

IN THE CUSTOMS, EXCISE & SERVICE TAX  
APPELLATE TRIBUNAL,  
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –IV

**Service Tax COD Application No.ST/COD/50450/2018 -CU [DB] in**  
**Service Tax Appeal No. ST/51219/2018-CU [DB]**

[Arising out of Order-in- Appeal No.IND/CEX/000/APP/77/2014  
DATED 08.05.2014 passed by the Commissioner (Appeals),  
CGST, Customs, Central Excise, & S.T., Bhopal]

**Rai Enterprises**

**...Appellant**

**Vs.**

**C.C. G. & C.C.E., Bhopal**

**... Respondent**

Present for the Appellant : Mr. Deepak Vajpay, CA  
Present for the Respondent: Mr.Sanjay Jain, D.R.

**Coram: HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)**  
**HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)**

**Date of Hearing/Decision: 10.08.2018**

**FINAL ORDER NO. 52855/2018**

**PER: RACHNA GUPTA**

Arguments on application for condonation of delay heard.  
Ld. Counsel for the applicant has submitted that the assessee  
M/s. Rai Enterprises was a proprietorship firm run by Shri  
Santosh Rai. The order in appeal dated 8<sup>th</sup> May, 2014 said  
Shri Santosh Rai has expired on 3<sup>rd</sup> November, 2016. The

death certificate as annexed is impressed upon. It is mentioned that the present applicant, Shri Rahul Rai, the legal heir/ S/o. Deceased Shri Santosh Rai acquired knowledge of order of appeal dated 8<sup>th</sup> May, 2014 from the by letter of the Department dated **23<sup>rd</sup> February, 2018 only**. The appeal was filed on 23<sup>rd</sup> March, 2018 i.e. within one month of acquiring knowledge by the applicant of the impugned order. Resultantly, the delay for filing the same within 3 months is prayed to be condoned.

2. Ld. DR has objected the argument with a submission that as per the order of this Tribunal dated 28<sup>th</sup> June, 2018 a letter has been sent to the Department seeking the date and proof of service of the impugned order and no reply thereof has been received but the fact remains is that the order was communicated well within time. There is no cogent reason to allow the condonation of delay. Application is prayed to be rejected.

3. After hearing both the sides and perusing the record, we are of the opinion that the order under challenge was announced on 18<sup>th</sup> May, 2014. The assessee, the Proprietor thereof passed away on 3<sup>rd</sup> November, 2016 i.e. after 2 years of the date of order under challenge. The application mentions

no reason for the delay for said 2 years except that the deceased Mr. Santosh Rai was under medical treatment. The documents attached shows that the illness was for the year 2010-11. Hence this reason is opined as not relevant for explaining the delay for the said 2 years. Further, the ground taken that the applicant who is the son of the deceased Proprietor had not received the copy of the impugned order prior to 23<sup>rd</sup> February, 2018 is also opined by us to not to be a reasonable cause, as the appellant's own annexure with the application i.e. the copy of the letter of the Department dated 23<sup>rd</sup> February, 2018 makes it clear that the letter was issued earlier also on several occasions with the repeated reminders. The absence of any action on those letters is opined sufficient to not to extend any benefit in favour of the applicant. Perusal of record also shows that an observation of the original adjudicating authority in the order dated 23<sup>rd</sup> December, 2011 highlighting the conduct of the then assessee observing that despite several communications and notices to the assessee/deceased Santosh Rai he had been non-cooperative with the Department for providing any requisite documents.

4. In view of the above observations, we are of the opinion that there is no cogent explanation for the initial delay of two years. The document of applicant himself, falsifies the ground

taken by him. Hence the benefit as prayed by the legal representatives of the deceased Proprietor, in the given circumstances, cannot be extended. The application stands dismissed.

5. Appeal is, resultantly, stands dismissed.

[Dictated and Pronounced in the open Court]

**(C.L. MAHAR)**  
**MEMBER (TECHNICAL)**

**(RACHNA GUPTA)**  
**MEMBER (JUDICIAL)**

Anita