IN THE CUSTOMS, EXCISE AND SERVECE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI
COURT NO. II

APPLICATION NO. ST/COD/85837, 85838 & 85994/2018
IN APPEAL NO. ST/87385, 87386 & 87585/2018

(Arising out of order-in-appeal nos. KLH-EXCUS-OOO-APP-133 to 135-2016-17 dated 4th January 2017, KLH-EXCUS-OOO-APP-137 to 142-2016-17 dated 5th January 2017 and KLH-EXCUS-OOO-APP-131 to 135-2016-17 dated 4th January 2017 passed by the Commissioner of Central Excise & Service Tax (Appeals-II), Kolhapur.)

M/s Agricultural Produce Market Committee Appellant

Vs.

CCT, Pune-II Respondent
CCGST, Kolhapur

Appearance:

Shri Amit Sheovde, Cost Accountant for Appellant
Shri O M Shivalikar, Assistant Commissioner (AR) for Respondent

CORAM:

HON'BLE SHRI C J MATHEW, MEMBER (TECHNICAL)
HON'BLE SHRI AJAY SHARMA, MEMBER (JUDICIAL)

Date of Hearing: 11.09.2018
Date of Decision: 11.09.2018

ORDER NO. A/87423-87425/2018

Per: CORAM

Application seeks condonation of delay of 431 days in filing of appeal no. ST/87385/2018 against order-in-appeal no. KLH-EXCUS-OOO-APP-133 to 135-2016-17 dated 4th January 2017 of Commissioner of Central Excise & Service Tax (Appeals-II), Kolhapur which disposed off challenge to order-in-original no. 22/ST/JC/KOP/2015-16 dated 27th July 2015 along with two other disputes. The impugned order did not go into merit as appellate remedy had been sought without complying with the condition of pre-deposit stipulated in Central Excise Act, 1944 and as the appeal was, admittedly, filed after even the condonable period of thirty days beyond the normal period.

2. The second application seeks condonation of delay of 431 days in filing of appeal no. ST/87386/2018 against order-in-appeal no. KLH-EXCUS-OOO-APP-137 to 142-2016-17 dated 5th January 2017 of Commissioner of Central Excise & Service Tax (Appeals-II), Kolhapur which dismissed appeal against order-in-original no. Satara/STC/03/ADJ/2016-17 dated 8th July 2016 along with five other appeals for failure to comply with condition of pre-deposit prescribed in Central Excise Act, 1944, and as the appeal had not been filed within the normally stipulated period of 60 days from date of receipt of order. Learned Cost Accountant appearing for applicant submits that the delay of 86 days was well within the power of condoning vested in the first appellate authority.

3. The third application seeks condonation of delay of 431 days in filing of appeal no. ST/87585/2018 against order-in-appeal no. KLH-EXCUS-OOO-APP-131 to 135-2016-17 dated 4th January 2017 of Commissioner of Central Excise & Service Tax (Appeals-II), Kolhapur which dismissed challenge to order-in-original no. 21/ST/JC/KOP/2015-16 dated 27th July 2015 along with two other appeals for not having complied with the condition of pre-deposit prescribed in Central Excise Act, 1944 and for having been filed beyond the normal period of 60 days prescribed for filing of appeals before first appellate authority. Learned Cost Accountant submits that delay of 87 days was within the power of condonation vested in the first appellate authority.

4. It is not in dispute any longer that condition of pre-deposit for second stage of appeal has been complied with. Learned Cost Accountant for the applicant submits that they were hindered from seeking intervention of the Tribunal as their consultant to whom the work was entrusted did not go beyond giving assurances. He pleaded that an entity such as the appellant should not be denied access to justice.

5. Heard Learned Authorised Representative. Considering the submissions and the nature of work undertaken by appellant, we find sufficient ground for condonation. All the applications for condonation of delay are accordingly, allowed.

6. On perusal of the records, it is seen that the other ground invoked by the first appellate authority was of delay beyond the normal period that, in some of the appeals, could have been condoned on sufficient cause. As we have condoned the delay in filing of these appeals, there is no reason for the first appellate authority to demur from doing so to the extent of discretion vested in him. Accordingly, we dismiss appeal no. ST/87385/2018 as delay was beyond that condonable in exercise of statutory powers. The delay in filing appeals leading to impugned order challenged in appeals no. ST/87386/2018 and ST/87585/2018, being within the condonable powers, we direct the first appellate authority to condone the delay, and on considering of the submission in fresh hearing, to dispose of the appeals on merit. All three applications are disposed of accordingly.

(Dictated & pronounced in open Court)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

Prasad