CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Service Tax Appeal No. 52738 of 2019

(Arising out of Order-in-Appeal No. 41/ST/DLH/2019 dated 22.07.2019 passed by the Commissioner of CGST & CX (Appeals-I), Delhi)

M/s Infozone Services Pvt Ltd .....**Appellant**
(Through its Director Shri Ankit Srivastava)

VERSUS

Commissioner of Central Excise,
Service Tax and CGST, Delhi North .....**Respondent**

Appearance:

Mr. Aakarsh Srivastava, Advocate for the Appellant
Mr. Radhe Tallo, Authorized Representative of the Department

CORAM :
HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

DATE OF HEARING/DECISION: 17.05.2023

FINAL ORDER NO. 50723/2023

JUSTICE DILIP GUPTA

This appeal is directed against the order dated July 22, 2019 passed by the Commissioner (Appeals-I), Central Tax/ GST, Delhi[1], by which the appeal filed by the appellant to assail the order dated January 16, 2018 passed by the Additional Commissioner, was dismissed only for the reason that it was filed beyond the statutory

---
1. the Commissioner

time period contemplated under section 85 of the Finance Act, 1994[2].

2. The relevant portion of the section 85 of the Finance Act is reproduced below:

> **"85. Appeals to the Commissioner of Central Excise (Appeals)**
>
> (1) Any person aggrieved by any decision or order passed by an adjudicating authority subordinate to the Principal Commissioner of Central Excise or Commissioner of Central Excise may appeal to the Commissioner of Central Excise (Appeals).
>
> (2) Every appeal shall be in the prescribed form and shall be verified in the prescribed manner.
>
> (3) **An appeal shall be presented within three months from the date of receipt of the decision or order of such adjudicating authority**, relating to service tax, interest or penalty under this Chapter, made before the date on which the Finance Bill, 2012 receives the assent of the President.
>
> **PROVIDED that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of three months**.
>
> 3(A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 receives the assent of the President, relating to service tax, interest or penalty under this Chapter:
>
> PROVIDED that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.
>
> xxxx xxxx xxxx"
>
> **(emphasis supplied)**

3. A perusal of sub-section (1) of Section 85 shows that any person aggrieved by any decision or order passed by the Adjudicating Authority, may file an appeal to the Commissioner of Central Excise (Appeals). Sub-section (3A) of section 85 provided

---

2. the Finance Act

that the appeal shall be presented within two months from the date of receipt of the order of such Adjudicating Authority but the proviso provides that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.

4. In the instant case, the Commissioner (Appeals) has found that the appeal that was filed on February 11, 2019 was not only filed beyond the period of two months from the order dated January 16, 2018 but was even beyond the extended period of one month and so dismissed the appeal for the reason that there was no power to condone any delay beyond one month after the expiry of one month. The relevant findings of the Commissioner (Appeals) in this regard are as follows:

> "5. I have carefully gone through the case records, grounds of the appeal, written submissions made by the appellants and other documents available on file. **I find that the appeal has been filed against Order-in-Original No. 02/ADC/D-N/2018 dated 16.01.2018. The date of receipt of Order-in-Original by the appellants is mentioned as 21.12.2018 in appeal papers and the appeal has been marked as dated 11.02.2019**. Appellants have not submitted any explanation for delay in receipt of order and have also not substantiated it in any manner. Therefore, before proceeding into the matter further, I would like to deliberate on the limitation issue first.
>
> xxxx xxxx xxxx
>
> 8. The statutory time limit of two months from the date of receipt of the decision or order, for filing appeal before Commissioner (Appeals) has been prescribed under Section 85(1) of the Finance Act, 1994. **The delay in filing appeal before the Commissioner (Appeals) is condonable at most by one month under the Proviso to Section 85(3A) of the Act ibid. However, in the instant case, the impugned order is dated 16.01.2018 and the appellants have not explained how and when did they receive it. No reasonable excuse is given by the appellants as to why there is delay in receipt of the Order-in-Original.** Further, no proper record of service tax details is submitted by the appellants. The appellants had shown similar approach before lower authorities by not

> submitting any record/ data and by not responding to summons. I, thus find that appellants have no reason to file the appeal beyond the statutory time period."

(emphasis supplied)

5. Shri Aakarsh Srivastava, learned counsel appearing for the appellant submitted that the order of the Adjudicating Authority was received by the appellant only on December 21, 2018, which fact was clearly stated by the appellant in form ST-IV that was filed before the Commissioner (Appeals). According to learned counsel for the appellant, as the appeal was filed on February 11, 2019 within a period of two months from the date of receipt of the order, the Commissioner (Appeals) committed an illegality in rejecting the appeal for the reason that it was filed beyond the period contemplated under sub-section (3A) of section 85 of the Finance Act.

6. When the matter last taken up on April 11, 2023, a detailed order was passed requiring the learned authorized representative to seek instructions from the Department.

7. Learned authorized representative has placed a communication dated May 11, 2023 sent by the Assistant Commissioner. It mentions that the order dated January 16, 2018 was dispatched to the appellant on January 18, 2018 but the same returned undelivered to the Adjudication Branch and accordingly, the task of the delivery of the order was assigned to the Karolbagh Division by a letter dated February 09, 2018. It has, further, been stated that since during the personal hearing, the premises of the appellant were found to be not functioning and locked, a physical

delivery of the order dated January 16, 2018 was not attempted. It has also been stated that after finding out details from the Ministry of Corporate Affairs website, the residential address of the Director was obtained and the order was sent by registered post to one of the Director, namely, Shri Dharmender Kumar, on October 06, 2018 which was delivered on October 09, 2018. This statement has been made on the basis of the track report received from the post office. The letter further mentions that the impugned order dated January 16, 2018 was also received by one Shri Santosh Kumar of the appellant, as is clear from the letter dated December 21, 2018 issued by the Range Officer.

8. The facts stated in the communication dated May 11, 2023 sent by the Assistant Commissioner clearly reveal that the order was actually received by the appellant only on December 21, 2018 and this is what was stated by the appellant in ST Form-IV which was submitted by the appellant before the Commissioner (Appeals). The appeal was, therefore, filed within two months from the date of receipt of the order and it should have been entertained by the Commissioner (Appeals).

9. The Commissioner (Appeals), however, as is clear from the order dated July 22, 2019, observed the appellant had not submitted any explanation for delay in receipt of the order. Once the appellant had indicated in ST-IV form that the order was received by the appellant only on December 21, 2018, then it was for the Department to have controverted that the order had been received by the appellant earlier to this date and an explanation for the delay should not have been expected from the appellant.

10. Thus, as the order was actually served upon the appellant only on December 21, 2018 and the appeal was filed on February 11, 2019 which would be within two months from the date of receipt of the order, the dismissal of the appeal by the Commissioner (Appeals) only for the reason that it was filed beyond the statutory period prescribed under sub-section (3A) of section 85 of the Finance Act deserves to be set aside. The impugned order dated July 22, 2019 is, accordingly, set aside and the matter is remitted to the Commissioner (Appeals) to decide the appeal on merits. As the matter is old, it is expected that the Commissioner (Appeals) shall make all endeavours to decide the appeal expeditiously. The appeal is allowed to the extent indicated above.

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Archana