CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>NEW DELHI</u>

PRINCIPAL BENCH – COURT NO. – IV

Service Tax COD Application No. 51342 of 2018
IN
Service Tax Appeal No. 54084 of 2018

M/s. Indore Municipal Corporation …Appellant
Vs.
Commissioner of Central Excise,
Customs & Service Tax …Respondent

<u>APPEARANCE:</u>

Ms. Shohini, Advocate for the Appellant
Ms. Tamana Alam, Authorised Representative for the Respondent

Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

FINAL ORDER No. <u>50866/2019</u>

DATE OF HEARING/ DECISION : **<u>20.06.2019</u>**

RACHNA GUPTA

The appellants herein are providing taxable service of renting of immovable property service, however, no service tax registration has been obtained nor any liability in view thereof has been discharged. Resultantly, a show cause notice No. 8500 dated 13.07.2016 was served upon the appellants proposing the recovery of the amount of service tax of Rs. 37,25,997/- for the period from 01.04.2014 to March 2015 alongwith the interest at the appropriate rate and the proportionate penalties. The said proposal was confirmed vide the Order-in-Original No. 54 dated 23.03.2017. Being aggrieved, an Appeal was preferred against the said Order which has been dismissed on the grounds of limitation without giving into the merits of the case vide Order No. 180-18-19 dated

28.06.2018 Still being aggrieved, the appellant is before this Tribunal. However, the Appeal was filed on 19.11.2018, hence an Application praying for condonation, in case there is observed delay, has also been filed.

2. We have heard Ms. Shohini, learned Advocate on behalf of the appellant and Ms. Tamana Alam, learned AR on behalf of the Department.

3. It is submitted w.r.t. the condonation of delay application that the Order of Commissioner (Appeals) was announced on 28.06.2018 but it was communicated to appellant only on 09.10.2018. The impugned Appeal is impressed to be filed within two months of said receipt. Though the Department has denied the same with the mention that Order was dispatched immediately after announcement thereof but I observe that there is nothing cogent to show that the Order was received by appellant prior 09.10.2018. Hence, I hold that Appeal is well within time. COD Application stands accordingly disposed of. Now coming to the main Appeal, it is submitted on behalf of the appellant that the Order-in-Original dated 23.03.2017 was received by the appellant on 06.12.2017 vide the registered post. The Appeal in hand was filed on 07.03.2017 before Commissioner(Appeals). The Appeal is, therefore, impressed upon to be well within the period of limitation. The Order under challenge as passed by Commissioner(Appeals) holding Appeal to be barred by time is, therefore, prayed to be set aside.

4. While rebutting, it is submitted on behalf of the Department that admittedly the Appeal was not filed within two months of the

Order nor it could be filed before the expiry of another one month. Hence, there is no infirmity in the Order under challenge.

5. After hearing the parties and perusing the records of the Appeal as well as the Order under challenge it is the apparent admission of the appellant that the original Order of 23.03.2017 was received by them on 06.12.2017, i.e. the 91st day of receiving the Order-in-Original. This admission itself is sufficient to hold that the Appeal has not been filed in compliance of Section 35 of Central Excise Act, 1944 which provides period of 60 days to the appellant for an Appeal to be filed against the decision or Order passed by the original Adjudicating Authority however, the Section provides discretion to the Commissioner to allow the Appeal to be presented within a further period of 30 days if he is satisfied that the appellant was prevented by sufficient cause from presenting the Appeal within the aforesaid period of 60 days. Apparently and admittedly the present Appeal is beyond the period of 90 days. I draw my support from **Singh Enterprises Vs. Commissioner Of C. Ex., Jamshedpur 2008 (221) E.L.T. 163 (S.C.)** which impresses that Commissioner (Appeals) has no authority to condone the delay. In view thereof I find no infirmity in the Order under challenge. Accordingly, the Appeal in hand is dismissed.

[Dictated and pronounced in the open Court]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

DJ