# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
## MUMBAI

REGIONAL BENCH - COURT NO. 01

**Service Tax Miscellaneous Application No. 85253 Of 2021**

(on behalf of Appellant)

**in**

**Service Tax Appeal No. 85293 of 2021**

(Arising out of Order-in-Appeal No. PUN-CT-APPII-000-045-2020-21 dated 30.09.2020 passed by Principal Commissioner of Central Tax (Appeals-II), Pune.)

**M/s Siddhi Developers** **.....Appellant**
Flat No. 1001, B Wing Hyde Park
Bibwewadi, Pune-411037.

*VERSUS*

**Commissioner of CGST & Central Excise-Pune-II** **.....Respondent**
ICE House, 41/A, Sasoon Road,
Pune, Maharashtra- 411001.

**Appearance:**

Shri Prateek Jha, Advocate for the Appellant
Shri Nitin Ranjan, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)**
**HON'BLE MR. C.J. MATHEW, MEMBER (TECHNICAL)**

**FINAL ORDER NO. A/87477/2023**

Date of Hearing: 18.11.2022
Date of Decision: 10.05.2023

**PER : S. K. MOHANTY**

This appeal is directed against the impugned order dated 30.09.2020 passed by the learned Commissioner (Appeals), Central Tax, Pune. Vide the impugned order, the appeal filed by the appellant was dismissed by the learned Commissioner (Appeals) on the ground that the same was filed beyond the prescribed time limit provided under the statute and that he being a creature under the statute, cannot travel beyond the jurisdiction conferred upon him for condoning the delay in filing the appeal. In support of rejection of appeal, the impugned order has relied upon the judgment of Hon'ble Supreme Court, in the case of M/s. Singh Enterprises Vs. Commissioner of C. Ex., Jamshedpur – 2008 (221) E.L.T. 163 (S.C.).

2. The appellant has assailed the impugned order before this Tribunal on the ground that though sufficient reason of delay in filing of appeal was explained by them, but the same was brushed aside and the power conferred for condoning the delay was not judiciously exercised by the learned Commissioner (Appeals). Thus, it is contended by the appellant that the impugned order is not sustainable and the same is liable to be quashed/set-aside. Learned Advocate appearing for the appellant has relied upon the following judgments delivered by the judicial forums, to advance the case of appellant against rejection of appeal by the learned Commissioner (Appeals):

*(i)* *Yapp India Automotive Systems Pvt. Ltd. Vs. CCE & ST, Pune I [A/86775/2018 dated 21.06.2018]*
*(ii)* *M/s. Jagdish Ispat Pvt. Ltd. Vs. The Commissioner [A/51670/2019 dated 28.11.2019]*
*(iii)* *Shree Neeraj Kumar Vs. Principal Commissioner of Customs (Airport & ACC), Kolkata With Shree Chirag Dhamija Vs. Principal Commissioner of Customs (Airport & ACC), Kolkata [A/75624-75625/2021 dated 04.10.2021]*
*(iv)* *Rosa Impex Pvt. Ltd. Vs. Commissioner of CGST, Thane [A/85639-85640/2022 dated 14.07.2022]*

3. On the other hand, learned Authorized Representative (A.R.) appearing for the Revenue has stated that there is no infirmity in the impugned order inasmuch as the appeal was filed by the appellant, even beyond the condonable period prescribed under the statute and that since, the learned Commissioner (Appeals) has not been provided with any discretion to condone the delay beyond three months from the date of receipt of the adjudication order by the appellant, rejection of appeal by him is in conformity with the statutory provisions. Learned A.R. has placed reliance on the following judgments to support the case of Revenue that the appeal of the appellant cannot be entertained on the ground of maintainability:

*(i)* *Collector of C.E., Chandigarh Vs. Doaba Co-operative Sugar Mills [1988(37) E.L.T. 478 (S.C.)]*

(ii) *Singh Enterprises Vs. Commissioner of C. Ex. Jamshedpur [2007(12) TMI 11- Supreme Court]*

(iii) *Sri Swami Hathiramji Mutt Vs. Commissioner of Central Tax & Customs (Appeals), Guntur-GST [2022(7) TMI 1243-CESTAT Hyderabad]*

(iv) *Yapp India Automotive Systems Pvt. Ltd. Vs. CCE & ST, Pune I [2018 (8) TMI 690- CESTAT Mumbai]*

(v) *M/s Arun Enterprises Vs. Commissioner, Central Goods & Service Tax Meerut [2022-TOIL-190-CESTAT-ALL]*

(vi) *Ms/ Kohinoor Healthcare Pvt. Ltd. vs. Commissioner of Customs, ACC Mumbai [2022 (8) TMI 769-CESTAT Mumbai]*

4. Heard both sides and examined the case records.

5. In this case, the facts are not under dispute that the adjudication order passed by the original authority was communicated to the appellant on 30.11.2019 and thereafter, the appeal along with delay condonation application was filed by the appellant in the office of the Commissioner (Appeals) on 17.03.2020. The provisions for filing of service tax appeal before the Commissioner (Appeals) are governed in Section 85 of the Finance Act, 1944. Sub-section (3A) contained therein prescribe the time line for filing of appeal and the power for condoning delay by the First Appellate Authority. The statutory provision is extracted below:

> *'(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.'*

5.1 Reading of the above statutory provision, makes the position clear that the appeal was required to be filed within two months from the date of receipt of the original order and on sufficient cause being shown for non-filing of appeal within such prescribed time limit, the Commissioner (Appeals) is empowered to condone the delay for a further period, up to one month thereafter. In other words, no authority has been vested on the

Commissioner (Appeals) to condone the delay or entertain the appeal, if the same is filed beyond the period of three months from the date of receipt of the adjudication order by the assessee-appellant.

5.2 In the case in hand, since the adjudication order was received by the appellant on 30.11.2019 as declared in the 'Form ST-4' by them, the appeal was required to be filed within the normal time period of two months i.e. on or before 29.01.2020. Even considering the power conferred under the *proviso* to sub-section (3A) of Section 85 *ibid* for condoning the delay up to a further period of one month by the Commissioner (Appeals), the present appeal still was required to be filed on or before 29.02.2020. However, in this case, admittedly, the appeal was filed on 17.03.2020, which was beyond the normal, including the extended period for consideration of delay by the competent authority.

6. On examination of the case records vis-à-vis the ratio of judgments relied upon by both sides, we find that there are conflicting views expressed by the co-ordinate Benches of this Tribunal, concerning the issue of the power to condone the delay by the First Appellate Authority. The conflict mainly arose, owing to the reason, whether the provisions of the indirect taxing statute viz. Central Excise, Customs or Service Tax have to be looked into, or that of the provisions contained in the Limitation Act, 1962. Further, one more question also arose for consideration by this Bench, as to whether, this Tribunal has the power to deal with the situation, especially when the parent statute is silent and has not provided for the option for condoning the delay in respect of the appeal filed before the Commissioner (Appeals) beyond the normal as well as the condonable period.

7. Where the special statute i.e., Finance Act, 1994 (governing the field of service tax) does not prescribe any limitation period for carrying out any activity, then recourse can be made to the general law, for consideration of the limitation aspect, as prescribed thereunder. However, when the special statute itself has prescribed the time limit, within which a specific act has to be performed, then such time limit must be adhered to and the authorities functioning under such special Act are bound by the provision of such Act. In context with belated filing of the refund application, the Hon'ble Supreme

Court in the case of Collector of C.E., Chandigarh Vs. Doaba Co-operative Sugar Mills (supra), by relying upon the judgement delivered in the case of Miles India Ltd., Vs. Assistant Collector of Customs [1987 (30) E.L.T. 641 (S.C.)], have held that the customs authorities acting under the relevant provisions of the Act, were justified in disallowing the claim for refund as they were bound by the period of limitation.

8.1 Similarly, with regard to the time limit prescribed for filing of appeal before the Commissioner (Appeals) under Section 35 of the Central Excise Act, 1944, the Hon'ble Supreme Court in the case of Singh Enterprises (supra), have held as under:

> *"**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."*

8.2 On reading of the judgements (referred supra), the law laid down by the Hon'ble Supreme Court is clear on the following aspects with regard to consideration of the limitation period for filing of the appeal before the Commissioner (Appeals):

a) There is no power of condonation beyond 30 days before Commissioner (Appeals).

b) Section 5 of the Limitation Act does not apply to these appeals because there is a specific provision in the Act.

c) The Commissioner (Appeals) and the Tribunal are creatures of the statute and are vested with jurisdiction to condone the delay as provided under the Statute. The period up to which the prayer for condonation can be accepted is statutorily provided.

d) No law was laid down by the Supreme Court that even though the statue prescribed a particular period of limitation, the (Supreme Court) can direct condonation as that would render a specific provision providing for limitation rather otiose.

9. In view of the settled principles of law, enunciated by the Hon'ble Supreme Court, we are of the considered opinion that the ratio laid down in the judgements, relied upon by the learned Advocate for the appellants cannot be made applicable in the present case, for deciding the issue differently.

10. In view of the foregoing discussions, we do not find any merits in the appeal filed by the appellants and accordingly, dismiss the same.

Miscellaneous application stand disposed of.

(Order pronounced in the Open Court on 10.05.2023)

**(C J Mathew)**
**Member (Technical)**

**(S. K. Mohanty)**
**Member(Judicial)**

*Sm*