CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

COURT-IV

Date of hearing/decision: 06.03.2018

ST/ROA/50676/2017
IN
Appeal No. ST/51199/2017- [DB]

[Arising out of the Order-in-Appeal No. 33-ST-DLH-2015 dated 28/05/2015 passed by the Commissioner of Service Tax-DELHI - I(Appeal)]

Merchant Couriers Pvt. Ltd. …Appellant

Vs.

CGST, Delhi I … Respondent

Appearance:
Present Shri Prem Prakash, 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)

FINAL ORDER No. 51089/2018

Per S.K. Mohanty

1. Heard both sides.

2. The applicant has filed this Miscellaneous Application, seeking restoration of appeal, which was dismissed by the Tribunal vide Final Order No. 55300/2017 dated 07/07/2017, on the ground of non-prosecution. The reason of non appearance on the scheduled date of hearing as explained by the appellant seems reasonable. Accordingly, in the interest of justice, we allow this application and restore the appeal to its original number.

3. Since the issue lies in the narrow compass, with the consent of both the sides, we take up this appeal for final hearing and disposing today.

4. In this case, the Ld. Commissioner (Appeals) vide the impugned order dated 28/05/2015 has dismissed the appeal of the appellant on the sole ground that the same has been filed beyond the time limit prescribed under Section 85 of the Finance Act, 1994. On perusal of the impugned order, we find that the adjudication order dated 28/02/2013 was communicated to the appellant on 08/03/2013 and thereafter, the appeal was filed before the office of the Commissioner (Appeals) on 17/04/2014. It is evident that the appeal was filed more than one year from the date of communication of the adjudication order. With regard to time limit for filing the appeal before the Commissioner (Appeals), Section 85 of the Act mandates that appeal shall be presented within three months from the date of receipt of the decision or order of the Adjudicating Authority. The proviso appended to sub-section (3) of Section 85 of the Act provides that the Commissioner (Appeals) is empowered to condone the delay of three months in entertaining the appeal. Since the appeal was filed beyond the statutory time limit, we are of the considered view, that the Commissioner (Appeals) has rightly dismissed the appeal filed by the appellant.

5. Therefore, we do not find any infirmity in the impugned order passed by the Ld. Commissioner (Appeals). Accordingly, appeal filed by the appellant is dismissed.

[Order dictated and pronounced in the open court]

(V. Padmanabhan)
Member (Technical)

(S.K.Mohanty)
Member (Judicial)

Rekha