CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 52302 of 2019

[Arising out of Order-in-Appeal No. 449 (CRM) ST/JDR/2019 dated 09.05.2019 passed by the Commissioner of Central Excise & Central Goods and Service Tax (Appeals), Jodhpur]

M/s. Jalam Singh Construction Company **...Appellant**
C/o Manohar Cloth Store,
Village Luna Bap Phalodi,
Jodhpur, Rajasthan - 342301

VERSUS

Commissioner of Central GST
and Central Excise, Jodhpur **...Respondent**
G-105, New Industrial Area,
Opp. Diesel Shed, Basni-Jodhpur,
Rajasthan - 342001

APPEARANCE:
Shri Rajendra Singh Bhati, Chartered Accountant for the Appellant
Shri Rajeev Kapoor, Authorized Representative for the Respondent

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 27.03.2025
DATE OF DECISION: 27.03.2025

FINAL ORDER No. 50493/2025

DR. RACHNA GUPTA

In the present case, the impugned Order-in-Appeal bearing No. 449/2019 dated 09.05.2019 has been assailed, vide which the appeal against the Order-in-Original No. 79/2016 dated 16.03.2017 has been dismissed being barred by time. The said Order-in-Original had confirmed the demand of Rs.2,75,041/- on the amount received for the period 2014-15, against the appellant who also had failed to file the ST-3 returns filed for the said period. The demand was confirmed along with the proportionate interest and the appropriate penalties.

2. The learned Chartered Accountant appearing for the appellant submitted that the appellant provided the service to Government Department and construction work related to domestic construction under the category of work contract service. These are exempted from the service tax. He also submitted that no work order is available with him. He submitted the copy of Form 26AS and requested to set aside the impugned Order-in-Appeal.

3. Learned Departmental Representative, however has pointed out that Order-in-Appeal has been passed holding the appeal against the Order-in-Original No. 79/2016 dated 16.03.2017 as barred by time. Hence, the present appeal be dismissed.

4. Having heard both the parties.

5. We observe that the appellant filed the appeal before Commissioner (Appeals) against the Order-in-Original dated 16.03.2017. While filing the same, in view of Section 84 of the Finance Act, 1994, the appeal should have been filed/presented within two months of the date of receipt of order. The Commissioner (Appeals) may allow it to be presented within a further period of one month if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal whthin the aforesaid period of two months.

6. As already observed above that the delay is substantial over and above the three months period from the date of receipt of the

Order-in-Original with the appellant. Hence, we do not find any infirmity in the order where Commissioner (Appeals) has dismissed the appeal holding it barred by time. There had occurred a delay of 9 months and 11 days whiling filing the appeal before Commissioner (Appeals). We draw our support from the decision of Hon'ble Apex Court in the case of **Singh Enterprises Vs. Commissioner of C.Ex., Jamshedpur reported as 2008 (221) E.L.T. 163 (S.C.)** vide which Hon'ble Apex Court has held as follows:

> **"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."

7. In the light of the above discussion and the decision of Hon'ble Apex Court in the case titled as **Singh Enterprise** (supra), we uphold the order under challenge. Appeal is accordingly dismissed.

[Dictated and pronounced in the open Court]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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

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