CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 52388 of 2018

[Arising out of Order-in-Appeal No. 338-339(SM) ST/JPR/2018 dated 11.05.2018 passed by the Commissioner of Central Excise & Central Goods and Service Tax (Appeals), Jaipur]

M/s. Rajasthan State Industrial Development & Investment Corn. Ltd. **...Appellant**
Brij Industrial Area,
Bharatpur, Rajasthan

VERSUS

Commissioner of Central Excise & CGST-Alwar **...Respondent**

APPEARANCE:
Shri B.L. Narasimhan and Shri Kunal Agarwal, Advocates for the appellant
Shri R.P. Sharma, learned Authorized Representative for the Respondent

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

DATE OF HEARING: 24.03.2026
DATE OF DECISION: 24.03.2026

FINAL ORDER NO. 50731/2026

DR. RACHNA GUPTA

Present appeal is filed to assail Order-in-Appeal (O-I-A) No. 338-339/2018 dated 11.05.2018 vide which Commissioner (Appeals) has rejected the appeal before him on the ground of limitation without going into the merits of the case.

2. Briefly stated, the facts of the case are that M/s. Rajasthan State Industrial Development & Investment Corporation (RIICO), the appellant herein, is registered with the service tax department under the category of "Maintenance & Repair and Renting of Immovable Property". It is observed that while providing taxable service of renting of immovable property, the appellant had

received an amount of Rs.8,71,77,969/- against land allotment/development charge and economic rent charge during the period from October 2014 to September 2015 alleging it to be a amount towards rendering of taxable service. The appellant was observed to not to have paid service tax for providing these taxable services. Accordingly, the appellant was served with the Show Cause Notice bearing No. 14/2016 dated 21.10.2016 proposing the demand and recovery of service tax amouting to Rs.1,14,94,866/- along with interest at the appropriate rate and the proportionate penalties. The proposal was confirmed vide Order-in-Original (O-I-O) No. 14/2016 dated 29.12.2016. The appeal against the said order has been rejected on the technical ground of limitation vide the impugned order/Order-in-Appeal dated 11.05.2018

2. We have heard Shri B.L.Narasimhan and Shri Kunal Agarwal, learned Advocates for the appellant and Shri R.P. Sharma, learned Special Counsel for the department.

3. Learned counsel for the appellant has submitted that the filing of appeal before Commissioner (Appeals) got delayed by 226 days on account of failure of Indian Postal system to deliver the Order-in-Original in time at Head Office of the appellants. With this submission, the impugned order is accordingly prayed to be set aside and the appeal is prayed to be allowed.

4. On the other hand, learned Authorized Representative for the department has reiterated the findings arrived at by Commissioner (Appeals) in the impugned order under challenge mentioning that Commissioner (Appeals) was not competent to condone the delay

beyond 30 days after expiry of 60 days i.e. normal period for preferring the appeal before him. The delay in the present case is substantial. Hence there is no infirmity in the order under challenge when on account of said delay, the appeal has been rejected as time barred.

5. Having heard both the parties and perusing the records. It is observed that substantial delay has occurred in filing the appeal before Commissioner (Appeals) against Order-in-Original dated 29.12.2016. The only explanation about said delay is attributed to the postal department due to which the Order-in-Original could be handed over to the appellant on 03.10.2017. However, we observe that there is no proof on record to support the said contention not even the affidavit of the appellant is on record nor any document from the postal department. Therefore, the reason quoted cannot be considered as sufficient cause/reasonable explanation for the substantial delay. Rather it reflects the lack of due diligence on part of the appellant and utmost negligence as the Order-in-Orginal was passed after hearing the appellant. Hon'ble High Court of Madras in the case of **S. Xavier Vs. CESTAT, Chennai reported as (2015) 316 ELT 589 (Mad.)** has held that the appellate court is not a court of remedy for lethargy and laid back attitude of the party. It has become very common in filing appeal along with an application seeking condonation of delay by stating trivial reasons. If courts are liberal in granting such relief, it will lead to multiplicity of proceedings and waste of valuable judicial time.

6. Otherwise also, the appeal before Commissioner (Appeals) are maintainable in terms of Section 85(3A) of the Finance Act

according to which an appeal can be preferred within two months from the date of receipt of Order-in-Original. The Commissioner (Appeals) can condone the delay only up to the period of 30 days from the last day of said period of 2 months. The delay in the present case is apparently far beyond than the said 30 days. Resultantly, we hold that Commissioner (Appeals) has committed no error while rejecting the appeal on grounds of limitation. We draw our support from the decision of Hon'ble Supreme 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)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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