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

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.76816 of 2018

(Arising out of Order-in-Appeal No.106-107/RAN/2018 dated 07.03.2018 passed by Commissioner(Appeals), Goods & Service Tax & Central Excise, Ranchi.)

M/s. R.N.Pandey
(At Purnadih, P.O. Jorapokhar, P.S. Jorapokhar, Distt-Dhanbad-828110, Jharkhand.)

...Appellant

VERSUS

Commissioner of CGST & CX, Ranchi Commissionerate

.....Respondent

(C.R.Building, 5A, Main Road, Ranchi, Jharkhand.)

<u>APPEARANCE</u>

NONE for the Appellant (s)
Shri P.K.Ghosh, Authorized Representative for the Revenue

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

<u>FINAL ORDER NO. 75907/2024</u>

DATE OF HEARING : 02.05.2024
DATE OF DECISION : 02.05.2024

R. MURALIDHAR :

None has appeared in spite of Notice. Several adjournments have been granted in the past. In the interest of justice, the Appeal itself has been taken up for disposal with the help of the Ld.AR for the Department.

2. On going through the Order-in-Appeal, I find that the Ld.Commissioner(Appeals) has dismissed the Appeal filed by the Appellant on the ground of delayed filing of the appeal. His findings are as under:-

"9. While filing of appeal 24.05.2017, the appellant assessee has failed to substantiate his claim that the impugned order-in-original was

received on 16.03.2017, as discussed under Para 6(a), above. Therefore, keeping in view of the fact that the appeal has been filed after more than four months from the date of issuance of the order-in-original, I conclude that the instant appeal has been filed even after lapse of extended time limit of one month and so the same is barred by limitation by virtue of section 85(3A) of the said Act. I also observe the issue of condonation of delay has been settled by the Hon'ble Supreme Court in the matter of Singh Enterprises Versus Commissioner of Central Excise, Jamshedpur reported in [2008 (221) E.L.T. 163 (S.C.)] wherein the Hon'ble Apex Court has held as under:-

- *Appeal to Commissioner (Appeals) – Limitation – Condonation of delay – Appeal filed after 21 months from date of service of order dismissed by Commr. (Appeals) – Writ petition filed against impugned order dismissed by High Court – Appeal to be filed within 60 days from date of communication of order – delay condonation upto further period of 30 days on sufficient cause being shown - Appellate authority having no power to allow appeal presented beyond the said 30 days – Impugned orders sustainable – Section 35 of Central Excise Act, 1944 [paras 2,3,8].*
- *Appeal to Commissoiner(Appeals) – Limitation – Appeal to be filed within 60 days from the date of communication of order – Commissioner(Appeals)empowered to condone delay of further period of 30 days only – Section 5 of Limitation Act ,1963 not applicable – Section 35 of Central Excise Act, 1944. – The proviso to sub-section (1) of Section 35 ibid makes the positon crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. [para 8].*
- *Appeal – Limitation – Power of High Court/Supreme Court to condone delay – Supreme Court decision in 1998 (101) E.L.T. 9 (S.C.) on condonation of delay in filing appeal – <u>No law declared in the impugned decision to the effect that Supreme Court can</u>*

<u>direct condonation evne when the statute prescribed particular period of limitation – Such stand would render specific provision providing for limitation rather otiose</u> – Section 35 of Central Excise Act, 1944. [para 10]

Therefore, in view of the facts, statutory provisions and judgment of the Hon'ble Supreme Court discussed above, I hold that the instant appeal is barred by limitation and so the same is not maintainable."

3. He has also held that the Appellant has not made the pre-deposit of 7.5% of the litigated amount. His findings are extracted below:-

"11. Next, I also find that the instant appeal is intended for setting aside the impugned order-in-original. Therefore, the appellant assessee has been liable for pre-deposit 7.5% of the amount of the service tax confirmed. I observe that in the ST-4 Form meant for filing appeal, under Entry No.7 as to 'whether service tax or penalty or interest or all the three have been deposited', it has been mentioned – "No Separate Application for dispensation of pre-deposit of service tax demanded and penalty imposed and stay operation of impugned order in original is being filed under Section 35F of the Central Excise Act, 1944 as applicable for service tax matter with appeal". However, in the appeal memorandum, no such application has been found enclosed. I also find that the impugned order-in-original do not mention about appropriation /adjustment of any amount against the liability of service tax. With such findings, I conclude that in this case, neither the appellant assessee has made any payment towards their liability during the stage of investigation or adjudication nor the requisite pre-deposit has been made at the time of filing of the instant appeal."

4. I find from the records that the Appellant has enclosed Challan for Rs.10,93,583/- which was considered by this Bench on 04.03.2019. The Bench vide their order dated 04.03.2019 held that it was not in a position to make out as to whether this amount pertains to the present Appeal only or not.

5. Taking into account that the Appeal was not decided on merits by the Commissioner(Appeals) and the same was dismissed both on account of non-fulfillment of pre-deposit condition as well as delay in

filing of the appeal, I remand the matter to the Commissioner(Appeals) with the following directions :-

(a) The Appellant is given an opportunity to bring in proper evidence towards date of communication of Order-in-Original.

(b) He should also give the details of the pre-deposit made by them towards 7.5% of the litigated amount before the Commissioner(Appeals).

6. After receiving these details, the Commissioner(Appeals) will give proper opportunity for personal hearing and follow principles of natural justice and decide the issue.

(Dictated and pronounced in the open Court.)

Sd/

(R. MURALIDHAR)

MEMBER (JUDICIAL)

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