IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.1

Service Tax Appeal No.79097 of 2018

(Arising out of Order-in-Appeal No.35/DIB/CE(A)/GHY/2018 dated 10.08.2018 passed by Commissioner(Appeals), Central GST, Central Excise & Customs, Guwahati.)

M/s. SRD Nutrients Private Limited
(Industrial Area, Mangaldoi, District-Darrang, Assam-784125.)

...Appellant

VERSUS

Commissioner of CGST & CX, Dibrugarh Commissionerate

.....Respondent

(Milan Nagar, F Lane, P.O. C.R. Building, Dibrugarh-786003, Assam.)

APPEARANCE

Shri B.L.Narasimhan & Ms. Udita Saraf, both Advocates for the Appellant (s)
Shri Mihir Ranjan, Special Counsel for the Revenue

CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

FINAL ORDER NO. 77245/2023

DATE OF HEARING : 26 September 2023
DATE OF DECISION : 26 September 2023

Per : ASHOK JINDAL :

The appellant is in appeal against the impugned order, wherein the Ld.Commissioner(Appeals) dismissed their appeal as time barred.

2. The facts of the case are that the order of adjudication dated 07.11.2017 was received by the appellant on 10.02.2018 and against the said order, the appellant filed appeal before the Ld.Commissioner(Appeals) on 16.04.2018 along with an application for condonation of delay of 5/6 days. The Ld.Commissioner(Appeals) dismissed their appeal as time barred, as he was not convinced with

the reasons for causing delay before the ld.Commissioner(Appeals). Against the said order, the appellant is before us.

3. Heard the parties, considered the submissions.

4. The facts are not in dispute that the appellant received the order of adjudication on 10.02.2018 and the appeal has been filed against the said order on 16.04.2018 before the Ld.Commissioner(Appeals).

5. In terms of section 85(3A) of the Finance Act, 1994, the appellant is required to file appeal within 60(sixty) days of the communication of the order and the said period can be condoned by another 30(thirty) days, being the reasons for causing delay has been explained satisfactorily to the Ld.Commissioner(Appeals).

6. Admittedly the appeal was filed by the appellant beyond a period of 60(sixty) days, but within the condonable period. But the Ld.Commissioner(Appeals) has held that the reasons for causing delay are not up to his satisfaction, therefore, the appeal was dismissed. The appellant in their application for condonation of delay, stated that the person who had received the adjudication order and was assigned the responsibility to file the appeal was on leave for around two weeks on the occasion of his marriage. Since, the concerned person remained out of office for a long time and was fully occupied with his personal ventures he could not keep track of his pending assignment and other works that got piled up during his leave which resulted delay in filing the appeal. The Ld.Commssioner(Appeals) held that the said reasons stated by the appellant are not up to his satisfaction, which shows that the adamant attitude of the Ld.Commissioner(Appeals) while entertaining the application for condonation of delay in filing the appeal by the appellant. The discretion given under section 85(3A) of the Finance Act, 1994 is to be exercised judiciously. Admittedly the Ld.Commissiner(Appeals) has not applied his mind judiciously in condoning the delay in filing the appeal before him by the appellant.

7. In that circumstances, we do not find any merit in the impugned order dismissing the appeal as time barred. Therefore, we set aside the

impugned order and condone the delay in filing the appeal before the Ld.Commissioner(Appeals).

8. Further, we find that the Ld.Commissioner(Appeals) although heard the matter on merits, but have not given any findings on the merits, therefore, we remand the matter back to the Ld.Commissioner(Appeals) to decide the issue on merits after following the judicial pronouncements on this subject.

Appeal is disposed of by way of remand.

(Operative part of the order was pronounced in the open Court.)

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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