CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH COURT NO.IV

SERVICE TAX APPEAL NO. 50460/2021

[Arising out of Order-in-Appeal No. 576(SM)ST/JPR/2020 dated 15.12.2020, passed by the Commissioner (Appeals), Central Goods & Service Tax, Jaipur (RAJ)]

ASHOK KUMAR GUPTA
B-67 A, Dadu Dayal Nagar
Kalyanpura, Opp. Agarwal Farm
Mansarovar, Jaipur- 302020.

APPELLANT

Vs.

COMMISSIONER,
Central Goods & Service Tax,
Jaipur 302005.

RESPONDENT

APPEARANCE:

Shri Suhrid Bhatnagar, Advocate for the Appellant
Ms Tamana Alam, Authorised Representative for the Department

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

Date of Hearing/Decision: November 25, 2021

FINAL ORDER No.52062 /2021

PER RACHNA GUPTA

The present appeal has been filed to assail the order in appeal No. 576/2020 dated 15.12.2020 vide which the appeal has been rejected as being filed beyond the stipulated period without any genuine reason.

2. I have heard Shri Suhrid Bhatnagar, learned Counsel appearing for the Appellant and Ms Tamana Alam, Authorised Representative appearing for the Department.

3. Learned Counsel for the appellant has mentioned that order-in-original was issued on 28.06.2019. It was received by the appellant on 05.07.2019 but the appeal in hand could have been filed on 1.10.2019. It is submitted that appellant wanted to avail the benefits of the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 and therefore, to fall under the category of arrears, he did not file the appeal which was required to be filed within two months of the receipt of the order of the adjudicating authority, because if he had filed the appeal his dues could not qualify the meanings of 'tax due' in terms of Section 123 of the Finance (No.2) Act, 2019 (which contained the SVLRDS Scheme 2019). However, since the financial position of the appellant did not allow to avail the scheme, it could not be filed before 01.10.2019.

4. It is impressed upon that the said reason has wrongly been held as non-genuine reason. The order under challenge is accordingly prayed to be set aside.

5. To rebut these submissions, Ld. Departmental Representative has laid emphasis on the findings of the Commissioner (Appeal) in paragraph 8 of the Order under challenge. It is impressed upon that there is no infirmity when it is held that the provisions of the Act are required to be followed strictly according to which the stipulated time for filing the appeal was 60 days. The reasons quoted is accordingly, not a sufficient cause for exercising the discretion as is provided under proviso to section 85(3) A of Finance Act, 1994. The appeal is accordingly, prayed to be dismissed.

6. After hearing the parties, the rival contentions and the record of the present appeal, it is observed that the appeal has not been filed within a period of 2 months /60 days as has been stipulated statutorily in terms of section 85 (3)A of the Finance Act. Apparently and admittedly, it has been filed within a period of 90

days i.e. within the permissible time limit in terms of proviso to above provisions. The only adjudication accordingly is as to:

> Whether the reason quoted for delay in filing appeal before the Commissioner (Appeals) in terms of the said proviso is the sufficient reason or not.

7. To appreciate I observe that learned Counsel has mentioned that the delay is caused purely due to time taken for opting to Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019, a beneficial scheme to the assessee. Admittedly, the scheme though was announced on 05.07.2019 but came into effect from 01.09.2019. Perusal of section 123 for the said scheme under Finance Act shows that since the impugned order in original was announced just two days prior the locking date of the scheme i.e. 30.06.2018, hence to avail the benefit of said scheme, appellant should fall under said clause '(e)' of section 123 of the Finance Act. The appellant otherwise could not fall under any of the categories in clause (a) to (d) of section 123. The benefit could be availed in terms of said clause (e) of 123 which reads as follows:

> "**123 (e)**
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> Where an amount in arrears relating to the declarant is due, the amount in arrears."

The said amount in arrears is defined in section 121 sub clause (C) of Finance Act, 1990. It reads as follows:

> "(c) "amount in arrears" means the amount of duty which is recoverable as arrears of duty under the indirect tax enactment, on account of—
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> (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
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> (ii) an order in appeal relating to the declarant attaining finality; or

> (iii) the declarant having filed a return under the indirect tax enactment on or before the 30th day of June, 2019, wherein he has admitted a tax liability but not paid it; ”

8. Perusal of these provisions makes it clear that to challenge the Order-in-Original of 28.6.2019, the appellant should not have filed the appeal before Commissioner (Appeals). This particular perusal makes it clear that till the scheme was announced same could not have been opted for. Hence till 01.09.2019, the time taken has genuinely been taken by the appellant.

9. For the period from 1.9.2019 till October 2019 when the appeal was filed by for the appellant before Commissioner (Appeals), the reason for delay is quoted as financial position of the appellant which did not allow the appellant to avail the benefits of the scheme. To elaborate this situation, learned Counsel mentioned that appellant is a contractor and the payment with respect to work done was always irregular and used to be received after the completion of the work. Hence another one months was availed awaiting the payments to have sufficient funds to apply under the said scheme. It is only when no sufficient payments could be received by the appellant in reasonable time and he could not apply under SVLRDS; that he immediately filed the appeal before Commissioner (Appeals). The said submissions have been held as insufficient by Commissioner (Appeals) to reasonably explain the delay in filing the impugned appeal due to which Commissioner (Appeals) has not exercised the discretion to condone the delay of 28 days for filing the appeal before him as stands vested in him by virtue of the proviso to Section 85(3) A of the Finance Act.

10. Catena of decisions have already held that there cannot be straight jacket formula to define the word ‘sufficient cause’ or which can be applied to all cases without reference to the peculiar facts and facts and circumstances of a given case. Further, a liberal

interpretation of the provisions has already been appreciated to be taken while deciding the case to condone delay for a sufficient cause. I rely upon the decision of Hon'ble Apex Court in the case of

1. **Perunion Bhagvathy Devaswom vs Bhargav Amma [2008 (3) Apex Court Judgements 557 (SC) 2008 (4) Civil Court Case 503 (SC) : 2008 (8) SCC 321]** has held as under:

> The words "sufficient cause for not making the application within the period of limitation" should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words 'sufficient cause' in section 5 of Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bonafides, deliberate inaction or negligence on the part of the appellant.
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> 4.2) Rule 4 of Order 22 prescribes the procedure in case of death of a respondent. Sub-Rule (1) of Rule 4 provides that where a respondent dies and the right to sue does not survive against the surviving respondents alone or where the sole respondent dies and the right to sue survives, the court on an application made in that behalf, shall cause the legal representative of the deceased respondent to be made a party to the appeal and shall proceed with the appeal. Sub-rule (3) provides that where no application is made to cause the legal representative of the deceased respondent to be made party, the appeal shall abate as against the deceased respondent. (The word `abate' in the context of Order 22 CPC means termination of the suit or appeal on account of the death of a party materially interested).
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> 4.3) Under Article 120 of the Limitation Act, 1963, the period of limitation to have the legal representative of a deceased respondent made a party to an appeal under the

Code of Civil Procedure, is 90 days from the date of death of the respondent. Article 121 provides that for an application under the Code of Civil Procedure for an order to set aside abatement, the period of limitation is 60 days from the date of abatement. Section 5 of the Limitation Act provides that any application may be admitted after the prescribed period if the applicant satisfies the court that he had sufficient cause for not making the application within such period.

4.4) Sub-rule (5) of Rule 4 of Order 22 now gives a clear indication as to what will be sufficient cause. It provides that where the appellant was ignorant of the death of a respondent, and for that reason could not make an application for the substitution of the legal representative of the deceased respondent under Rule 4 within the time specified in the Limitation Act, 1963, and in consequence, the appeal has abated, and the appellant applies after the expiry of the period specified in the Limitation Act for setting aside the abatement and also for the admission of that application under section 5 of the Limitation Act, on the ground that he had by reason of such ignorance, sufficient cause for not making the application within the period specified in the Limitation Act, the court shall, in considering the application under section 5 of the Limitation Act, have due regard to the fact of such ignorance, if proved.

4.5) Rule 10A of Order 22 provides that whenever a pleader appearing for a party to the suit comes to know of the death of that party, he shall inform the court about it, and the court shall thereupon give notice of such death to the other party."

2. **Ram Sumiran vs DDC [1985 (1) SCC431], Mithailal Dalsangar Singh vs Annabai Devram Kini [2003 (10) SCC 691, Ganeshprasad**

Badrinararyan Lahoti vs. Sanjeevprasad Jamnaprasad Chourasiya [2004 (4) Civil Court Cases 410 (SC); 2004(2) Apex Court Judgements [281 (SC) : 2004 (7) SCC 482 contented that the Court should adopt a very liberal approach and the delay should be condoned on the mere asking by the applicant.

3. **Ramlal & Ors. Vs Rewa Coalfields Ltd. vs. AIR 1962 SC 361,** it was held as under**:**

> In construing Section 5 t is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be light heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in **Krishna v. Chattapan ILR 13 Nad, 269.**

4. In the case of **Perunion Bhagvathy Devaswom vs Bhargav [2008 (3) ACJ 557 SC, it was held as:**

> "(i) The words "sufficient cause for not making the application within the period of limitation" should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words 'sufficient cause' in section 5 of Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any

> dilatory tactics, want of bonafides, deliberate inaction or negligence on the part of the appellant.
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> (ii) In considering the reasons for condonation of delay, the courts are more liberal with reference to applications for setting aside abatement, than other cases. While the court will have to keep in view that a valuable right accrues to the legal representatives of the deceased respondent when the appeal abates, it will not punish an appellant with foreclosure of the appeal, for unintended lapses. The courts tend to set aside abatement and decide the matter on merits, rather than terminate the appeal on the ground of abatement.
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> (iii) The decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation.
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> (iv) The extent or degree of leniency to be shown by a court depends on the nature of application and facts and circumstances of the case. For example, courts view delays in making applications in a pending appeal more leniently than delays in the institution of an appeal. The courts view applications relating to lawyer's lapses more leniently than applications relating to litigant's lapses. The classic example is the difference in approach of courts to applications for condonation of delay in filing an appeal and applications for condonation of delay in refiling the appeal after rectification of defects.
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> (v) Want of 'diligence' or 'inaction' can be attributed to an appellant only when something required to be done by him, is not done. When nothing is required to be done, courts do not expect the appellant to be diligent. Where an appeal is admitted by the High Court and is not expected to be listed for final hearing for a few years, an appellant is not expected to visit the court or his lawyer every few weeks to ascertain the position nor keep checking whether the contesting respondent is alive. He merely awaits the call or information from his counsel about the lilsting of the appeal. "

11. It has already been held vide several decisions for disposal on merits has always to be preferred without adopting the hyper technical approach of the provision. Though principles of limitation

have to be strictly observed but in a case where their appears that there is no deliberate delay on the part of the appellant, nor there is inaction apparent on his part, disposal of 'lis' on merits has always to be preferred.

12. In the present matter since there is no substantial delay nor it was beyond such period as was not condonable by Commissioner (Appeals). Also department has brought nothing on record to falsify the submissions of the appellant as far as the sufficient cause shown is concerned. No deliberate delay nor any malafide intent is apparent on part of the appellant. I am of the opinion that the findings of the Commissioner (Appeals) in paragraph 8 are not appropriate. The Cause shown for impugned delay is accordingly held to be sufficient. Hence, it is held that Commissioner (Appeals) has failed to observe proviso to section 85 (3) A of the Finance Act, 1994. The order under challenge is accordingly set aside. Commissioner (Appeals) is directed to decide the matter on merits after condoning the delay of 28 days. In view of the above entire discussion, the appeal is hereby allowed by way of remand with the above directions.

(RACHNA GUPTA)
MEMBER (JUDICIAL)

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