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

REGIONAL BENCH - COURT NO. 01

Excise Appeal No. 85945 of 2019

(Arising out of Order-in-Appeal No. NSK/EXCUS/000/APPL/542/18-19 dated 29.11.2018 passed by Commissioner of CGST & Central Excise (Appeals), Nashik)

M/s. Varroc Engineering Pvt. Ltd. .....**Appellant**
L-4, MIDC, Waluj,
Aurangabad (Maharashtra)

VERSUS

Commissioner of Central Excise .....**Respondent**
and Service Tax, Aurangabad
N-5, Tow Centre, CIDCO,
Aurangabad, Maharashtra-431030

Appearance:

Shri Manish Nim, Company Representative for the Appellant
Shri Sanjay Hasija, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

FINAL ORDER NO. A/87327/2021

Date of Hearing: 20.12.2021
Date of Decision: 20.12.2021

PER : S.K. MOHANTY

Heard both sides and perused the records.

2. Dismissal of appeal by the learned Commissioner (Appeals) on the ground of limitation prescribed under Section 35A of the Central Excise Act, 1944 is the subject matter of dispute before this Tribunal.

3. On careful examination of the case records, I find that the original order dated 18.01.2018 passed by the adjudicating authority was received by the appellant on 24.03.2018 and thereafter, the appeal was

filed by them before the Commissioner (Appeals) on 25.06.2018. Insofar as filing of appeal before the Commissioner (Appeals) is concerned, sub-section (1) of Section 35 *ibid* mandates that appeal shall be preferred within sixty days from the date of communication of the decision or order of the adjudicating authority. The *proviso* clause appended to the said section empowers the Commissioner (Appeals) to condone the delay for a further period of thirty days, if the appellant shows sufficient cause for delayed filing of the appeal. On a conjoint reading of sub-section (1) of the Section 35 *ibid* and the first *proviso* appended thereto, it transpires that the Commissioner (Appeals) has no power to condone the delay, in filing of appeal, if the same has been filed beyond the overall time limit of ninety days from the date of receipt of the adjudication order. In this case, it is an undisputed fact on record that the adjudication order was communicated to the appellant on 25.01.2018 and thus, the appeal ought to have been filed before the office of the Commissioner (Appeals) on 24.03.2018. However, the subject appeal was filed by the appellant on 25.06.2018, which is beyond the condonable period prescribed in the statute. Since the office of the Commissioner (Appeals) is created under the statute, the appeal provisions contained therein, including the limitation aspect, are strictly required to be followed and no discretion has been vested on him to relax any of the conditions itemized in the statute. In this case, since the appeal was preferred by the appellant beyond the prescribed statutory limit, in my considered view, rejection of appeal by Commissioner (Appeals) on the ground of limitation is legal/proper and accordingly, cannot be interfered at this juncture for taking a contrary view. With regard to strict adherence of the time limit for filing of appeal before the Commissioner (Appeals), the Hon'ble Supreme Court in the case of Singh Enterprises Vs. Commissioner of C.EX., Jamshedpur reported in 2008 (221) E.L.T. 163 (S.C.) has held that Commissioner (Appeals) is not empowered to condone the delay of beyond thirty days, from expiry of two months for entertaining the appeal. The relevant paragraph in the said judgment is extracted herein below:

> *"**8.** The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of Statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the Statute. The period upto which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Indian Limitation Act, 1963 (in short the 'Limitation Act') can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position 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. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period."*

4. In view of the foregoing discussions, I do not find any infirmity in the impugned order passed by the learned Commissioner (Appeals). Therefore, appeal filed by the appellant is dismissed.

(Dictated and pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

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