CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV.

Service Tax Appeal No. 50867 of 2020 [SM]

[Arising out of Order-in-Appeal No.889 (CRM)ST/JDR/2019 dated 21.11.2019 passed by the Commissioner, CGST, Jodhpur].

Mrs.Shalu Agarwal **...Appellant**
1-TA-17, Vigyan Nagar, Kota,
Rajasthan.

VERSUS

The Commissioner,
Central Goods & Service Tax, Jodhpur **...Respondent**
G-105, New Industrial Area,
Opposite Diesel Shed, Jodhpur.

APPEARANCE:

Mr. Yash Dhadda, Advocate for the Appellant
Mr.Mahesh Bhardwaj, Authorized Representative for the Respondent

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

DATE OF HEARING/DECISION:**18/08/2021**

FINAL ORDER No. 51780/2021

RACHNA GUPTA

The order of Commissioner (Appeals) bearing No.889-2019 dated 21.11.2019 vide which the appeal of the present appellant has been rejected for non-compliance of Section 35 F of Central Excise Act i.e. for not being filed in time has been assailed in the impugned appeal.

2. I have heard Shri Yash Dhadda, learned Counsel for the appellant and Shri Mahesh Bhardwaj, learned Authorized Representative for the Department.

3. It is submitted on behalf of the appellant that vide a Show Cause Notice No.8362 dated 23rd October, 2018. Service Tax of Rs.598297 for a period 2013-14 was proposed to be recovered from the appellants who were engaged in providing the taxable services. The said demand was confirmed vide Order-in-Original No.28/2019 dated 28.02.2019. The appeal there against has been rejected vide the order under challenge. It is submitted that the appeal against Order-in-Original dated 20th March, 2019 was filed on 4th June, 2019. However, since the ACS System was down for upgradation that the temporary service tax No. for payment of pre-deposit could not be allotted to the appellant till then. It is submitted that pre-deposit was finally made by them on 29th June, 2019. Learned Counsel impressed upon that after the said payment the appeal would have been considered to have been filed on 4th June, 2019 itself i.e. within the permissible period of limitation. But the said fact has not been considered by learned Commissioner (Appeals). Learned Counsel has laid emphasis upon the decision in the case of **M/s. Aqua Care Industries vs. Commissioner of Central Excise, Varanasi reported in 2019 (370) ELT 1462 (Tri.-All.) and M/s. Nyati Hotels & Resorts Pvt. Ltd. Vs. Commissioner of C.Ex., Pune-III reported in 2018 (364) ELT 1081 (Tri.-Mumbai)** wherein it has been held that pre-deposit in terms of amended provisions of Section 35 F of Central Excise Act, 1944 is a requirement for disposal of appeal

and is not a requirement for filing of the appeal. Accordingly, as and when the pre-deposit amount stands paid, the appeal has to be considered to have been filed on the date of its actual filing. Based thereupon the order under challenge is prayed to be set aside and appeal is prayed to be allowed.

4. Per-contra learned D.R. has laid utmost emphasis upon the findings arrived at by ld. Commissioner (Appeals) in the order under challenge. Appeal is, accordingly, prayed to be dismissed.

5. After hearing the parties, the rival contentions thereof, and after perusing the record of the impugned appeal, I observe and hold as follows:-

Apparently and admittedly the appeal against Order-in-Original date4d 20th March, 2019 was filed on 4th June, 2019. Admittedly the aforesaid order was received by the appellant on 25th March, 2019. In terms of Section 35 F of CEA, 1944, the appeal against the said order would have been filed within two months reckoning from 25th March, 2019. Apparently and admittedly, the appeal was filed on 4th June, 2019 i.e. beyond the said period of two months. No doubt Section 35 F gives power to Commissioner (Appeals) to condone the delay for another a month and to accept the appeal which is filed not later than three months from the receipt of order challenged before him and the appeal in hand was filed within said three months period. But there has been a statutory mandate that the said time extension of one month could be provided only when there has been a sufficient cause which restrained the assessee from filing the appeal within the two months from the date of the receipt of the order. The entire record of appeal is found silent about any single reason for the appeal to not to have been filed within said two months i.e. prior to 4th June, 2019.

6. I have no reason to differ with the case law relied upon by the appellant but the said decisions are not applicable to the above discussed facts and circumstances of the present case. Even if, the date of appeal is allowed to be that of 4th June, 2019 instead of 29th June, 2019 still the appeal is beyond the permissible period of two months, with no sufficient explanation of delay beyond said two months. Hence, I do not find any reason to differ from the findings of Commissioner (Appeals). Order is, accordingly, upheld. Appeal is dismissed.

[Dictated and pronounced in the open Court]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Anita