CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH COURT NO.IV

Excise Appeal No. 51213 / 2020

[Arising out of Order-In-Appeal No. 027-20-21 dated 06.08.2020 passed by the Commissioner (Appeals) Central Excise & and Service Tax, Indore (MP)]

SIDDHARTHA MARKETING SERVICES LTD. **APPELLANT**
63, AB Road, Industrial Area
Maxi Distt Ujjain, MP

Vs.

COMMISSIONER OF CENTRAL EXCISE,
CENTRAL GOODS AND SERVICE TAX, **RESPONDENT**
UJJAIN, MP.

APPEARANCE:

Shri Ankur Upadhyay, Advocate for the Appellant
Shri Ravi Kapoor, Authorised Representative for the Department

CORAM:

HON'BLE MRS RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING / DECISION: July 30, 2021

FINAL ORDER No. 51768/2021

PER RACHNA GUPTA

Present appeal has been filed against the Order-In-Appeal No. 027-20-21 dated 06.08.2020 vide which the appeal of the present appellant against the Order-in- Original dated 31.7.2019 has been disposed of on the ground of limitation holding that the appeal before Commissioner (Appeals) has been filed after a delay of 11 months and as such, cannot be entertained in terms of section 35 (1) of Central Excise Act, 1944.

2. The facts in brief, are as follows:

A show cause notice dated 24.12.2018 was served upon the appellant alleging the wrong availment of CENVAT Credit on common inputs used in the manufacture of goods cleared on payment of duty as well as those used in manufacture of goods cleared without payment of duty under exemption Notification No.12/12 CE. The appellants otherwise are engaged in manufacture of PVC rigid pipe, PVC scrap etc. It was observed that the recovery of amount at the rate of 6% , 6.25% from the customers by the appellant in the name of Central Excise duty and not paid to the Government attracts provisions of section 11D (1A) of Central Excise Act, 1944. Accordingly, the recovery of duty amount of Rs. 41,01,193/- along with the interest and the proportionate penalty was proposed vide the show cause notice. The proposal was initially confirmed vide Order in Original No. 002/2019-20 dated 31.7.2019. The appeal thereof has been rejected vide the Order under challenge being barred by time. Being aggrieved, the appellant is before this Tribunal.

3. I have heard Shri Ankur Upadhyay, learned Counsel for the Appellant and Shri Ravi Kapoor, learned Authorised Representative for the Department.

4. It is mentioned by the learned Counsel that the appeal filed by them is not barred by time as they were exercising another remedy available to them. The time taken for the same is thus prayed to be excluded for calculating the time required to file appeal before Commissioner (Appeals). Learned Counsel has laid emphasis on section 121 (c)(i) of Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 which talks about the amount which has been confirmed by the Department to be recovered from assessee but no appeal against said confirmation yet been filed to be called as "amount in arrears" . It is submitted that the time taken post Order-in-Original, is nothing but was for exercising the due diligence about the provisions of the scheme applying thereunder. Commissioner (Appeals) has failed to take the said fact into consideration. It is also mentioned that infact Commissioner (Appeals) also in his order, himself, has held that the appellant has sufficient cause for not presenting the appeal before him during the time line given, still the appeal has been dismissed taking the plea of Section 35(1) of Central Excise Act. The said order is accordingly, prayed to be set aside and appeal is prayed to be allowed.

5. While rebutting these arguments, it is submitted by the learned Departmental Representative that the Order in Original was announced on 31.7.2019. The appellant instead of filing the appeal against the said order had opted to settle the confirmed demand

under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 and accordingly, applied under the said scheme in September, 2019. This fact is impressed upon to be sufficient to deny the relief of time exclusion as is claimed by the appellant. It is further submitted that section 35 of Central Excise Act creates statutory mandate upon the Commissioner (Appeals) to not to condone the delay over and above 90 days from the date of receipt of Order-in-Original. In the present case, the Order-in-Original was admittedly announced in July, 2019. However the impugned appeal has been filed in May, 2020. There definitely is a delay of 11 months as has rightly been observed by Commissioner (Appeals) while rejecting the appeal. Hence, there is no illegality in the Order-in-Appeal. The present appeal accordingly is prayed to be dismissed.

6. After hearing the parties and perusing the entire record, I observe and hold as follows:

The show cause notice dated 24.12.2018 as was issued to the appellant was decided against the appellant vide Order-in-Original dated 31.7.2019. Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 providing One Time Dispute Settlement was got notified on 01.09.2019 i.e. during the period of two months from the date of Order-in-Original. The appellant applied under the said scheme on September 01, 2019. Section 121 (C) (i) of the Scheme as also is impressed upon by learned Counsel for appellant reads as follows:

> "121. In this Scheme, unless the context otherwise requires,—
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> (a) "amount declared" means the amount declared by the declarant under section 125;
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> (b) "amount estimated" means the amount estimated by the designated committee under section 127;
>
> (c) "amount in arrears" means the amount of duty which is recoverable as arrears of duty under the indirect tax enactment, on account of—
>
> (i) no appeal having been filed by the declarant against an order or an order in appeal before expiry of the period of time for filing appeal; or
>
> (ii) ...

(iii) ...”

Perusal makes it clear that Scheme also permits to apply against such demand which has been confirmed but could not have been challenged till the introduction of the scheme, and the period of limitation for filing the appeal against said order has not yet expired as on the date of Notification of said Scheme. I observe that period of two months from date of original order had not yet expired. It was extendable to another one month subject to discretion of Commissioner (Appeals). I further observe that the scheme got notified on 01.09.2019 i.e. before the period of two months (60 days) with appellant to file appeal before Commissioner (Appeals) expired. The application under said Scheme though has been filed on 04.12.2019 but under the category of arrears i.e. under section 121 C (i) of the Scheme. In the given circumstances, to my opinion, the date of filing the application is not relevant but it is the date when scheme got notified, which is relevant.

7. I further observe that the said request of the appellant got rejected shortly after he applied. The appellant again pleaded for the benefit of the scheme vide another application dated December 31, 2019. The said request also got rejected after a substantial time vide Order dated May 05, 2020, whereafter form No. 3 of SVLDRS was issued on May 08,2020. Immediately thereafter the impugned appeal has been filed on 07.07.2020. The entire observation makes it abundantly clear that the appellant has through out been vigilant and diligent about pursuing the appropriate remedy as was available to him.

8. To my opinion, doors of adjudicating the issue on merits shall not be shut down taking plea of concept which are merely technical in nature as that of bar of limitation. There has been catena of

decisions saying that the concept of any litigation to be barred by time is to be leniently invoked. Hon'ble Apex Court in the case of **Balwant Singh vs. Jagdish Singh** reported in [**2010 (262) ELT 50 (SC)]** has held that extent or degree of leniency which has to be shown by the Court while invoking the concept of limitation depends upon the nature of application and facts and circumstances of the case. It has been held that diligence factor in condonation of delay is not limit of delay but sufficiency of satisfactory explanation. The Hon'ble Court further held that want of diligence or inaction can be attributable to the appellant only when scrutiny is required to be done by him and not done.

9. In the present case:

(i) the SVLDR Scheme for settling disputes was introduced prior the period of 60 days to file the appeal before Commissioner (Appeals) could expire.

(ii) This Scheme talks about amount in arrears" (as discussed above) to also be settled.

(iii) Appellant availed the said benefit within reasonable time without any inordinate unexplainable delay.

(iv) More time has been taken by the department for considering appellant's request under the Scheme which finally was rejected.

(v) The appeal before Commissioner (Appeals) has also been within reasonable time.

(vi) The Commissioner (Appeals) himself has held that appellant otherwise has sufficient reason to reach him but beyond the time as prescribed under Section 35(C) of Central Excise Act.

10. In view of the above, I do not see any reason for taking hyper technical approach against the appellant which otherwise will amount to violation of principles of nature justice. Accordingly, I hold that appellant must be heard instead of his appeal being

rejected at threshold. Accordingly, I take support also from the decision of Tribunal in the case of **Khamdenu Ispat Ltd. vs. CCE, Jaipur I** reported in **[2017 (358) ELT 380 (Tri-Del)]** wherein it was held that when undisputed fact transpires that the appellant was diligently pursuing its remedy for resolving the dispute, the appellant was not guilty of negligence or lapse or inaction for delaying the process in filing the appeal before the learned Commissioner (Appeals) within the stipulated time limit prescribed in the statute.

11. Simultaneously, it is observed that under the statutory mandate of Section 35 of Central Excise Act that Commissioner (Appeals) is not empowered to condone the delay of more than 30 days over and above the period of 60 days from the date of receipt of Order in Original. Apparently the appeal in the present case could not have been filed before the Commissioner (Appeals) within the said period of 90 days. However, in the view of the entire above discussions, the benefit of time extension has to be given to the appellant. I hold that there was no infirmity in the order under challenge however, the facts of the case are held to be such as require decision on merits. Accordingly, the matter is ordered to be remanded back to the Commissioner (Appeals) directing him to consider the appeal as the one which has been filed within time and to adjudicate the same on merits. As a result of above discussions, the appeal in hand is hereby allowed by way of remand.

(RACHNA GUPTA)
MEMBER (JUDICIAL)

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