

**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH,COURT NO. 1**

SERVICE TAX APPEAL NO. 51413/2018

[Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-450-17-18 dated 29.12.2017 passed by the Commissioner (Appeals), Customs, CGST & Central Excise Indore]

SHATABDI PEST CONTROL.

85, Pratap Nagar, Ratlam (MP) 457001.

Appellant

Vs.

COMMISSIONER (APPEALS)

**CUSTOMS, CENTRAL GOODS AND SERVICE
TAX, CENTRAL EXCISE, INDORE**

Respondent

Appearance:

Present for the Appellant : Shri R. S. Sharma , Advocate

Present for the Respondent: Shri Rohit Issar, Authorised Representative

CORAM:

HON'BLE Mr.JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE Ms.HEMAMBIKA R. PRIYA, MEMBER(TECHNICAL)

Date of Hearing/ Decision: **07/07/2023**

FINAL ORDER No. 50942 /2023

JUSTICE DILIP GUPTA

The Commissioner (Appeals) has dismissed the appeal on the ground that the appeal had been filed beyond the statutory time limit of 2 months specified under section 85 of the **Finance Act, 1994**¹ and condonation of delay application was not filed for condoning the delay in filing the appeal.

2. The order passed by the Commissioner (Appeals) mentions that though the impugned order was passed by the Adjudicating

1 The Act

Authority on 30.03.2016 and was received by the appellant on 12.04.2016 but the appeal was filed on 11.07.2016.

3. Under section 85 (3) (a) of the Finance Act, an appeal before the Commissioner (Appeals) has to be filed within two months from the date of receipt of the order, but the Commissioner Appeals) can, 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. Shri R. S. Sharma, learned counsel for the appellant has stated that the appellant believed that the appeal could be filed within 90 days in view of the communication dated 29.11.2017 that accompanied the order passed by the Commissioner (Appeals) as this letter mentions that the appeal could be filed within 90 days. It is his submission that if the appellant was informed that there was a delay, the appellant could have filed an application for condonation of delay. Learned counsel also submitted that if such an opportunity is now granted to the appellant, the appellant would file an application for condonation of delay.

5. Shri Rohit Issar, learned authorised representative appearing for the department has supported the order and has pointed out that appellant had not appeared before the Commissioner (Appeals) despite repeated opportunities having been granted and therefore, the appellant cannot be permitted to contend that an opportunity

should now be granted to the appellant to file an application for condonation of delay.

6. The submissions advanced by learned counsel of the appellant and learned authorized representative appearing for the department have been considered.

7. It is not in dispute that the order dated 30.03.2016 was received by the appellant on 12.04.2016 and the appeal was filed before the Commissioner (Appeals) on 11.07.2016. It is, therefore, clear that the appeal was filed within the extended period of one month contemplated under section 85(3)(a) of the Finance Act. Thus, in case an application for condonation of delay had been filed, the Commissioner (Appeals) could have examined whether the appellant was prevented by sufficient cause from filing the appeal within the stipulated period of two months.

8. It is however, not in dispute that the appellant did not file any application for condonation of delay.

9. The issue that arises for consideration is whether an opportunity can now be provided to the appellant to move an application for condonation of delay or not. The Kerala High Court in **Writ Petition No. 17252/2019 [The Federal Bank Ltd. vs The Assistant Commissioner of Central Taxes and Central Excise and others]** decided on 27.06.2019, in an identical matter, held that if there is delay, the office should have brought the fact to the notice of the petitioner and given an opportunity to explain the

delay, more particularly if appeal was registered without noticing that there was any delay.

10. In the facts and circumstances of the case, we deem it appropriate to provide an opportunity to the appellant to move an application for condonation of delay. In case such an application is filed, an appropriate order shall be passed by the Commissioner (Appeals).

11. The order dated 29.12.2017 passed by the Commissioner is accordingly, set aside with liberty to the appellant to move an appropriate application for condonation of delay within a period of one month from today. If such an application is filed, the Commissioner shall decide it on merits. The appeal is allowed to the extent indicated above.

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER(TECHNICAL)