IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I

APPEAL No. ST/85237/2015

(Arising out of Order-in-Appeal No. PUN-EXCUS-002-APP-056/14-15 dated 8.10.2014 passed by Commissioner of Central Excise (Appeals), Pune-II)

Shree Samarth Teleservices **Appellant**

Vs.

Commissioner of Central Excise, Kolhapur **Respondent**

Appearance:

None for appellant
Shri V.R. Reddy, Assistant Commissioner (AR), for respondent

CORAM:

Hon'ble Mr. Ramesh Nair, Member (Judicial)
Hon'ble Mr. Raju, Member (Technical)

Date of Hearing: 21.3.2018
Date of Decision: 5.6.2018

ORDER No. **A/86653/2018**

Per: Ramesh Nair

The present appeal has been filed against the Order-In-Appeal dated 08.10.2014 passed by Commissioner (Appeals) Central Excise, Pune-II. Brief facts of the case are that the Appellant was issued SCN dated 26.03 2012 on the ground that they have provided the services of sale of SIM Cards and making new subscribers to M/s Tata Teleservices (Maharastra) Ltd.(TTML) under the taxable category of

Business Auxiliary Services (BAS). That while raising the bills for commission from M/s TTML the appellant has charged service tax and also received the said service tax amount from M/s TTML but did not pay the same to the Govt. The said facts came to the knowledge of the revenue by making inquiry from M/s. TTML. The SCN therefore proposed demand of service tax of Rs. 3,34,257/-for the period 2006-07 to 2010-11 along with interest and also proposing imposition of penalty under Sections 76, 77 and 78 of FA, 1994. The Appellant neither filed reply to the SCN nor attended the Personal hearing. The adjudicating authority thereafter confirmed the demand and also imposed penalty. The appellant filed appeal before Commissioner (Appeals) against the said order. The Commissioner (Appeals) found that from the copy of acknowledgement of the receipt of the Order-in-Original furnished by the revenue that said OIO was received by the Appellant on 03.04.2013 whereas the appeal was filed on 22.07.2013. He held that the appeal was required to be filed within 2 months of the receipt of the OIO i.e. by 02.06.2013 or within a further extended period of one month i.e. by 02.07.2013. However, the appeal filed on 22.07.2013 is beyond the condonation power of Commissioner (Appeals). Hence he rejected the appeal on grounds of limitation. Aggrieved, the appellant has filed present appeal.

2. None appeared for the Appellant.

3. Shri V. R. Reddy Ld. AC (AR) appearing for revenue submits that since the appeal filed by the Appellant before the Commissioner (Appeals) was not maintainable on the point of limitation hence the impugned order has been correctly passed. He further submits that the service tax amount was recovered by the appellant from M/s. TTML. Therefore the Appellant has no case on merits also.

4. Heard the revenue and perused the records. We find that the Commissioner (Appeals) has rightly passed the impugned order by rejecting appeal of the Appellant on point of limitation. We do not find any infirmity in the impugned order as the Commissioner (Appeals) could not have condoned the delay being out of his power. Resultantly, we upheld the impugned order and reject the appeal filed by Appellant.

(Pronounced in court on 5.6.2018)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

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