

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL**  
**REGIONAL BENCH AT HYDERABAD**  
 Single Member Bench  
 Court - I

<b>Appeal No.</b>	<b>Appellant(s)</b>	<b>Respondent(s)</b>	<b>Order-in-Appeal No.</b>
E/30715/2018	HMT Machine Tools Ltd	CCT, Medchal - GST	HYD-CEX-004-APP-005-16-17 CE dt.29.04.2016 passed by CCCE (Appeals), Hyderabad

**Appearance**

Shri M.V.S. Sridhar, Advocate for the Appellant.

Shri Moin Anwar, Asst. Commissioner/AR for the Respondent.

**Coram:**

**HON'BLE Mr. P. Venkata Subba Rao, MEMBER (TECHNICAL)**

Date of Hearing: 17.12.2018

Date of Decision: 17.12.2018

**FINAL ORDER No. A/31607/2018**

**[Order per: P.V. Subba Rao.]**

1. This appeal has been filed against Order-in-Appeal No. HYD-CEX-004-APP-005-16-17 CE dated 29.04.2016.

2. Learned counsel for the appellant submits that this is second round of litigation in the matter, the matter having been remanded to the first appellate authority vide Final Order No.25764/2013. The facts of the case, in brief, are that the Order-in-Appeal passed by the lower authority was received by the appellant and they filed an appeal before the first appellate authority who dismissed the same as not maintainable on the ground that the appeal was filed beyond the period of limitation as well as the condonable limit. Aggrieved by such an order, the appellant preferred appeal E/26212/2013-DB before the CESTAT-Bangalore who vide Final Order No.25764/2013 remanded the same to the Commissioner (Appeals) with the following remarks:

*"Under these circumstances, we consider it appropriate that the matter should be remanded to the Commissioner (Appeals) to consider the correspondence between his office and the appellant and facts and*

*circumstances once again and see whether the appeal was filed in time or not and whether the appeal deserves to be heard on merits and thereafter pass a well reasoned order. The appellant shall be given a reasonable opportunity to present their case. The appeal is disposed of in above terms."*

3. The Commissioner (Appeals) vide the impugned order held that the Order-in-Original was received by the appellant on 08.12.2011 and from the records he deems that the appeal was filed on 06.11.2012 after considerable delay and therefore the appeal is not maintainable being time barred under Sec.35 of Central Excise Act, 1944.

4. Learned counsel for the appellant submits that they had filed appeal within time limit and sent it through a special messenger who failed to receive an acknowledgment. After receiving correspondence from the department, they have again sent a copy of the appeal to the first appellate authority which has been taken by him in the impugned order as the date of submission of the appeal. In support of his contention, he submits an affidavit filed by the General Manager of the appellant company.

5. Learned departmental representative reiterates the findings of the first appellate authority and asserts that the appeal was filed beyond the time limit and the condonable limit and hence was correctly rejected by the first appellate authority.

6. I have gone through the records of the case and considered the submissions made on both sides. The simple point to be decided is whether appeal before the Commissioner (Appeals) was filed within time or not. Learned counsel for the appellant fairly submits that there is no record to show that the appeal was, in fact, submitted within the time limit before the first appellate authority. He relies on the affidavit filed by the General Manager of the appellant firm. I have considered the assertions made in the affidavit relevant portion of which is as follows:

- "IV. *Aggrieved by the said orders, an appeal under section 35 of the Central Excise Act was prepared along with the stay petition within the stipulated time of 60 days from the date of receipt of the said order. That is, appeal in form No. EA – I and Miscellaneous petition for the waiver of predeposit of the recovery of the impugned demands were prepared finalised and signed by me as authorised signatory of the company along with our Counsel on 05.02.2012.*
- V. *I may reiterate and emphasise that to ensure the submission of appeal within the stipulated time of 60 days, I have verified and signed the appeal documents on 05.02.2012.*
- VI. *I do hereby declare that what is stated above is true to the best of information and belief."*

7. From the above, I find that even in the affidavit filed by the General Manager of the appellant firm, the only assertion is that the appeal papers were prepared and were also signed by the General Manager of the appellant within the period of 60 days specified. There is no assertion that the appeal has actually been submitted in the office of the first appellate authority within time. I also find no other evidence to show that the appeal was filed within time before the first appellate authority. In view of the above, I find no reason to doubt the finding in the impugned order that the appeal was not filed within the time limit or even within the condonable limit of 30 days. Therefore, the appeal was correctly dismissed by the first appellate authority. In view of the above, I reject the appeal filed by the appellant.

8. The appeal is rejected.

(Dictated and Pronounced in the Open Court)

(P.VENKATA SUBBA RAO)  
MEMBER (TECHNICAL)