CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 01

Service Tax Appeal No. 90002 of 2018

(Arising out of Order-in-Appeal No. NGP/EXCUS/000/APPL/385-386/16-17 dated 17.11.2016 passed by Commissioner (Appeals) Custom & Central Excise, Nagpur)

M/s Bhaurao Chavan SSK Ltd. **.....Appellant**
M/s. Hutatma Jaiwantrao Patil SSK Ltd
Unit-4, Tal-Hadgaon, Nanded.

VERSUS

Commissioner of Central Excise And Service Tax-Aurangabad **.....Respondent**
Null-5, Town Centre, CIDCO, Aurangabad-431030.

WITH

Service Tax Appeal No. 85752 of 2019

(Arising out of Order-in-Appeal No. NGP/EXCUS/000/APPL/385-386/16-17 dated 17.11.2016 passed by Commissioner (Appeals) Central Excise, Aurangabad)

M/s Bhaurao Chavan SSK Ltd. **.....Appellant**
M/s. Hutatma Jaiwantrao Patil SSK Ltd
Unit-4, Tal-Hadgaon, Nanded.

VERSUS

Commissioner of Central Excise And Service Tax-Aurangabad **.....Respondent**
Null-5, Town Centre, CIDCO, Aurangabad-431030.

Appearance:

Shri J. N. Somaiya , Advocate for the Appellant
Shri Piyush Badhe , Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/85149-85150/2023

Date of Hearing: 03.02.2023
Date of Decision: 03.02.2023

PER : S.K. MOHANTY

These appeals are directed against the impugned order dated 17.11.2016 passed by the Learned Commissioner (Appeals), Central Excise, Nagpur. Vide the impugned order, the Learned Commissioner (Appeals) has rejected the appeals filed before him by the appellants on the ground that there is delay in filing the appeals and as such, as per the provisions of Section 85(3A) of the Finance Act, 1994, the delay cannot be condoned and the Commissioner (Appeals) is not empowered to condone such delay.

2. When the matter was called for hearing, Learned Advocate appearing for the appellants submitted the synopsis and list of dates, mentioning there in the sequence of events taken place between the period of taking over of the manufacturing unit of M/s. Hutatma Jaiwantrao Patil SSK Ltd. by the appellant and till filing of appeals before the learned Commissioner (Appeals).

SYNOPSIS & LIST OF DATES

Sr. No.	Date	Event
1	27.11.2012	The Appellants purchased the factory of M/s. Hutatma Jaiwantrao Patil S.S.K. Ltd. from MSC Bank Ltd. under auction sale.
2		The Appellants applied for Central Excise Registration of the said factory in the name and style of M/s. Bhaurao Chavan S.S.K. Ltd., Unit-4 and the same was granted by the department.
3		However, subsequently, the said registration was revoked by the Assistant Commissioner, C.Ex., Nanded since the Appellants had not paid the dues of M/s. Hutatma Jaiwantrao Patil S.S.K. Ltd. involved in the Order-In-Original No.20/ST/AC/2011, dt.28.11.2011 and No.49/ST/ADC/2012, dt.05.10.2012.
4	26.06.2013	The Appellants again applied for the C.Ex. Registration and had also given undertaking in respect of the said outstanding dues provided they will defend the said cases before the appropriate authority.(**Exh.2**)
5	16.08.2013	The Appellants requested the Assistant Commissioner, C.Ex., Nanded to provide them the certified copies of the above said Order-In-Originals along with copies of show cause notice/reply etc.. (**Exh.3**)

6	06.09.2013	The Superintendent, Service Tax, Nanded vide his letter bearing F.No.VGN(30)ST/SCN/HJPSSK/AR-100/08/2012/116, dt.06.09.2013 has provided the said documents to the Appellants. (**Exh.4**)
7	30.10.2013	The Appellants filed appeals against the said Order-In-Originals before the Commissioner, C.Ex.(Appeals), Aurangabad. (**Exh.7**)
8	01.11.2013	The Commissioner(Appeals) vide his Order-In-Appeal No. AV(299)287/2013, dt.01.11.2013 dismissed their above said appeals as time barred. (**Exh.8**)
9	02.01.2014	The Appellants filed appeal No.ST/85006-85007/14 before the Hon'ble CESTAT against the said Order-In-Appeal.
10	06.03.2014	The Hon'ble CESTAT vide its final order No.A/484-485/14/SMB/C-IV, dt.06.03.2014 has remanded the case back to the Commissioner(Appeals). (**Exh.9**)
11	17.11.2016	The Commissioner, C.Ex. (Appeals), Nagpur vide his Order-In-Appeal No.NGP-EXCUS-000-APPL-385-386/16-17, dt.17.11.2016 has again rejected their appeal as time barred. (**Exh.17**)

By referring to such date chart, Learned Advocate has submitted that there is no delay in filing the appeals inasmuch as the impugned order was received by the appellants on 13.09.2013 and thereafter the appeals were filed before the office of the Learned Commissioner (Appeals) on 30.10.2013, which was within the stipulated time frame provided under Section 85(3A) *ibid.* Accordingly, the Learned Advocate appearing for the appellants submitted that the appeals should be entertained for a decision on merits.

3. On the other hand, learned Authorized Representative appearing for the Revenue reiterated the findings recorded in the impugned order.

4. Heard both sides and perused the records.

5. It is an admitted fact on record that the unit of M/s. Hutatma Jaiwantrao Patil SSK Ltd. was taken over by the appellants from MSC Bank, who were in possession of the seized unit belonging to the

previous company. Since, the present appellants are the lawful owner consequent upon of handling over possession of the factory by MSC Bank, they applied for certified copy of the order and such request was entertained by the Department on 06.09.2013 in furnishing the certified copy of the adjudication order. Considering the date of receipt of the adjudication order and the date of filing of appeals before the office of the Commissioner (Appeals), I find that the appeals were preferred within the prescribed time limit of 60 days from the receipt of such order. Thus, I am of the considered opinion that there is no delay in filing of appeals before the Commissioner (Appeals). Therefore, rejection of the appeals by the Learned Commissioner (Appeals) are not sustainable on merits. Accordingly, it is ordered that the appeals filed by the appellants before the Learned Commissioner (Appeals) should be restored to their original numbers. Since, Commissioner (Appeals) has not discussed the merits of the case, I am of the view that the ends of justice would be met, if the matter is remanded to him for passing of a speaking order, after affording the opportunity of personal hearing to the appellants.

7. Therefore, the impugned order is set aside and appeals are allowed by way of remand to the learned Commissioner (Appeals) for passing of fresh order upon observance of the principles of natural justice.

8. In the result, the appeals are allowed by way of remand.

(Dictated and pronounced in the open court)

(S. K. Mohanty)
Member (Judicial)

Sm/ys