CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 4

SERVICE TAX APPEAL NO. 50649 OF 2024

[Arising out of Order-in-Appeal No.RPR-EXCUS-000-APP-159-23-24 dated 25.10.2023 passed by the Commissioner (Appeals), CGST & Central Excise, Raipur (C.G.)]

PAWAN KUMAR AGRAWAL
Village – Gobersingha,
Sarangarh,
Raigarh (C.G.) **....Appellant**

Vs.

COMMISSIONER OF CUSTOMS
CENTRAL EXCISE AND CGST-RAIPUR **....Respondent**
CGST, Customs & Central Excise,
Raipur, Chhattisgarh

Appearance:
Present for the Appellant : Ms. Pooja Jaswani, C.A.
Present for the Respondent: Mr. Rajiv Kapoor, Authorised Representative

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MRS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing/ Decision : **03/12/2024**

FINAL ORDER NO.59786/2024

DR. RACHNA GUPTA

Present appeal is filed to assail the Order-in-Appeal No.159/23/24 dated 25.10.2023 vide which the appeal against the Order-in-Original No.2711/2018-19 dated 30th March, 2022 has been dismissed on the grounds of limitation.

2. We have heard Ms.Pooja Jaswani, ld. Counsel for the appellant and Mr.Rajeev Kapoor, ld. Authorised Representative for the Revenue.

3. The appellant was served with the Show Cause Notice No.30-04/2018-19 dated 15.10.2018 vide which the service tax of an amount of

Rs.11,43,892/- alongwith interest and penalties was proposed to be recovered. The said demand was raised based upon the data received from the Income-tax department. The demand was initially confirmed vide the aforementioned Order-in-Original. Appeal against the said order has been dismissed on the ground of limitation. Ld. Counsel for the appellant has mentioned that while dismissing the appellant's appeal, only one day delay has been observed by Commissioner (Appeals), despite the fact that the appeal was filed on the last day of limitation. Order is accordingly, prayed to be set aside.

4. Ld. Departmental Representative, *per-contra*, has mentioned that the appeal was filed after two months of the date of receipt of Order-in-Original. 30 days top of said two months also expired on 27.10.2022. Since the appeal was filed on 28.10.2022 there was apparently a delay of one day and thus, there is no infirmity in the findings of the impugned order.

5. Having heard both sides, we perused the impugned order. The relevant para reads as follows:-

> *"9. Thus, as per Section 85 of the Act, an Appeal shall be presented within two months from the date of receipt of the decision or order of the adjudicating authority. Further, Commissioner (Appeals) has power to condone the delay for a further period of one month if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months. Therefore, the appellant ought to have preferred appeal on or before 27/10/2022, as the Appellate Authority can condone the delay in filing of appeal as prescribed under Section 85(3A) of the Act up to period of one month only. However, the appellant has filed the instant appeal on 28/10/2022. Thus, the appeal has been filed beyond the prescribed time limit. Therefore, I hold that the instant Appeal fails at the threshold stage itself on the ground of being time barred. Held Accordingly."*

5. We also observe that there is no denial to the fact that the Order in Original dated 30.03.2022 was received by the appellant on 28.07.2022. The appeal before Commissioner (Appeals) should have been filed within 60 days from the said date of receipt. Apparently and admittedly, the appeal was not filed within those 60 days. For subsequent one month there is discretion with the Commissioner (Appeals) to condone the delay during said 30 days provided the delay is sufficiently and reasonably explained. The above quoted para of the impugned order reveals that there is no such discussion by Commissioner (Appeals) despite that the separate application seeking condonation of delay top of 60 days from the date of receipt of order was filed before the Commissioner (Appeals). This observation is sufficient for us to hold that the application of condonation of delay be re-heard by the Commissioner (Appeals) giving his findings vis-à-vis the reasonableness of the reason taken in the said application along with the other observations, however, afresh. With these observations we allow the present appeal by way of **remand,** directing Commissioner (Appeals) to decide the application seeking condonation of delay afresh.

[Dictated & Pronounced in the open Court]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Anita