CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 60484 of 2023

[Arising out of Order-in-Appeal No. CHD-EXCUS-001-LDH-APP-23-22-23 dated 15.02.2023 passed by the Commissioner (Appeals), CGST, Chandigarh]

M/s R B Gears Pvt Ltd ......**Appellant**
C-57, Opp Plot No. 16,
Focal Point, Chanalon, Kurali,
Mohali, Punjab 140103

VERSUS

Commissioner of Central Excise & Service Tax, Chandigarh-I ......**Respondent**
Central Revenue Building, Plot No. 19,
Sector 17-C, Chandigarh 160017

APPEARANCE:

Shri Mukesh K. Ghai, Advocate for the Appellant

Shri Ravinder Jangu, Authorized Representative for the Respondent

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

FINAL ORDER NO. 60478/2025

DATE OF HEARING: 09.04.2025
DATE OF DECISION: 09.04.2025

S. S. GARG :

The present appeal is directed against the impugned order dated 15.02.2023 passed by the Commissioner (Appeals), CGST, Chandigarh, whereby the learned Commissioner (Appeals) has rejected the appeal of the appellant as time barred.

2. Heard both sides and perused the records of the case.

3. The learned Counsel for the appellant submits that the Commissioner (Appeals) has dismissed their appeal as time barred by

holding that the appellant has not filed the appeal within the statutory period as prescribed under Section 35F of the Central Excise Act, 1944. The learned Counsel further submits that the Order-in-Original was passed on 21.02.2018 and was received on 12.03.2018 and the appellant filed the appeal before the Commissioner (Appeals) on 02.05.2018; copy of the appeal was submitted in the office of Assistant Commissioner, CGST, Mohali physically vide Diary/Receipt No. 35 dated 02.05.2018 and one copy of the same was sent to the Commissioner (Appeals), Ludhiana by post after depositing 7.5% i.e. Rs.4,291/- vide Challan dated 01.05.2018 well before 60 days from the receipt of the Order-in-Original. The learned Counsel further submits that it appears that copy of the appeal was not received in the office of the Commissioner (Appeals), Ludhiana and the appellant was asked to file the same again alongwith proof of deposit filed with the Assistant Commissioner, Mohali vide Diary/Receipt No. 35 dated 02.05.2018. The learned Counsel further submitted that the appellant filed the appeal within the period as prescribed under Section 35 and even if by mistake copy of the appeal has been filed in the office of Assistant Commissioner, Mohali, it was the duty of Assistant Commissioner to forward the same to the Commissioner (Appeals) which was not done in the present case. The learned Counsel further submits that the Commissioner (Appeals) in the impugned order has observed that the appeal before him was filed on 29.07.2021 and accordingly, the same is time barred being beyond the statutory period of two/three months as applicable as per law. The learned Counsel relies on the decision of the Division Bench of the Tribunal in the case of **Premier Car Sales Ltd vs. Commr of Cus, CE & ST, Kanpur – 2019 (370) ELT 1291 (Tri. All.)** wherein by remanding the matter to the Commissioner (Appeals), the Tribunal has observed that even if the appeal was filed before the Assistant Commissioner then it was the duty of the Assistant Commissioner to forward the same to the Commissioner (Appeals). In the said case, the matter was remanded to the Commissioner (Appeals) to find out whether the assessee filed the appeal before the Assistant Commissioner and if it is found that the assessee has filed the appeal before the Assistant Commissioner, then the period, during which the appeal was kept pending with the Assistant Commissioner, should be excluded from the computation of the period prescribed for filing the appeal before the Commissioner (Appeals).

3. On the other hand, the learned Authorized Representative for the department reiterates the findings of the impugned order and submits that the appeal filed before the Assistant Commissioner, cannot be considered to have been filed legally before the Commissioner (Appeals). He further submits that before the Commissioner (Appeals), the appeal was filed only on 29.07.2021 which was time barred as the Commissioner (Appeals) does not have the power to condone the delay beyond the period of one month after the expiry of two months as prescribed under Section 35.

4. I have considered the submissions made by both the parties and perused the material on record. The appellant has produced before me a copy of appeal filed before the Assistant Commissioner,

Mohali on 02.05.2018 in the form of "Form No. E.A. 1" which is a form of appeal before the Commissioner (Appeals) under Section 35. The appellant has also produced the proof of Challan dated 01.05.2018 depositing mandatory pre-deposit of 7.5%.

5. I also find that as per the appellant, he has also sent the copy of the appeal to the Commissioner (Appeals), but the same was not proved by furnishing the proof of the receipt in the office of Commissioner (Appeals). I also note that when the copy of the appeal was filed in the office of Assistant Commissioner, Mohali, it was the duty of Assistant Commissioner to forward the same to the office of Commissioner (Appeals), but the same was not done and the learned Commissioner (Appeals) rejected the appeal of the appellant being time barred holding that the appellant filed the appeal on 29.07.2021 before him.

6. Further, I find that the Division Bench of the Tribunal in the case of **Premier Car Sales Ltd** (supra) has remanded the matter back to the Commissioner (Appeals) in identical facts wherein also the appellant filed appeal before the Assistant Commissioner. Similarly, by following the ratio of the said decision, I also remand the matter back to the learned Commissioner (Appeals) to find out whether the appellant has filed copy of the appeal alongwith proof of pre-deposit before the Assistant Commissioner, Mohali and if the same is found to be valid, then the period, during which the appeal was kept pending with the Assistant Commissioner, should be excluded from the computation of the period prescribed for filing the

appeal before the Commissioner (Appeals). It is pertinent to reproduce the relevant findings of the Division Bench of the Tribunal in the case of **Premier Car Sales Ltd** (supra), which are reproduced as under:

> **"5.** Before we part, we would like to mention that if the appeal was actually filed by the appellant in the office of the Assistant Commissioner, who in any case should have forwarded the same to Commissioner (Appeals) and was pending for three years in his office, the time period for which the appeal was pending in the office of the Assistant Commissioner is required to be excluded from consideration for the purpose of limitation in terms of Section 14 of the Limitation Act.**"**

7. In view of the above, I set aside the impugned order and remand the matter back to the Commissioner (Appeals) with a direction to decide the issue of limitation afresh after considering the material placed on record by the appellant and after affording an opportunity of hearing to the appellant and thereafter, pass a reasoned order in accordance with law within the period of two months from the date of receipt of the certified copy of this order. It is further directed that if the appeal is found in time then the same may also decided on merits.

8. The appeal is allowed, accordingly, by way of remand.

(Operative part of the order pronounced in the open court)

(S. S. GARG)
MEMBER (JUDICIAL)

RA_Saifi