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

REGIONAL BENCH – COURT NO.2

Service Tax Miscellaneous Application No. 75812 of 2019 (COD)
And
Service Tax Appeal No. 76229 of 2019

(Arising out of Order-in-Appeal No.530/RAN/2018 Dated 27.11.2018 passed by Commissioner (Appeals), Central Goods & Service Tax & Central Excise, Ranchi.)

M/s. Sai Construction
(Jainagar, Ghanghari, Hirosish, Koderma-825409)

Appellant

VERSUS

Commissioner of CGST & Central Excise, Ranchi Commissionerate
(C. R. Building, 5, Main Road, Ranchi, Jharkhand-834001)

Respondent

APPEARANCE :
None for the Appellant
Mr. S. S. Chattopadhyay, Authorized Representative for the Respondent

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

MISCELLANEOUS ORDER NO.75311/2023
FINAL ORDER NO.76090/2023

Date of Hearing : 13 July 2023
Date of Decision : 13 July 2023

PER R. MURALIDHAR

No one has appeared on behalf of the Appellant. Since the matter is within a short compass, I have taken up the COD Application as well as the Appeal itself for disposal with the consent of Learned AR.

2. The Appellant has filed this Appeal with the delay of 67 days. The Appellant is based at Ranchi and this Appeal was to be filed at Kolkata. He submits in the Miscellaneous Application that initially they prepared the appeal Papers in A4 size and approached the Tribunal Registry for filing the Appeal. They were informed that the Appeal is required to be filed only in legal size paper. Therefore, they had to go back to Ranchi and prepare the Appeal Papers afresh and get them signed and again come back to file the Appeal. This has resulted in a delay of about 67 days.

3. Being satisfied with the explanation given by the Appellant, I condone the delay and allow the Miscellaneous Application.

4. The Learned AR submits that in this case, the Commissioner (Appeals) has dismissed the Appeal filed by the Appellant on the sole ground that the Appeal was filed with a delay of 24 days.

5. On going through the OIA, it is seen that the Commissioner (Appeals) has noted that the Appellant has filed the Appeal along with their prayer for Condoning the Delay. Admittedly, the delay is only for 24 days. However, he has gone ahead and dismissed the Appeal holding that sufficient cause was not shown by the Appellant to condone the delay. As per the Proviso of Section 85 (3A) of the Finance Act, 1994, the Commissioner has the power to condone the delay upto 30 days. It has been held in catena of decisions by the Tribunal, High Court and Supreme Court that no Appellant would willfully delay the filing of Appeal and therefore, the request for condoning should be considered liberally and should be granted unless any adverse fact is found.

6. In this case, I find the very fact that the Appellant has filed the Appeal along with Condonation request, shows that due to some difficulty the delay has occurred. Since the delay was only for 24 days, I condone the delay which has taken place while filing the Appeal before the Commissioner (Appeals). The Commissioner (Appeals) is directed to take up the Appeal for disposal and complete the proceedings within 4 months from the date of receipt of communication of this Order.

7. The Miscellaneous Application and Appeal are disposed of thus.

(Dictated and pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Pooja