IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

S.Tax Miscellaneous Application (COD) No.76223 of 2018
S.Tax Stay Petition No.76224 of 2018 &
S.Tax Appeal No.77371 of 2018

(Arising out of Order-in-Appeal No.193/JSR/2018 dated 11.04.2018 passed by Commr. (Appeals) of CGST & Excise, Ranchi)

M/s Guru Govinda Construction
Navjeevan Complex,
S-4/7 Baridih,
Jamshedpur-831017

Applicant (s)

VERSUS

CCEx. & S.Tax, Jamshedpur
Outer Circle Road,
Bistupur,
Jamshedpur

Respondent (s)

APPERANCE :

Shri T.Mondal, Authorized Representative for the Appellant
None for the Respondent

CORAM:

HON'BLE MR. P.K.CHOUDHARY, MEMBER (JUDICIAL)

MA/SP ORDER NO.76792-76793/2019
FINAL ORDER NO.75972/2019

DATE OF HEARING : 01.08.2019
DATE OF DECISION : 01.08.2019

PER P.K.CHOUDHARY :

None appeared on behalf of the appellant. Heard the Ld.D.R. for the Revenue.

2. The present Miscellaneous Application for condonation of delay has been filed by the appellant/applicant. On perusal of appeal papers, I find that the Order-in-Appeal dated 11.04.2018 issued on 12.04.2018, was received by the appellant on 18.04.2018 and they were required to

file appeal on or before 18.07.2018. The appeal was filed by them on 02.07.2018. Accordingly, there is no delay in filing the appeal by the appellant before the Tribunal. Hence, Registry should not have listed this Miscellaneous Application for condonation of delay.

3. In view of the above, the Miscellaneous Application (COD) is dismissed as infructuous.

4. Further, I find that the lower appellate authority has rejected the appeal on the ground of limitation and has not decided the appeal on merit. I observe that the Order-in-Original dated 17.03.2016 issued on 18.03.2016, was received by the appellant assessee on 23.03.2016 and accordingly, they were required to file the appeal by 24th May, 2016. Whereas the appeal was filed by them on 23.06.2016. I find that the appellant assessee had filed the appeal before the lower appellate authority beyond the statutory period of 60 days, but within the condonable period of 30 days. In view of the above, the delay in filing the appeal before the Commissioner (Appeals) is condoned and I set aside the impugned order and remand the matter to the Ld. Commissioner (Appeals) for deciding the issue on merits in accordance with law without visiting the aspect of time bar. Needless to mention, a reasonable opportunity of hearing be granted to the appellant to present their case. Both sides are at liberty to produce evidences in their support.

5. In the result, the Appeal filed by the appellant is allowed by way of remand. Stay Petition also gets disposed off.

(Dictated and pronounced in the open court.)

Sd/

(P. K. Choudhary)
Member (Judicial)

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