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

REGIONAL BENCH - COURT NO. 02

Service Tax Misc. Application No. 86873 of 2018
(on behalf of Appellant)
in
Service Tax Appeal No. 86635 of 2018

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-1004-2017-18 dated 11.01.2018 passed by Commissioner of Central Tax (Appeals-I), Pune)

M/s Alan Associates .....**Appellant**
Alan Associated (Prop. Alan Doulton), 373 Clover Water Gardens, Kalyani Nagar, Pune-411006

VERSUS

Commissioner of Central Excise & Service Tax, Pune-I .....**Respondent**
Commissioner Central Tax Commissionerate, Pune-I, GST Bhawan, 41/A, Sassoon Road, Opposite Wadia College, Pune-411001

Appearance:

Shri Suresh Singh, C.A. for the Appellant
Shri Bidhan Chandra, Authorized Representative for the Respondent

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

FINAL ORDER NO. A/86502 / 2019

Date of Hearing: 30.04.2019
Date of Decision: 30.04.2019

Per: S.K. MOHANTY

Heard both sides and perused the records.

2. The applicant has filed this miscellaneous application, seeking for consideration of new facts/additional grounds, which were not urged in the appeal filed before the office of the Commissioner (Appeals). The additional grounds raised at this

juncture through this miscellaneous application are considered for deciding the appeal. In the result, the miscellaneous application filed by the applicant is allowed. Since the issue involved in the present case lies in a narrow compass, with the consent of both sides, the appeal is taken up for hearing and disposal today.

3. In this case, the Learned Commissioner (Appeals) vide the impugned order dated 11.01.2018, has rejected the appeal filed by the appellant on the ground of limitation, holding that the adjudication order was received by the appellant on 07.04.2017 and thereafter, the appeal was filed on 03.08.2017, which was beyond the permissible time limit prescribed under Section 85(3A) of the Finance Act, 1994.

4. Filing of appeal before the Commissioner (Appeals) is governed under Section 85 *ibid*. Sub-section (3A) contained therein mandates that an appeal shall be presented within two months from the date of receipt of the decision or order of the adjudicating authority. The *proviso* clause appended to such sub-section provides the discretion to the appellate Commissioner for condoning the delay up to a period of one month, on the condition that the appellant has to show sufficient cause for not presenting the appeal within the permissible time frame of two months. On reading of the said statutory provision, it transpires that the Commissioner (Appeals) cannot entertain the appeal, if

the same is filed beyond the period of three months. It is an admitted fact on record that the appellant had filed the appeal ahead of the prescribed time limit prescribed under the statute. Thus, we are of the considered view that the Commissioner (Appeals) being a creature under the statute, has correctly rejected the appeal on the ground of limitation.

5. Therefore, we do not find any infirmity in the impugned order passed by the learned Commissioner (Appeals). Accordingly, appeal filed by the appellant is dismissed.

(Dictated and pronounced in the open court)

(S.K.Mohanty)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

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