

West Block No.2, R.K.Puram, New Delhi

Date of hearing: 12.05.2017

Appeal No. ST/50125/2017-ST[DB]

Vs.

CCE Jaipur-I ... Respondent

Appearance:

Present Shri N.K. Jain, Advocate for the appellant

Present Shri Sanjay Jain, DR for the respondent

Coram: Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Per S.K. Mohanty:

There is a delay of 4 ½ month in filling the appeal. The reasons of delay explained by the applicant seems reasonable and in the interest of justice, the same is condoned.

2. With the consent of both the sides, the appeal is taken up for disposal today.

3. On perusal of the impugned order, we find that the Ld. Commissioner (A) has dismissed the appeal on the grounds that the same was filed after the expiry of more than 4½ months from the receipt of the adjudication order. Since Section 85 of the Finance Act, 1994 empowers the Commissioner (A) to

condone the delay of 30 days from the last date of filing the appeal, the Ld. Commissioner (A) has dismissed the appeal on the ground of limitation alone.

4. On going through the statutory provisions, we find that the Commissioner (A) is empowered to condone the delay of 1 month beyond a period of two months prescribed in Section 85 *ibid*. On conjoined reading of Section 85 and the provision contained therein, it reveals that the Commissioner (A) is not empowered to condone the delay beyond 90 days from the date of receipt of the adjudication order. In the present case, since the appeal was preferred by the applicant beyond a period of 4 ½ months from the date of receipt of the adjudication order, dismissal of appeal by Commissioner (A) in terms of the provisions of section 85 *ibid* is in conformity with the statutory provisions.

5. Therefore, we do not find any infirmity in the impugned order. Accordingly, we dismiss the appeal filed by the appellant.

[Order Dictated and Pronounced in the open court]

(V. Padmanabhan)
Member (Technical)

(S.K. Mohanty)
Member (Judicial)

Bhanu