IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

Application No. ST/COD-86772/2018
Appeal No. ST/89454/2018

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-1066/2017-19 dated 12.02.2018 passed by Commissioner of Central Excise & Service Tax (Appeals I), Pune)

Satara Nagar Parishad **Appellant**

Vs.

Commissioner of CGST **Respondent**
Kolhapur

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Application No. ST/COD- 86771/2018
Appeal No. ST/89456/2018

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-1065/2017-18 dated 12.02.2018 passed by Commissioner of Central Excise & Service Tax (Appeals I), Pune)

Satara Nagar Parishad **Appellant**

Vs.

Commissioner of CGST **Respondent**
Kolhapur

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Application No. ST/COD- 86787/2018
Appeal No. ST/89465/2018

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-821/2017-18 dated 06.02.2018 passed by Commissioner of Central Excise & Service Tax (Appeals I), Pune)

Satara Nagar Parishad **Appellant**

Vs.

Commissioner of CGST **Respondent**
Kolhapur

Appearance:

Shri Saurabh P. Rairikar, C.A. for appellant
Shri O.M. Shivdikar, Asst. Commr (AR) for respondent

Shri Dilip Shinde, Asst. Commr (AR)

CORAM:

Hon'ble Mr. S.K.Mohanty, Member (Judicial)
Hon'ble Mr. Sanjiv Srivastava, Member (Technical)

Date of Hearing/Decision: 05.02.2019

FINAL ORDER NO. **A/85458-85460 / 2019**

Per: S.K.Mohanty

Heard both sides and perused the records.

2. The appellant has filed the appeals being numbers ST/89454/2018 and ST/89465/2018 against the impugned orders dated 12.02.2018 passed by the Commissioner (Appeals), wherein the appeals filed by the appellant were dismissed on the ground that the appeals were filed before him beyond the period of 90 days from the date of receipt of the adjudication orders. The appellant has filed another appeal being No. ST/89456/2018 on the ground that certain charges / expenses incurred by the appellant should not be considered as part of taxable service. These three appeals were filed by the appellant before this Tribunal after statutory time limit provided in the Finance Act, 1994. The delay ranges between the period from 123 to 129 days. The reason of delay explained by the appellant seems reasonable and accordingly, the delay in filing the appeals before the Tribunal is condoned.

3. So far as the appeal Nos. ST/89454/2018 and ST/89465/2018 are concerned, we find that the learned Commissioner (Appeals) has dismissed the appeals on the ground that the appeals were filed before him beyond 90 days from the date of receipt of the adjudication order and as per Section 85 of the Finance Act, 1994 he is not empowered to condone such delay. In this contest, we find that the Hon'ble Supreme Court in the case of *Singh Enterprises vs. Commissioner of Central Excise, Jamshedpur – 2008 (221) ELT 163 (SC)* have held that the statutory time limit for filing appeal provided under the statute should be strictly adhered to. In view of the admitted fact that these two appeals were filed beyond the period of 90 days from the date of receipt of the adjudication order, we do not find any justifiable reason to interfere with the impugned order passed by the Commissioner (Appeals) in dismissing the appeals on the ground of limitation. Accordingly, these two appeals filed by the appellant are dismissed.

4. So far as the appeal No. ST/89456/2018 is concerned, we find that vide the impugned order dated 06.12.2017, learned Commissioner (Appeals) while disposing the appeal filed by the Revenue has held that the adjudicating authority had incorrectly considered the taxable value of Jaga Bhade / land rent as Rs.21,85,223/-, instead of the correct figure of Rs.2,41,85,223/- and accordingly, confirmed the service tax demand of

Rs.22,11,604/- along with interest and imposed penalties on the appellant. On a query from the Bench as to whether the figure of Rs.2.41 crores arrived at in the impugned order is correct or not, the learned Consultant appearing for Revenue submits that the said figure has correctly been considered by the learned Commissioner (Appeals). However, he contended that certain cost / charges incurred by the appellant should not be considered as part of taxable service on renting of immovable property. We find that such plea made by the appellant in the appeal filed before the Tribunal was not a subject matter of dispute before the Commissioner (Appeals). Thus, we cannot address the issue raised by the appellant for the first time before this Tribunal, which was not the dispute before the lower authorities. Therefore, we do not find any justifiable reason to entertain the prayer made by the appellant for allowing its appeal in respect of the appeal No ST/89456/2018. Accordingly, the said appeal filed by the appellant is also dismissed.

5. In the result, all the three appeals filed by the appellant are dismissed.

(Order dictated in Court)

(Sanjiv Srivastava)
Member (Technical)

(S.K.Mohanty)
Member (Judicial)

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