Thereafter, the appellant filed the appeal before the Commissioner (Appeals) and the Commissioner (Appeals) rejected the same on time-bar.

2. Heard both the parties and perused the records.

3. Learned counsel for the appellant submitted that the applicant was prevented from filing the appeal in time due to the circumstances beyond their control and due to the fact that M/s. Etisalat Software Solutions was undergoing a total transformation inasmuch as there was no staff or employees who were dealing with day-to-day financial matters. He further submitted that the applicant has given detailed reasons in their application seeking condonation of delay. Along with the application the applicant has filed the affidavit of Mahesh Shenoy, Director of the appellant-company and also filed the affidavit of Ganesh Sundaram, Consultant of the appellant-company who filed the appeal before the Commissioner (Appeals). The applicant has also filed the affidavit of Balady Shekar Shetty, Liquidator of the appellant-company. Learned counsel further submitted that in all the affidavits filed by three persons cited supra, they have stated that the

applicant was prevented from filing the appeal before the Tribunal in time due to reasonable cause and due to the fact of loss of business, resignation of employees, relocation of employees, relocation of their office premises, shifting of various assets, documents etc. to new premises while managing the liquidation proceedings. Learned counsel also relied upon the decision of the Supreme Court in the case of ***Collector, Land Acquisition, Anantnag & Another Vs. Mst. Katiji & Others – 1987 (28) E.L.T. 185 (S.C)*** wherein the Hon'ble Apex Court has held that for condonation of delay, a liberal approach is needed.

4. On the other hand, learned DR contested the condonation application and submitted that the Order-in-Original was received by the applicant on 21/03/2016 and appeal before the Commissioner was filed on 08/11/2016 and hence the appeal was barred by time and the Commissioner (Appeals) has rightly dismissed the appeal. In support of his submission, he relied upon the following decisions:

a. *Gayatri Pest Management Pvt. Ltd. Vs. CCE, Indore – 2019 (5) TMI 1623 – CESTAT New Delhi*
b. *Singh Enterprises Vs. CCE, Jamshedpur – 2007 (12) TMI 11 – SC*
c. *Amchong Tea Estate Vs. Union of India – 2010 (8) TMI 30 – SC*
d. *CC & CE Vs. M/s. Hongo India (P) Ltd. & Anr. – 2009 (3) TMI 31 – SC*

5. After considering the submissions of both the parties and after going through the contents of various affidavits filed by the Director of the company, the Consultant of the company and the Official Liquidator of the company who were engaged in the process of winding up of the company, I am of the considered opinion that the delay in

filing the appeal has been satisfactorily explained. After going through the grounds of appeal, I find that there is no intentional and deliberate delay in filing the appeal and the delay occurred on account of the reasons stated in the application which is satisfactorily explained. In view of this, I condone the delay by allowing the COD application.

6. After condoning the delay, with the consent of both the parties, I proceed to decide the appeal.

7. Learned counsel for the appellant submitted that the applicant is a 100% EOU and filed the refund claim before the original authority but the same was rejected on time-bar vide Order-in-Original dated 18/03/2016. Learned counsel further submitted that the said order of the original authority rejecting the refund dated 18/03/2016 was not received by the appellant. Thereafter the appellant requested the Department for issuance of the Order-in-Original and the Department vide letter dated 03/11/2016 issued the Order-in-Original on the request of the appellant. Learned counsel further submitted that they received the copy of the Order-in-Original on 08/11/2016 but the Senior Finance Manager Sitakant Pattanaik who was in-charge of tax litigation did not immediately bring this fact to the notice of the company. He further submitted that the appellant filed the appeal before the Commissioner on 31/01/2017 along with the application seeking condonation of delay of 24 days but the Commissioner (Appeals) has dismissed the appeal as well as application seeking condonation on the ground that it is beyond his power of condonation. He further submitted that the Commissioner (Appeals) has wrongly assumed that the Order-in-Original was received by the applicant. He also submitted that the Department was not brought any evidence on record to prove that the Order-in-Original dated 18/03/2016 was received by the appellant. He further submitted that there was no

reason not to file the appeal in time as the matter pertains to refund and the appellant for the previous periods and also for the subsequent periods have been getting refund from the Department. Learned counsel further submitted that the condonation of delay of 24 days was very much within the power of learned Commissioner (Appeals) as the Commissioner (Appeals) under Section 85(3A) of the Finance Act, 1994 has the power to condone the delay of one month after expiry of normal period of two months for filing the appeal. Learned counsel further submitted that in the application filed before the Commissioner seeking condonation, they have explained the reasons for the delay in filing the appeal before the Commissioner but the Commissioner (Appeals) has not considered those grounds and has refused to condone the delay which was within his condonable power.

8. On the other hand the learned AR reiterated the findings of the impugned order.

9. After considering the submissions of both the parties and perusal of the material on record, I find that the Department has not brought any evidence on record to prove that the Order-in-Original No. 54/2016 dated 18/03/2016 passed by the Assistant Commissioner of Central Tax, Bangalore was received by the appellant but the respondent has only proved the dispatch of the Order-in-Original and has not proved the receipt of the same. Moreover, the company during the relevant period was passing through a difficult phase of their business and was suffering loss of business and many employees were left the service of the company and there was relocation of the company’s premises and shifting of various assets and also the company was going through the voluntarily liquidation process. In view of all these reasons stated in the appeal memorandum as also in the affidavits of the Director, Consultant of the company and the

Official Liquidator of the company, I am of the considered view that rejection of the appeal by the learned Commissioner (Appeals) is not sustainable in law. There was a delay of 24 days in filing the appeal before the learned Commissioner (Appeals) which the learned Commissioner (Appeals) ought to have condoned but the same was not condoned. Hence, I condone the delay of 24 days in filing the appeal before the Commissioner (Appeals) and remand the matter back to the Commissioner (Appeals) with a direction to decide the same on merit within one month after receipt of the certified copy of this order, after following the principles of natural justice and after affording adequate opportunity to the appellant. Appeal is accordingly disposed of.

(Operative portion of the Order was pronounced
in Open Court on **29/07/2020**)

(S.S GARG)
JUDICIAL MEMBER

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