CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH –COURT NO. 4

E-HEARING

Service Tax Appeal No. 53850 of 2018

(Arising out of Order-in-Appeal No. 1037(CRM)ST/JDR/2018 dated 19.09.2018 passed by the Commissioner (Appeals), CGST and Central Excise, Jodhpur)

M/s Mahaveer Sharma **Appellant**
Badi Pol Hurda, Gulabpura,
Distt. Bhilwara (Raj.)-311022.

Versus

Commissioner, Central Goods & Service Tax & Central Excise, Udaipur **Respondent**
142-B, Sector-11, Hiran Magri,
Udaipur.

Appearance:

Present for the Appellant: None

Present for the Respondent: Shri Manoj Kumar, Authorized Representative

CORAM:

Hon'ble Dr. Rachna Gupta, Member (Judicial)
Hon'ble Ms. Hemambika R. Priya, Member (Technical)

Date of Hearing/Decision : 15/05/2025

Final Order No. 50781/2025

Dr. Rachna Gupta:

None is present for the appellant. Written request is received mentioning as follows:

> "It is requested that we do not require to be heard in person and therefore, the case may kindly be decided on merits."

2. In view of the said request from appellant, we have heard learned Authorized Representative appearing for the department. Learned Authorized Representative has mentioned that the present appeal is filed against the Order-in-Appeal No. 1037/2018 dated 19.9.2018. The Commissioner (Appeals) has rejected the said appeal before him holding the appeal to be time-barred. Learned Authorized Representative impressed upon that there has been a substantial delay of 7 to 8 months as has been observed by Commissioner (Appeals) in para 5.2 of the impugned order. While relying upon the decision of Hon'ble Supreme Court in the case of **Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur**[1], the present appeal is prayed to be dismissed.

3. Having heard learned Authorized Representative and perusing the entire record of the appeal, we observe that the Show Cause Notice No. 277/2014 dated 30.09.2014 was served upon the appellant proposing the recovery of service tax amounting to Rs. 10,92,293/- as was not paid for rendering the taxable services during the period from 1.4.2009 to 31.3.2013. Recovery of interest of imposition of penalties was also proposed. The proposal was confirmed vide order-in-original No. 12/2017-18 dated 27.04.2017. In an appeal against the said order-in-original that the impugned order has dismissed the appeal. We observe that Commissioner (Appeals) has held as follows:

> "In view of above, I hold that the appeal filed by appellant is time barred in terms of proviso to (3A) of Section 85 of the Finance Act, 1994. I, therefore, dismiss the appeal without going into merits of the case."

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1 2008 (221) ELT 163 (SC)

4. We have perused the provisions of Section 85 (3A) which reads as follows:

> "(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).
>
> (2) Every appeal shall be in the prescribed form and shall be verified in the prescribed manner.
>
> (3A) An appeal shall be presented within three 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 three months, allow it to be presented within a further period of three months.

The perusal makes it abundantly clear that the Commissioner has no statutory power to condone the delay beyond a period of 30 days over and above the period of 60 days from the date of receipt of order in original with the appellant. Apparently, the appeal before Commissioner (Appeals) was filed after a gap of 7 to 8 months. In light of these observations, we do not find any infirmity in the order under challenge. We draw our support from the decision in the case of **Singh Enterprises** (supra) as relied upon by learned Authorized Representative, the Hon'ble 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."

5. In view of the above discussion, the order under challenge is upheld. Consequently, the appeal is hereby dismissed.

(Dictated & pronounced in open Court)

(Dr. Rachna Gupta)
Member (Judicial)

(Hemambika R. Priya)
Member (Technical)

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