CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH,
COURT NO. IV

SERVICE TAX APPEAL NO. 50270 OF 2021

[Arising out of the Order-in-Appeal No. 241 (CRM)/ST/JDR/2020 dated 09/07/2020 passed by The Commissioner (Appeals), Central Excise & Service Tax/CGST, Jodhpur.]

M/s Mohit Construction, **......Appellant**
Behind UIT, Subhash Nagar,
Bhilwara – 311 001.

Versus

Commissioner (Appeals), **....Respondent**
Central Excise/CGST,
G-105, New Industrial Area,
Opp. Diesel Shed, Basni,
Jodhpur.

APPEARANCE:

None for the appellant.
Shri Aejaz Ahmad, Authorized Representative for the Department

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

FINAL ORDER NO. 50805/2026

DATE OF HEARING/DECISION : 20.04.2026.

RACHNA GUPTA

The present appeal is filed to assail the Order-in-Appeal No. 241/2020 dated 09.07.2020 vide which the Commissioner (Appeals) has rejected the appeal on the grounds of limitation without going into the merits of the case.

2. Briefly stated, the appellant M/s Mohit Construction is engaged in providing Works Contract Services, however, was

observed to have not paid service tax amounting to Rs. 11,33,660/- on the value of taxable service amounting to Rs. 1,92,57,640/- provided during the period from April 2015 to June 2017. The aforesaid amount of service tax was proposed to be recovered from the appellant along with the interest at the appropriate rates and the proportionate penalties vide the show cause notice bearing No. 114/2017/176-177 dated 12.02.2018. The said proposal was confirmed initially vide the Order-in-Original bearing No. 37/2018-19 dated 30.03.2019. Appeal against the said order has been rejected on the technical grounds of limitation vide the impugned order-in-appeal dated 09.07.2020.

3. Today none had appeared for the appellant. On last date of hearing, the appellant was warned with the last opportunity. The appellant still has opted not to appear. In the order dated 04.02.2026 (the previous date order) it has also been recorded that the notice of hearing was duly served upon the appellant. Otherwise also, the present appeal has been filed by the appellant itself. The appeal was filed in the year 2021 since then till date there is no single effort on the part of the appellant to pursue the present appeal. In the given circumstances, we refrain ourselves to adjourn the appeal any further. Following the decision of Hon'ble Supreme Court in **Balaji Steel Re-Rolling Mills** versus **Commissioner of Central Excise & Customs**[1], we have heard learned Departmental Representative who has

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1. 2014 (310) E.L.T. 209 (S.C.)

impressed upon no infirmity in the order under challenge. Reiterating the findings arrived at in the impugned order, the present appeal prayed to be dismissed.

4. We have perused the grounds of appeals. It is observed and held as follows :

That most of the grounds are with respect to the merits of the appeal. With respect to delay in filing appeal before Commissioner (Appeals) it is mentioned that order-in-original dated 30.03.2019 could not be received by the appellant till 01.01.2020. Hence, the appeal filed before Commissioner (Appeals) on 27.01.2020 was within the permissible period of limitation. The observations of Commissioner (Appeals), viz-a-viz limitation, are being objected on the said sole submission.

5. We have perused the impugned order. Commissioner (Appeals) has held that there is the full compliance of Section 37C (2) of Central Excise Act viz-a-viz effecting service of order-in-original upon the appellant. It has been categorically recorded that the order-in-original was sent to the appellant through registered AD No. RR586409924IN dated 16.04.2019. The signed acknowledgement is received by the department from the postal authorities. There is no denial in the grounds of appeal about the order-in-original to initially being dispatched through registered post. The receipt with acknowledgement is due is the sufficient proof for the proper service of the said dispatched order. In view of the said observations, the date of receipt mentioned by the

appellant i.e. 01.01.2020 is not at all acceptable. It is also to be the Xerox copy of order-in-original received by the appellant from the Division Office.

6. The appeals before Commissioner (Appeals) are to be preferred within 2 months of receiving the copy of the order to be challenged, in terms of Section 85 (3A) of Finance Act, 1994. The provision reads as follows :-

> "The proviso to sub-section (3A) of Section 85, however, empowers the appellate authority to condone the delay in presentation of the appeal beyond the prescribed period of limitation of two months, within a period of one month, if he is satisfied that the appellant was prescribed by sufficient cause from presenting the appeal and the stipulated period of two months".

7. Perusal makes it clear that Commissioner (Appeals) cannot condone the delay of more than 30 days over and above the period of two months prescribed for filing the appeal before him. Hon'ble Supreme Court in **Singh Enterprises** versus **Commissioner of C. Ex., Jamshedpur**[2] 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

2. 2008 (221) E.L.T. 163 (S.C.)

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".

8. Since the delay in the present case is for beyond the said period of 30 days, we do not find any infirmity where Commissioner (Appeals) rejected the appeal on the grounds of limitation. We, therefore, uphold the said order; consequent thereto the appeal in hand is hereby dismissed.

(Order dictated and pronounced in open court.)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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

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