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

PRINCIPAL BENCH – COURT NO. – III

Service Tax Appeal No. 50120 of 2020 [SM]

[Arising out of Order-in-Appeal No.BHO-EXCUS-001-APP-200 – 18 -19 dated 31.08.2018 passed by the Commissioner (Appeals), Bhopal]

M/s. Al Sadik Haj Tour Organizers **...Appellant**
Near Congress Bhawan
Burhar Road Shahdol (M.P.)

VERSUS

Commissioner of Customs,
CGST & Central Excise, Jabalpur **...Respondent**
CGST Bhawan, Mission Chowk,
Napier Town, Jabalpur (M.P.)

<u>APPEARANCE:</u>

Shri Arya Bhatt, Advocate for the Appellant
Smt. Tamanna Alam, Authorised Representative for the Respondent

Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING/ DECISION: **12.03.2021**

FINAL ORDER NO. 51144/2021

<u>RACHNA GUPTA:</u>

Present is an appeal against the Order-in-Appeal No. BHO-EXCUS-001-APP-200 – 18 -19 dated 31st August, 2018 vide which the appeal has been dismissed on the grounds of limitation. Being aggrieved, the appellant is before this Tribunal.

2. I have heard Shri Arya Bhatt, learned Advocate for the appellant and Smt. Tamanna Alam, learned Departmental Representative for the Respondent.

3. It is submitted on behalf of the appellant that the appellant had not appeared before the Original Adjudicating Authority and the order dated 25 March, 2014 was passed in his absence, as such, was never in his knowledge.

This order was passed sanctioning the refund claim of service tax amounting to Rs.1,05,715/- it is mentioned that, however, review petition was filed qua this order, but no notice of the same was ever received by the appellant. Due to which, he could not mark his presence before the competent authority and the order dated 30.01.2018 was passed ex-party.

3.1 It is further submitted that it is only after a demand of recovery was telephonically received by the appellant that he filed an RTI application for obtaining the copy of order dated 30.01.2018 vide his application dated 27 June, 2018 but the copy was not provided within reasonable time and subsequently, vide letter dated 2nd July, 2018 the request was rejected, however, the appellant filed the impugned appeal on 30th July, 2018.

3.2 Though there is a delay in filing the said appeal of one month 20 days but absolutely due to the time taken in filing the said RTI application and for the reasons as mentioned above it is submitted that learned Commissioner (Appeals) failed to appreciate the same as sufficient reason for the impugned delay. Accordingly, the order of Commissioner is hereby prayed to be set aside and appeal is prayed to be allowed.

4. While rebutting these arguments, learned D.R. has submitted that appellant had knowledge of all the proceedings. He had submitted his case before the original adjudicating authority at the

time when order dated 25 March, 2014 was passed. Learned D.R. has placed reliance upon para 5 of the said order. It is further submitted that even during the review proceedings the appellant was very much present. Due opportunity of hearing was given to the appellant. Emphasis is laid on para 11 of the order dated 30.01.2018. It is submitted that none of the order was passed ex-party as is mentioned by the appellant. Appellant had all the knowledge about the impugned orders. The RTI application is mentioned to be an exercise taken up due to the reasons known to the appellant himself. Since there is no reason other than that RTI application, learned Commissioner has committed no infirmity or illegality while rejecting his appeal on the ground of limitation. The present appeal is, therefore, prayed to be rejected.

5. After hearing the parties and perusing the record, I observe and hold as follows:-

The refund claim of the appellant was sanctioned initially vide Order-in-Original No.25 dated 25.03.2014. Para 5 thereof specifically records that the submissions made by the claimant have been considered by the original adjudicating authority thereby proving that the appellant was given the due opportunity of hearing and the said order is not an ex-party order. The perusal of order dated 30.01.2018 in furtherance of the review proceeding also is observed to not to be an ex-party order, as contrary to the submissions of the appellant. Para 11 as impressed upon by the D.R. reads as follows:-

> *"11. The claimant has been afforded a personal hearing in a matter on 13.10.2017 with a request to produce the evidences in its support of its defence. However, the*

> *claimant neither appeared for the hearing on the scheduled date nor sought for any other date for said hearing. The claimant has been extended another opportunity for a personal hearing in a matter on 21.11.2017. However, the claimant failed to avail the opportunity. The Claimant has again been afforded third opportunity for a personal hearing in a matter on 28.12.2017 / 29.12.2017 and the letter to this effect has been served upon it on 26.12.2017 through the office of the Superintendent, Central Tax, Range: Shahdol. However, the claimant failed to avail the opportunity for personal hearing. Even the claimant did not seek any suitable date for a personal hearing."*

6. This, perusal falsifies the appellant's submissions of having no opportunity of being heard, been given to him prior to the order dated 30.01.2018 and that the said order is an ex-party order. It is, therefore, sufficient to hold that there is no reason for the appellant to say that he had no knowledge about the order of 30.01.2018 and that for receiving the copy thereof he had to file the RTI application. To my opinion, once he was the party to those proceedings, the proceedings as well as order announced therein should very much be in his knowledge. There seems no cogent reason for the impugned RTI application except for gaining time that too to create/manipulate the sufficient reason for the impugned delay.

7. In the light of these observations, the arguments of appellant that the notice is shown to have been received by Manoj Srivastava whereas the owner of appellant is Mr. Aslam has no further relevance to extend any benefit to the appellant.

8. Keeping in view that there is a statutory mandate upon Commissioner (Appeals) to not to hear the appeal, which is filed beyond the period of 60 days extendable to another 30 days if sufficient cause for delay is shown. I do not find any infirmity in

the order when the impugned delay of one month and 20 days is denied to be condoned for no sufficient cause. In this context, I rely upon the case law in the case of **Singh Enterprises vs. CCE, Jamshedpur reported in 2008 (221) E.L.T. 163 (S.C.).** It is mentioned therein as follows:-

> ***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. In view of entire above discussion and on the basis of the above quoted judgement of Hon'ble Supreme Court, the order under challenge is upheld. Consequent thereto, the appeal stands dismissed.

[Dictated and pronounced in the open Court]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Anita