CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH, COURT NO. 1

Service Tax Appeal No. 51530 of 2018

[Arising out of Order-in-Appeal No. BHO-EXCUS-001-APP-707-17-18 dated 20.02.2018 passed by the Commissioner (Appeals) CGST, Customs & Central Excise, Bhopal (M.P.)]

M/s. M N Singh **...Appellant**
Civil Contractor & Coal Transporter
219 Bandra, NH-78, Ward No.- 01,
At-Bandra, Post-kotma,
Distt-Annupur-484334 (M.P.)

VERSUS

Join Commissioner of Customs, **...Respondent**
Central Excise & Service Tax,
C.R. Building, Napier Town, l/F Hotel
Roopali Inn, Jabalpur-482001
(M.P.)

APPEARANCE:

Shri Prashant Shukla, Advocate for the appellant.
Ms. Jaya Kumari, 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: 16.10.2024
Date of Decision: 09.04.2025

FINAL ORDER No. 50470/2025

JUSTICE DILIP GUPTA:

M/s. M N Singh[1] has filed this appeal to assail the order dated 20.02.2018 passed by the Commissioner (Appeals), CGST, Customs and Excise, Bhopal[2] by which the appeal filed by the appellant to assail the order dated 28.02.2017 passed by the Joint Commissioner confirming the demand of service tax has been dismissed for the reason that it was

1. **the appellant**
2. **the Commissioner (Appeals)**

filed beyond the period contemplated under section 85(3A) of the Finance Act, 1994[3].

2. It transpires from the records that the Joint Commissioner adjudicated three show cause notices dated 21.10.2013, 25.09.2014 and 06.04.2016 by an order dated 28.02.2017. This order also records that personal hearing was held on 25.01.2017, on which date Aniruddha Pratap Singh, partner of the appellant, appeared before the Joint Commissioner and made submissions.

3. Feeling aggrieved by the aforesaid order dated 28.02.2017 passed by the Joint Commissioner, the appellant filed an appeal before the Commissioner (Appeals) on 18.10.2017. In Form ST-4 filed with the appeal it was stated that the order dated 28.02.2017 was received on 03.08.2017. The appeal was signed by Sangram Singh as partner of the appellant. In paragraph 15 of the memo of appeal filed before the Commissioner (Appeals), the appellant stated that it is a partnership concern with two existing partners. Along with the appeal, an application for condonation of delay was filed stating inter-alia that appellant partnership firm was re-constituted on 10.06.2016 with two partners, namely, Aniruddha Pratap Singh and Sangram Singh and both the partners were cousins. The order passed by the Joint Commissioner was received by Aniruddha Pratap Singh, as partner of the firm, on 07.04.2017 but he did not inform Sangram Singh about the said order and nor did he file any appeal. It was only when the Jurisdictional Range Officer sent a recovery letter dated 31.07.2017 that Sangram Singh came to know about the order and after he visited the range office, a

3. the Finance Act

duplicate copy of the order on 03.08.2017 was provided, whereafter the appeal was filed.

4. The Commissioner (Appeals) noted that following facts in the impugned order:

(i) The appellant is a partnership firm and service of the order upon one partner is service of the order upon the appellant;

(ii) The appeal should have been filed within two months from the date of receipt of the order on 07.04.2017, but it was filed on 18.10.2017 which is not only beyond the normal period of two months but also beyond the extended period of one month contemplated under section 85(3A) of the Finance Act; and

(iii) As the appeal was presented beyond the period specified under section 85(3A) of the Finance Act and the Commissioner (Appeals) could not condone any delay beyond one month after the expiry of the normal period of two months, the appeal had to be dismissed.

5. Shri Prashant Shukla, learned counsel for the appellant submitted that though it is a fact that the order was served upon Aniruddha Pratap Singh, grandson of M N Singh, on behalf of the appellant on 07.04.2017 but Sangram Singh was not informed of this order by Aniruddha Pratap Singh and he came to know about this order only on 03.08.2017 when he went to the range office after receiving the recovery notice dated 31.07.2017 from the Jurisdictional Range Officer. Learned counsel also stated that there is a dispute between the two partners and, therefore, the period of limitation should be counted from 03.08.2017, on which date Sangram Singh received a duplicate copy of the order.

6. Ms. Jaya Kumari, learned authorized representative appearing for the department, however, submitted that as the order dated 28.02.2017 passed by the Joint Commissioner was received on behalf of the appellant by Aniruddha Pratap Singh as a partner, it is not open to the other partner to contend that limitation for filing the appeal should be counted from the date the other partner received a duplicate copy of the order on 03.08.2017. Learned authorized representative pointed out that under section 85(3A) of the Finance Act, the normal period for filing an appeal before the Commissioner (Appeals) is two months, but a delay of one month after the expiry of the said period of two months, can be condoned by the Commissioner (Appeals) if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the stipulated time of two months. In the present case, the appeal was filed even after the expiry of the extended period of one month and, therefore, the Commissioner (Appeals) was justified in dismissing the appeal. To support this contention, learned authorized representative placed reliance upon a decision of the Tribunal in **M/s. Diamond Construction** vs. **Commissioner of Customs, Central Excise & Service Tax**[4].

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

8. It is not in dispute that the order dated 28.02.2017 passed by the Joint Commissioner was served upon Aniruddha Pratap Singh, partner of the firm on behalf of the appellant, on 07.04.2017. This is clear from

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4. Service Tax Appeal No. 51592 of 2016 decided on 19.02.2019

the acknowledgement receipt signed by Aniruddha Pratap Singh, which is reproduced below:

Acknowledgement

> I, Anirudh Singh, Grandson of M.N. Singh, Badra, Kotma, Distt.- Anuppur has received the Order in Original No. 59-61/JC/ST/JBP/2016-17 issued vide F. No. V(ST)15-88/ADJ/JBP/2013/ 2507 dated 28/02/2017 (Containing page No. 1 to 38) by the Joint Commissioner, Service Tax, Division Jabalpur on behalf of M/s. M.N. Singh, Badra, Kotma, Distt-Anuppur on today i.e. 07/04/2017.
>
> Date: 07.04.2017
>
> Signature-
> Name- Aniruddha Pratap Singh
> Designation- Grandson

9. The order dated 28.02.2017 passed by the Joint Commissioner clearly also shows that it was Aniruddha Pratap Singh, partner of the appellant firm, who had appeared before Joint Commissioner on 25.01.2017 to make submissions. The order impugned before the Commissioner (Appeals) was passed by the Joint Commissioner on 28.02.2017 immediately after a period of one month from the date of personal hearing. It is Aniruddha Pratap Singh who received the order dated 28.02.2017 on 07.04.2017 and it is not the case set up by Sangram Singh that he was not aware of the proceedings before the Joint Commissioner.

10. This appeal was filed by the appellant through Sangram Singh on 18.10.2017 and in the delay condonation application it has been stated that because of some family dispute Aniruddha Pratap Singh did not file the appeal. There is nothing on the record to indicate that between the date of hearing on 25.01.2017 and the delivery of order on 28.02.2017, some dispute had suddenly arisen between the two partners. In fact, Aniruddha Pratap Singh contested the matter on merits before the Joint

Commissioner, though it is a different matter that the contentions were not accepted by the Joint Commissioner. It is, therefore, clearly a case where an attempt has been made by the appellant to get over the limitation provided under section 85(3A) of the Finance Act by filing the appeal filed though another partner alleging that because of some dispute the other partner did not file the appeal. There is nothing on the record to show that there was any dispute between the two partners as no documents have been filed except a complaint before the Police which was also not pursued.

11. Service of an order upon a partner shall be deemed to be service upon the appellant. The order shall, therefore, be deemed to have been served upon the appellant on 07.04.2017 and it is this date which has to be considered for the purposes of calculating limitation under section 85(3A) of the Finance Act.

12. In order to appreciate the issue involved, it will be useful to reproduce the relevant provisions of section 85 of the Finance Act and they are as follows:-

> "**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).
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> *****
>
> (3A) 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."

13. On a plain reading of the aforesaid provisions of section 85(3A) of the Finance Act, it is clear that any person aggrieved by any decision or order passed by the adjudicating authority may appeal to the Commissioner (Appeals) within two months from the date of receipt of the decision or order. The proviso, however, stipulates 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. It is, therefore, clear that an appeal can be filed within two months from the date of communication of the order, but if the appeal is filed after two months but within one month after the expiry of two months, the Commissioner (Appeals) may condone the delay in filing the appeal if he is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within two months. This necessarily implies that if the appeal is filed beyond one month after the expiry of the initial period of two months, the delay cannot be condoned by the Commissioner (Appeals).

14. This issue was considered by the Supreme Court in **Singh Enterprises** vs. **Commissioner of Central Excise, Jamshedpur**[5]. The Supreme Court examined the provisions of section 35 of the Central Excise Act, 1944, which are para materia the provisions of section 85 of the Finance Act, and observed that delay can be condoned in accordance with the language of the Statute which confers power on the

5. 2018 (221) E.L.T. 163 (S.C.)

Appellate Authority to entertain the appeal by condoning the delay only up to 30 days after expiry of 60 days which is the normal period for preferring the appeal. It is for this reason that the Supreme Court observed that the Commissioner and High Court were justified in holding that there was no power to condone the delay after expiry of 30 days period. Paragraphs 8, 9 and 10 of the judgment are reproduced below:

> "8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of Statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the Statute. The period upto which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Indian Limitation Act, 1963 (in short the "Limitation Act") can be availed for condonation of delay. **The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore**

> **justified in holding that there was no power to condone the delay after the expiry of 30 days period.**
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> 9. Learned counsel for the appellant has emphasized on certain decisions, more particularly, I.T.C.'s case (supra) to contend that the High Court and this Court in appropriate cases condoned the delay on sufficient cause being shown.
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> 10. Sufficient cause is an expression which is found in various statutes. It essentially means as adequate or enough. There cannot be any straitjacket formula for accepting or rejecting the explanation furnished for delay caused in taking steps. In the instant case, the explanation offered for the abnormal delay of nearly 20 months is that the appellant concern was practically closed after 1998 and it was only opened for some short period. From the application for condonation of delay, it appears that the appellant has categorically accepted that on receipt of order the same was immediately handed over to the consultant for filing an appeal. If that is so, the plea that because of lack of experience in business there was delay does not stand to be reason. I.T.C.'s case (supra) was rendered taking note of the peculiar background facts of the case. In that case there was no law declared by this Court that even though the Statute prescribed a particular period of limitation, this Court can direct condonation. That would render a specific provision providing for limitation rather otiose. In any event, the causes shown for condonation have no acceptable value. In that view of the matter, the appeal deserves to be dismissed which we direct. There will be no order as to costs."
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> **(emphasis supplied)**

15. Section 35 of the Central Excise Act 1944, which was considered by the Supreme Court in the aforesaid decision in **Singh Enterprises**, is reproduced below:

> "**35. Appeals to Commissioner (Appeals).** - (1) Any person aggrieved by any decision or order passed under this Act by a Central Excise Officer, lower in rank

than a Commissioner of Central Excise, may appeal to the Commissioner of Central Excise (Appeals) hereafter in this Chapter referred to as 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.

(2) Every appeal under this section shall be in the prescribed form and shall be verified in the prescribed manner."

16. A Division Bench of the Tribunal in **Diamond Construction**, in which the provisions of section 85 (3A) of the Finance Act 1994 relating to appeals to the Commissioner of Central Excise (Appeals) came up for consideration, after placing reliance upon the decision of the Supreme Court in **Singh Enterprises** observed that the discretion of the Commissioner to condone the delay is circumscribed by the conditions set out in the proviso and any delay beyond that period cannot be condoned. The relevant portion of the decision is reproduced below:

"7. In order to appreciate the contentions advanced by the parties it would be appropriate to reproduce Section 85(3A) of the Finance Act which is as follows :

"85. Appeals to the Commissioner of Central Excise (Appeals). -

(3A) 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."

> 8. 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 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, he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within a period of two months.**

> 9. In the present case, admittedly, the order of the adjudicating authority was received by the appellant on 20 September, 2013 but the appeal was presented before the Commissioner on 5 February, 2016. It was clearly not presented within the period of two months nor within the extended period of one month. The Commissioner (Appeals) dismissed the appeal after placing reliance on the decision of Supreme Court in Singh Enterprises."

(emphasis supplied)

17. The Delhi High Court also examined a similar situation in **Uttam Sucrotech International (P) Ltd.** vs. **Union of India**[6] and observed as follows:

> "13. **In view of the aforesaid, there can be no scintilla of doubt that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days after expiry of initial**

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6. 2011 (264) E.L.T. 502 (Del.)

> **60 days.** In the case at hand, the admitted position is that the order passed by the adjudicating officer was received by the petitioner on 29th August, 2006. The appeal was preferred on 28th November, 2006. The Commissioner excluded the date of receipt of the order in-original by the petitioner in terms of provision contained in Section 35-O and took note of the fact that the appeal was presented on the 91st day of the period commencing after the said date of receipt, i.e., one day beyond the condonable period of 30 days and, hence, the same could not have been condoned. Similar view has been expressed by the revisional authority."
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> **(emphasis supplied)**

18. In this view of the matter, as the appeal was preferred by the appellant before the Commissioner (Appeals) even beyond the extended period of one month after the expiry of the statutory period of two months, it was liable to be dismissed and was rightly dismissed by the Commissioner (Appeals).

19. There is, therefore, no infirmity in the order passed by the Commissioner (Appeals). The appeal is, accordingly, dismissed.

(Order pronounced on **09.04.2025**)

(JUSTICE DILIP GUPTA)
PRESIDENT

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

Jyoti