CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH

SERVICE TAX APPEAL NO. 50335 OF 2019

(Arising out of Order-in-Appeal No. BHO-EXCUS-001-APP-120-18-19 dated 31.05.2018 passed by Commissioner (Appeals), CGST, Customs & Central Excise, Bhopal)

M/s Ramzan Beg Contractor, **....Appellant**
Sunday Market,
Kymore Distt. Katani (M.P.)

VERSUS

Commissioner (Appeals), Customs, **....Respondent**
Central Excise & Service Tax,
Bhopal (M.P.)

APPEARANCE:

Shri Romil Pathak, Advocate for the Appellant

Shri Rajeev Kapoor, Authorized Representative for the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING/ DECISION: 10.10.2024

FINAL ORDER NO. 58822/2024

JUSTICE DILIP GUPTA:

The order dated 31.05.2018 passed by the Commissioner (Appeals), CGST, Customs and Central Excise, Bhopal[1] dismissing the appeal filed by the M/s. Ramzan Beg Contractor[2] for the reason that it was filed even beyond the extended period of one month after the expiry of period of two months, contemplated under section 85(3A) of the Finance Act, 1994[3].

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1. **the Commissioner (Appeals)**
2. **the appellant**
3. **the Finance Act**

2. The Commissioner (Appeals) noted that the appeal was filed on 31.05.2018 against the order dated 13.02.2018 passed by the Joint Commissioner, Customs, Central Excise and Service Tax, Jabalpur[4]. This order was received by the appellant on 28.02.2018. The extended period of one month, after the expiry of the normal period of two months, expired on 27.05.2018 but the appeal was filed on 31.05.2018.

3. The issue, therefore, that arises for consideration is as to whether the Commissioner (Appeals) was justified in dismissing the appeal.

4. A perusal of sub-section (3A) of section 85 clearly indicates that an appeal shall be presented within two months from the date of receipt of the order of the adjudicating authority in relation to service tax, interest or penalty. It further provides 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. The discretion of the Commissioner (Appeals) to condone the delay is, therefore, circumscribed by the condition set out in proviso and the delay can be condoned only if the appeal is presented within a further period of one month after the expiry of the statutory period of two months, provided of course, the Commissioner (Appeals) is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within a period of two months.

5. The provisions of section 35 of the Central Excise Act, 1944[5] relating to appeals before Commissioner (Appeals) had come up for consideration before the Supreme Court in **Singh Enterprises** vs. **Commissioner of**

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4. the Joint Commissioner
5. the Central Excise Act

Central Excise, Jamshedpur[6]. Section 35 of the Central Excise Act provides that any person aggrieved by any decision or order passed under the Central Excise Act, may appeal to the Commissioner (Appeals) within sixty days from the date of the communication to him of such decision or order provided 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 sixty days, allow it to be presented within a further period of thirty days.

6. The provisions of section 35 of the Central Excise Act are pari materia with section 85(3A) of the Finance Act. The Supreme Court held that the period upto which the prayer for condonation can be accepted is limited by the proviso to sub-section (1) of section 35 of the Central Excise Act. The position is crystal clear that the Commissioner (Appeals) has no power to allow the appeal to be presented beyond the period of thirty days after the expiry period of sixty days. In other words, the Commissioner (Appeals) can entertain the appeal by condoning the delay only upto thirty days beyond the normal period for preferring the appeal, which is sixty days.

7. The Commissioner (Appeals), in the present case, was, therefore, justified in dismissing the appeal on the ground of limitation.

8. The appeal, therefore, deserves to be dismissed and is dismissed.

(Order dictated and Pronounced in Open Court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

Shreya

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6. 2008 (221) E.L.T. 163 (S.C)