CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH
Single Member Bench

Service Tax Appeal No. 88013 of 2019

(Arising out of Order-in-Appeal No. NGP/EXCUS/000/APPL/433/18-19 dated 21.01.2019 passed by the Commissioner of GST & Central Excise (Appeals), Nagpur)

M/s. R.S. Crane **Appellant**
Kh. No. 68/1, 164/4,
Near Pardi Naka,
Bhandara Road,
Nagpur 440 008.

Vs.

Commissioner of Central Excise & ST, Nagpur **Respondent**
P.O. Box 81, Telankhedi Road,
Civil Lines, Nagpur 440 001.

Appearance:

None for the Appellant
Shri Vinod Kumar, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

Date of Hearing: 05.12.2022
Date of Decision: 05.12.2022

FINAL ORDER NO. A/86150/2022

This appeal is directed against Order-in-Appeal No. NGP/EXCUS/000/APPL/433/18-19 dated 21.01.2019 of the Commissioner of GST & Central Excise (Appeals), Nagpur, holding as follows:-

"ORDER

"I reject the appeal filed by appellant, being time-barred, without going into the merits of the case. Consequently the impugned Order-in- Original No. 29/ST/JC/NGP-II/2017 dated 09.01.2018 passed by the Joint Commissioner, GST & Central Excise, Commissionerate, Nagpur-II, Nagpur is upheld."

2.1 Commissioner (Appeals) has while dismissing the appeal observed as follows:-

"11. As per the provisions of Section 85 of the Finance Act, 1994 the prescribed time limit for filing appeal before the Commissioner (Appeals) is two months and if sufficient reasons for not filing the appeal within prescribed time limit is shown, the Commissioner (Appeals) may allow it to be presented within a period of further one month.

12. Thus as per the provisions of Section 85 ibid, the Commissioner (Appeals) may allow the appeal to be presented within a further period of one month if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months. The time limit for filing the appeal in Service Tax matters is governed in terms of provisions of Section 85(3A) of the Finance Act, 1994 (as amended) and the same is reproduced below:-

"SECTION 85.-[(1) Any person aggrieved by any decision or order passed by an adjudicating authority subordinate to the Commissioner of Central Excise may appeal to the Commissioner of Central Excise (Appeals).]

(2) Every appeal shall be in the prescribed form and shall be verified in the prescribed manner.

[(3A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 receives the assent of the President, relating to service tax, interest or penalty under this Chapter

Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.]"

13. The issue of condonation of delay has gone through judicial scrutiny in number of cases and it was held that the Commissioner of Central Excise (Appeals) has no power to *condone the delay beyond the powers conferred mandate by law as held in the following cases.*

a. Maruthi Industrial Carbohydrates Ltd Vs. Commissioner of Customs, Chennai 2001 (136) E.L.T. 1331 (Tri-Chennai)

Appeal-Limitation - Condonation of delay period fixed by statute cannot be enlarged beyond three months from date of expiry of three months from date of receipt of order - Sections 128 and 129A of Customs Act 1962. [para 4]

b. Delta Impex Vs. Commissioner of Customs (ACU), New Delhi 2004 (173) E.L.T. 449 (Del).

Appeal to Commissioner (Appeals) - Limitation - Delay in filing appeal beyond 90 days - Condonation of - Applicability of Section 5 of Limitation Act, 1963 specifically excluded under Section 128 of Customs Act, 1962- Extension of time for a period of 30 days only can be condoned subject to satisfaction and not beyond that Tribunal committed no error in dismissing appeal without considering merits of case. - On examination of the relevant provisions, if it becomes clear that the provisions of Section 5 of the Limitation Act are necessarily excluded, then the said provisions cannot be called in aid to supplement the provisions of the Act. It is open to the Court to examine whether and to what extent the nature of the provisions contained in Limitation Act in comparison with the scheme of the special law are excluded from operation. When Section 128 of the Customs Act specifically provides the period of limitation and a further period of 30 days only during which the applicant was prevented by sufficient cause from presenting an appeal can be condoned, meaning thereby that the legislature has given a mandate that delay could be condoned only for the specified period, prescribed in the proviso to Section 128 of the Act, and not further. In the instant case, a separate period of limitation is provided, as also the period for which delay can be condoned. The Legislature was aware about the provisions contained in Section 5 of the Limitation Act, yet with an intention to curb the delay in taxation matters, it has specially provided that after the statutory period, if there is delay of 30 days, on showing sufficient grounds for *delay of 30 days, that can be and no further. Thus, applicability of Section 5 of the Limitation Act is specifically excluded. (paras 13, 14, 16, 19)*

Appeal - Limitation Delay in filing Condonation of When maximum time-limit is specified or a condonable period is prescribed, then only delay within specified time or condonable period can be condoned, and no further Section 128 of Customs Act, 1962. [para 25]

Appeal to Commissioner (Appeals) Limitation Appellate authority has no jurisdiction to extend limitation even in a "suitable" case for a further period of more than thirty days. Section 128 of Customs Act, 1962. [para 201]

14. In the present case, the appellant has filed the beyond the period prescribed for filing appeal under Section 85(3A) ibid, which is also beyond the period prescribed for condonation of delay by this appellate authority. Hence, I am constrained to dismiss the appeal as time barred without going into the reasons for such delay as also without going into the merits of the case."

3.1 The matter was listed for hearing on 18.08.2022 and has been adjourned to today on the request of the counsel. None is present today also and no adjournment request has been received. For the reason of non-prosecution, this appeal is liable for dismissal under Rule 20 of CESTAT (Procedure) Rules, 1982.

3.2 Rule 20 of the CESTAT (Procedure) Rules, 1982 provides as follows:-

***"Rule 20. Action on appeal for appellant's default**. — Where on the day fixed for the hearing of the appeal or on any other day to which such hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Tribunal may, in its discretion, either dismiss the appeal for default or hear and decide it on merits :*

Provided that where an appeal has been dismissed for default and the appellant appears afterwards and satisfies the Tribunal that there was sufficient cause for his non-appearance when the *appeal was called on for hearing, the Tribunal shall make an order setting aside the dismissal and restore the appeal."*

3.3 However, I find that the issue is in a very narrow compass, as the Commissioner (Appeals) has dismissed the appeal only for the reason that the appellant has filed appeal before him with a delay for which he has no power to condone. He has relied upon the decisions which have been reproduced above while reproducing the order of the Commissioner (Appeals).

3.4 Further, I would like to refer to the following decisions:-

- Singh Enterprises [2008 (221) ELT 163 (SC)]
- Abhuyuday Co-operative Bank Ltd. [2021 (3) TMI 88 Bombay High Court]
- Flemingo (Duty Free Shop) Pvt. Ltd. [2015 (315) ELT 321 (Bom.)]
- Parsi Dairy Farm [2015 (320) ELT 376 (Bom.)]
- Raj Chemicals [2012-TIOL-278-HC-MUM-CX]
- Diamond Construction [2019 (2) TMI 1822-CESTAT-New Delhi]
- Bilt Graphic Paper Products Ltd. [2019-TIOL-2354-CESTAT-MUM]

4.1 As the issue is well settled, I do not find any merits in the appeal filed by the appellant.

4.2 Accordingly the appeal is dismissed under Rule 20 of CESTAT (Procedure) Rules, 1982 for non-prosecution and also on merits following the Hon'ble Supreme Court decision in the case of Singh Enterprises [2008 (221) ELT 163 (SC)].

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

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