

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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No. 76200 of 2019

Arising out of Order-in-Appeal No.08/S.Tax-II/KOL/19 dated 28.01.19 passed by
Commissioner of CGST & CX (Appeal-I), Kolkata.

M/s. WPIL Limited

(180/176, Upen Banerjee Road,
Taratala, Kolkata-700060)

Appellant

VERSUS

Commr. of CGST & CX, Kolkata South Commissionerate

(180, Shantipally, Rajdanga Main Road, Kolkata-700107)

Respondent

APPEARANCE :

Shri N. K. Chowhdury, Advocate for the Appellant

Shri S. Mukopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

FINAL ORDER NO...75111/2023

Date of Hearing : 23 February 2023

Date of Decision : 23 February 2023

ORDER

When the Appeal came up for hearing, the Learned Advocate appearing on behalf of the Appellant submits that the Commissioner (Appeals) has dismissed their Appeal on account of delay in filing of their Appeal before the Commissioner (Appeals). As per the Ld. Advocate, the Appeal was filed by them with a delay of 10 days after the normal period of 60 days allowed to them. They have also filed a Miscellaneous Application before the Commissioner (Appeals) seeking Condonation of Delay duly explaining the reason for the delay of 10 days. However, the Commissioner has not considered their prayer and dismissed this Appeal on this ground itself.

2. In terms of Proviso to Section 35 (1), in case of Central Excise matters and Proviso to Section 85 (3) of the Finance Act, 1994 in respect of the Service Tax matters, the Commissioner (Appeals) has the power to condone the delay up to 30 days.

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In this case since the delay is only for about 10 days and the Appellant has explained the delay is on account of making mandatory pre-deposit, the present Appeal is allowed and stands remanded to the Commissioner (Appeals) who will follow the Principles of natural justice while dealing with this Appeal.

(Dictated and pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Pooja