CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

Service Tax Appeal No. 87532 of 2016

(Arising out of Order-in-Appeal No. PUN-SVTAX-000-APP-197-16-17 dated 24.08.2016 passed by the Commissioner of Service Tax (Appeals), Pune.)

M/s. Seed Infotech Ltd. ....Appellant
Panchseel 42/16,
Erandwana, SEED Infotech Lane,
Off Karve Road, Pune – 411 004

VERSUS

Commissioner of Service Tax-I, Pune ....Respondent
F-Wing, 3rd Floor, ICE House,
41/A Sassoon Road,
Pune – 411 001

APPERANCE:

Ms. Manasi Patil, Advocate for the Appellant
Shri S.B.P. Sinha, Superintendent, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 85607/2024

Date of Hearing: 07.06.2024
Date of Decision: 07.06.2024

PER: DR. SUVENDU KUMAR PATI

Heard on the appeal from both the sides.

2. Consequent upon final order passed by this Tribunal on 28.05.2014 *vide* Final Order No. A/1099/14-CSTB/C-1 in setting aside demand for extended period and penalty under Section 78 of the Finance Act 1994, Appellant sought for refund of ₹2,08,30,889/- from the Refund Sanctioning Authority namely Assistant

Commissioner, Division–V, Service Tax, Pune by filing application on 29.01.2015, which was partly allowed on 17.03.2016 and an amount of ₹39,24,305/- was denied to the Appellant on ground stated in the said refund sanction order dated 17.03.2016. Appellant preferred an appeal before the Commissioner of Central Excise (Appeals) on 09.06.2016 with a condonation of delay petition to condone the delay of 23 days. The ground stated in the said petition, as reproduced by learned Commissioner (Appeals) in his order at para 6 reads as follows:

> *"8. In this connection we wish to submit that our concerned executive, Head Company Secretary Legal Department, CS Mander Wagh left the organization. After his resignation, we were in the process of recruiting the new person to look after all service tax related work. In the meantime the copy of the order was received at our office. In the absence of the person having knowledge of the matter, the issue remained unattended. While verifying the various other documents, we could retrieve the documents. In view of the same, we could not file the appeal before your honour before the due date of 16.05.2016 and there is delay of 23 days in filling the appeal.*
>
> *9. Under the Circumstances, we humbly request your honour to kindly condone the delay in filing appeal, which was on account of genuine reasons explained above, under the powers granted to your honour under section 35 of Central Excise Act, 1944."*

From the above paragraph, it is crystal clear that Appellant prayed for condonation of delay of 23 days which is available to the discretion of the Commissioner (Appeals) in view of clear provision contained in Section 85(3A) of the Finance Act, 1994, primarily on the ground that concerned official namely Head Company Secretary of Legal Department Mr. C.S. Mander Wagh had resigned and left the organisation, for which in the absence of any other staff having knowledge on the matter and order remaining unattended for not being brought to anyone’s knowledge for a considerable time, there was a delay of 23 days that could have been condoned by the Commissioner in exercising his discretion judicially and not arbitrarily, since it is a settled principle of law that when substantial justice and technical considerations are pitted with each other, justice should be promoted and given paramount consideration, unless the delay is quite long and unreasonable that would prejudicially affect the other party [*1987 (28) ELT 185 (S.C.)*] but instead of condoning delay learned Commissioner (Appeals) had asked the Appellant to substantiate the reason with documentary proof within 2 days and thereafter, dismissed the appeal even after admitting the same and holding personal hearing of the parties. This would be again violative of the judicial precedent set by this Tribunal by Writ Courts including the one passed in the case of *Federal Bank Ltd. Vs. Assistant Commissioner of Central Tax & Central Excise, Ernakulam* as reported in *2019 (367) ELT 581 (Ker.)* by the Hon'ble Kerala High Court in which clear finding is available to the effect that once the appeal has been registered and heard, it can’t be dismissed on technical grounds.

3. This being the facts on record and position of law and after going through the copy of resignation letter of the then Head of Company Secretary which is annexed to the appeal memo at page 72 *vide* Exhibit F and by accepting the same as additional proof in

support of evidence regarding the person concerned leaving the job, we consider it appropriate to allow the appeal and remand it back to the Commissioner (Appeals) for an order on merit. We also consider it proper to condone the delay of 23 days in filing appeal, before the Commissioner (Appeals), at this end. Further, having regard to the fact that Section 35(A)(4) dictates that the order of the Commissioner disposing of the appeal shall state the points for determination, the decision thereon and the reason for such decision and the same provision being equally applicable to service tax matters in view of Sub-Section (5) of Section 85 of the Finance Act, 1994, would also be applied to this case. Hence the order.

THE ORDER

4. Delay of 23 days in filing appeal before the Commissioner (Appeals) is hereby condoned. The appeal is allowed by way of remand to the Commissioner (Appeals) for a hearing afresh on merit of the case. Order passed by the Commissioner of Service Tax (Appeals), Pune *vide* Order-in-Appeal No. PUN-SVTAX-000-APP-197-16-17 dated 24.08.2016 is accordingly set aside.

(Pronounced in the open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

Prasad