CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.
PRINCIPAL BENCH - COURT NO.III

Service Tax Appeal No. 50413 of 2024

[Arising out of Order-in-Appeal No. 102RLM-ST-JPR-2023 dated 31.03.2023 passed by the Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jaipur].

Smt. Manesh Devi **Appellant**
M/s Shaheed Ranveer Singh
Filling Station State Highway No.8,
Post-Mohabatsar, Nawalgarh,Jhunjunu,
Rajasthan-333042

Versus

The Commissioner, Central Excise & Central Goods and Service Tax,Alwar **Respondent**
A- Block, Surya Nagar, Alwar-301001.

APPEARANCE:

Shri Kumud Bhatnagar, Advocate for the Appellant.
Shri Rajeev Issar, Authorised Representative for the Department.

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

FINAL ORDER NO. 59437/2024

DATE OF HEARING : 07.11.2024
DATE OF DECISION: 13.11.2024

BINU TAMTA:

1. The appellant has assailed the order in appeal no. 102(RLM)ST/JPR/2023 dated 31.03.2023 whereby the learned Commissioner dismissed the appeal on the ground of delay.

2. The submissions made by the learned counsel for the appellant is that the order-in-original dated 04.07.2019 was not received by them and it is only when the amount was recovered from their current account on 25.09.2020 and 22.12.2021 that they approached the Department and

thereafter filed the appeal before the Commissioner (Appeals) on 26.04.2022.

3. The learned counsel has also taken shelter on the order passed by the Apex Court with reference to COVID-19 so as to exclude the period of limitation from 20.03.2020 to 20.02.2022.

4. The provision of section 85(3A) of the Finance Act, 1994 provides that the appeal shall be presented within a period of two months from the date of the receipt of the order and if the Commissioner (Appeals) is satisfied, that there was sufficient cause for not filing the appeal within the period of two months, he may allow the same to file within the period of one month thereafter. The provisions of section 85(3A) have been considered by the Apex Court in **Singh Enterprises** vs. **Commissioner of Central Excise, Jamshedpur**[1] where it was held that if the limitation is provided in the statute and the power to condone the delay is also vested on the statutory authority though subscribed by the maximum period even the High Court should not direct the condonation as it would render the specific provision otiose.

5. The statutory provision as well as the decision in this regard clearly bars the appeal to be entertained beyond the extended period of one month.

6. As discussed in the impugned order, the appeal was filed on 26.04.2022 whereas as per the delivery status, the order-in-original was dispatched through speed post on 04.07.2019 and there is no evidence to the effect that the same was returned back. Accordingly, the Commissioner (Appeals) decided the issue as under:

> "I find that in the instant case even if the period starting from 15.03.2020 till 28.022022 is excluded in compliance of order of the Hon'ble Supreme Court in the order in miscellaneous application no. 21/2022 dated 10.01.2022 extended the limitation period suo moto from 15.03.2020 till 28.02.2022 shall stand extended for purpose of

---

1. 2008 (221) E.L.T. 163 (S.C.)

> limitation as may be prescribed under any general or special law in respect of all judicial or quasi-judicial proceeding but the appeal has been filed by the appellant after more than three months i.e. delayed by more than one months from expiry of stipulated period of two months. I find that in any case, delay of more than thirty days is not condonable under the provisions of Section 85 of the Finance Act 1994. I further find that Hon'ble Supreme Court's in the case of Miles India Ltd. Vs Assistant, Collector reported in 1987(30) ELT641 (SC) held that the Tribunal as well as Customs authorities are bound by the statutory period of limitation. This view was affirmed by the Hon'ble Supreme Court again in the case of Collector of Central Excise Vs Doaba Cooperative Sugar Mills reported in 1988 (37) ELT 478(SC)."

7. We agree with the impugned order that the right to appeal is the statutory right which is subject to the condition prescribed therein, i.e., the appeal has to be filed within the limitation period of two months and further extended by one month provided under the statute and in the event of failure to do so within the extended period of one month, the Commissioner (Appeals) cannot be found to be faulty and the appeal has been rightly rejected.

8. The present appeal, accordingly, stands dismissed on the ground of limitation.

(Order pronounced on **13th November**, 2024)

(Binu Tamta)
Member (Judicial)

Archana