IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI

Principal Bench, COURT NO. IV

Service Tax Appeal No. 50263 of 2016

[Arising out of the Order-in-Appeal No. 254 (AK) ST/JPR/2015 dated 23/11/2015 passed by The Commissioner (Appeals), Customs & Central Excise, Jaipur (Rajasthan).]

M/s Ramjeet Singh **Appellant**
Village Dungaringhpura,
Tehsil Sadulshahar,
Distt. Sriganganagar (Rajasthan).

Versus

Commissioner (Appeals) **Respondent**
Customs & Central Excise (Appeals)
NCR Building, Statue Circle, C-Scheme,
Jaipur – 302 005 (Rajasthan).

<u>Appearance</u>

Shri M.B. Maheshwari, C.A. – for the appellant.

Shri R.K. Majhi, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri C.L. Mahar, Member (Technical)**
Hon'ble Mrs. Rachna Gupta, Member (Judicial)

Final Order No. 50772/2019 Dated : 04/01/2019

DATE OF HEARING/DECISION : 04/01/2019.

<u>C.L. MAHAR :-</u>

The brief facts of the matter are that the appellant have filed an appeal before the Commissioner (Appeals), Jaipur against an order-in-original No. 04/ST/Demand/14 dated 01/07/2014 whereunder a service tax amount of Rs. 2,76,309/- was confirmed against the appellant, the penalty under Section 78 and Section 77 had also been imposed on the appellant. It is an admitted fact that the impugned order-in-original, as mentioned above, was received by the appellant on 07/07/2014. However, the appeal before Commissioner (Appeals) was filed on 01/10/2014 and, therefore, there was a delay of 25 days in filing the appeal. As per the provision of Section 85 (3a), an appeal is to be filed within 2 months from the date of receipt of the order of the Adjudicating Authority. The period of two months can be extended by another one month if 'sufficient cause' is shown to the Commissioner (Appeals) proving the circumstances which prevented him from filing appeal with a period of two months, the Commissioner (Appeals) has dismissed the appeal of the appellant on the ground that same was not filed within time and the appellant have failed to give convincing reasons for delay in filing the appeal before the Commissioner (Appeals). The appellant are before us against the above-mentioned impugned order-in-appeal. The learned Advocate appearing on behalf of the appellant has submitted that the Commissioner (Appeals) has failed to appreciate the fact that the father of the appellant who is aged 75 years and a disabled person and is also suffering from various diseases including paralysis. It was because of this reason that the appellant was prevented from filing appeal within time and delay of 25 days is a nominal delay, and same could have been condoned by the Commissioner (Appeals), however, the Commissioner (Appeals) after hearing has dismissed their appeal and not condoned the delay of filing appeal before Commissioner (Appeals). The learned Advocate has also submitted that on the merit also, they have strong case against the confirmation of service tax against them.

2. We have also heard the learned Departmental Representative who has supported the findings given in the order-in-appeal.

3. Having heard both the sides and on perusal of the appeal records, a short issue before us is, whether the appellant have enough grounds for condonation of delay of 25 days in filing the appeal before Commissioner (Appeals). Before proceeding further, it will appropriate to have look at the provision of Section 85 (3a) of the Finance Act, 1994. The same is reproduced here below :-

> "(3A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 receives the assent of the President, relating to service tax, interest or penalty under this Chapter :
>
> **Provided** that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month".

4. It is apparent from the perusal of the sub-Section (3a) the normal period of filing appeal before Commissioner (Appeals) is only two months. This can be extended by a further period of one month provided the Commissioner (Appeals) is satisfied that the appellant had sufficient reasons which prevented him from filing the appeal within time. We feel that the only reason given by the appellant is that "as the father of the appellant is an aged person of about 75 years and disabled and is suffering from various diseases including paralysis, as such, the appellant could not file the appeal in time". This is only reason on which the condonation sought by the appellant and same reason has been given before us while considering the appeal. We feel that the appellant have neither submitted any medical record/certificates nor he has tried to elaborate as to how the illness of father is prevented him from filing the appeal within time. We do not find any valid reason for interfering with the finding of Commissioner (Appeals) in this regard and are of the view that appellant have failed to provide any worthy reason for condonation of delay in fling the appeal, we, therefore, do not interfere with the impugned order-in-appeal and accordingly appeal is dismissed.

(Operative part of order pronounced in open court.)

(C.L. Mahar)
Member (Technical)

(Rachna Gupta)
Member (Judicial)

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