IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. III

Excise Appeal Nos. 41587 to 41595 of 2015

(Arising out of Order-in-Appeal Nos. 73-89/2015(CXA-I) dated 01.04.2015 passed by Commissioner of Central Excise (Appeals-I), No. 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

Commissioner of GST and Central Excise **...Appellant**
Chennai III Commissionerate,
No. 26/1, Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034.

Versus

M/s. Bharat Heavy Electricals Limited **...Respondent**
Boiler Auxiliary Plant,
Ranipet – 632 406.

APPEARANCE:

For the Appellant : Mr. Anoop Singh, Authorised Representative
For the Respondent : Ms. Charulatha, Advocate
Ms. Manasa Srinivasan, Advocate

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER Nos. 40995-41003 / 2024

DATE OF HEARING/ DECISION: 30.07.2024

Order :- Per Ms. SULEKHA BEEVI C.S.

Brief facts are that the Respondent, M/s. Bharat Heavy Electricals Limited (BHEL) is engaged in manufacturing Boiler Auxiliaries including Electrostatic Precipitators. In respect of some of the contracts, the Respondent manufactured only one portion of the ESP and the rest of the materials were suppled directly to the site (DTS) of contractors and reflected in the accounts as 'bought out items'. As the contracts contained price variation clause, the Respondent sought for provisional assessment which was allowed by the Department. They then filed request for finalisation of assessment. After due process of law, the Original Authority finalised the assessment wherein the appellant was permitted to add the Commercial & Administrative overheads, and other expenses to the total assessable value. Aggrieved by the orders of finalisation for different periods, the Department filed 17 appeals before the Commissioner (Appeals). Out of this, 8 appeals were filed within the prescribed time limit. Nine appeals filed by the Department, were found to be time-barred by the Commissioner (Appeals). All 9 appeals were dismissed. Aggrieved by such order, the Department has filed the above appeals.

2. The Ld. Authorised Representative Shri Anoop Singh appeared and argued for the Department. The contentions put forward in the Review Order were reiterated. It was submitted that delay occurred in filing 9 appeals before the Commissioner (Appeals) only due to administrative reasons. The Commissioner (Appeals) ought to have condoned the delay and accepted the appeal filed by the Department. It is prayed that the appeals may be allowed.

3.1 The Ld. Counsel Ms. Charulatha and Ms. Manasa Srinivasan appeared and argued for the Respondent. It is submitted by them that all the 17 appeals were filed by the Department against the finalisation of assessment which permitted the assessee to include in the assessable value certain expenses in the nature of overhead charges and value of bought out items based on commercial invoices. The very same issue had come up for consideration before the Tribunal in the appellant's own case *vide [Final Order Nos. 40942-40955/2024 dated 23.07.2024].* The issue has been held in favour of the assessee wherein the order of finalisation has been upheld. It is submitted that though these appeals are rejected as time barred, the issue arising for consideration in all these appeals have attained finality and have been held in favour of the assessee.

3.2 The Ld. Counsel pointed out that in the table given in page number 6 of the impugned order, the Commissioner (Appeals) has recorded the number of days delay in regard to all appeals filed by Department. The Commissioner (Appeals) has no power to condone the delay more than 30 days. The Ld. Counsel relied upon the decision in the case of *Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur [2008 (221) ELT 163 (SC)]*. It is prayed that the appeals may be dismissed.

4. Heard both sides.

5. The issue to be decided is whether the appeals rejected by the Commissioner (Appeals) on the ground of time bar is legal and proper.

6. Undisputedly, the appeals have been filed by Department before the Commissioner (Appeals) beyond the condonable period of limitation. The table in page number 6 of the impugned order would show the details

of the time bar, in respect of each appeal. The table is reproduced as under:-

TABLE-II

Sl.No.	Appeal No. and date	Order-in-Original No. and date	Date of Review Order	Date of Filing appeal	In Time / Time Barred.	In case of Time Bar, no. of days of delay	COD filed or not
[1]	[2]	[3]	[4]	[5]	[6]	[7]	[8]
1	12/2013 (M-III)D 16.07.2013	20/2013 CE dated 28.03.2013	05.07.13	16.07.13	In time	-	-
2	13/2013 (M-III)D 16.07.2013	16/2013 CE dated 20.03.2013	05.07.13	16.07.13	In time	-	-
3	14/2013 (M-III)D 16.07.2013	12/2013 CE dated 12.03.2013	05.07.13	16.07.13	In time	-	-
4	15/2013 (M-III)D 16.07.2013	13/2013 CE dated 12.03.2013	05.07.13	16.07.13	In time	-	-
5	16/2013 (M-III)D 16.07.2013	21/2013 CE dated 28.03.2013	05.07.13	16.07.13	In time	-	-
6	17/2013 (M-III)D 16.07.2013	15/2013 CE dated 20.03.2013	05.07.13	16.07.13	In time	-	-
7	18/2013 (M-III)D 16.07.2013	17/2013 CE dated 20.03.2013	05.07.13	16.07.13	In time	-	-
8	19/2013 (M-III)D 16.07.2013	22/2013 CE dated 28.03.2013	05.07.13	16.07.13	In time	-	-
9	20/2013 (M-III)D 23.07.2013	07/2013 CE dated 22.02.2013	05.07.13	23.07.13	Time barred	32 days	COD filed
10	21/2013 (M-III)D 23.07.2013	05/2013 CE dated 19.02.2013	05.07.13	23.07.13	Time barred	35 days	COD filed
11	22/2013 (M-III)D 23.07.2013	04/2013 CE dated 18.02.2013	05.07.13	23.07.13	Time barred	36 days	COD filed
12	23/2013 (M-III)D 23.07.2013	03/2013 CE dated 15.02.2013	05.07.13	23.07.13	Time barred	39 days	COD filed
13	24/2013 (M-III)D 23.07.2013	11/2013 CE dated 05.03.2013	05.07.13	23.07.13	Time barred	19 days	COD filed
14	25/2013 (M-III)D 23.07.2013	10/2013 CE dated 06.03.2013	05.07.13	23.07.13	Time barred	18 days	COD filed
15	26/2013 (M-III)D 23.07.2013	09/2013 CE dated 06.03.2013	05.07.13	23.07.13	Time barred	18 days	COD Filed
16	27/2013 (M-III)D 23.07.2013	08/2013 CE dated 22.02.2013	05.07.13	23.07.13	Time barred	32 days	COD Filed
17	28/2013 (M-III)D 23.07.2013	06/2013 CE dated 22.02.2013	05.07.13	23.07.13	Time barred	32 days	COD Filed

7. It is submitted by the Ld. Counsel for the Respondent that the issue arising for consideration in all these 9 appeals have been decided in favour of the assessee and that the said issue has attained finality.

8. Taking note of the fact that the appeals have been filed beyond the prescribed time limit, we are of the view that the order passed by the Commissioner (Appeals) does not require any interference. The appeals are dismissed.

(Order dictated and pronounced in open court)

Sd/-	Sd/-
(VASA SESHAGIRI RAO)	**(SULEKHA BEEVI C.S.)**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

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