CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 88105 OF 2019

[Arising out of Order-in-Appeal No: NGP/EXCUS/000/APPL/445/18-19 dated 31st January 2019 passed by the Commissioner of Central Excise & GST (Appeals), Nagpur.]

Prime Logistics
Orange City Logistcs Park, Mauza – Shivmadka
Kothewada, P H 48A, Tahsil – Hingna,
Dist.- Nagpur, Maharashtra- 441 114 … ***Appellant***

versus

Commissioner of Central Excise
Civil Lines, Telengkhedi Road, Nagpur – 440 001 ***…Respondent***

APPEARANCE:

Shri Karan Lodaya, Chartered Accountant for the appellant

Shri SBP Sinha, Superintendent (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: 86673/2024

DATE OF HEARING:	29/10/2024
DATE OF DECISION:	29/10/2024

This appeal lies against order[1] of Commissioner of Central Excise and Service Tax (Appeals), Nagpur which, solely on the

[1] [order-in-appeal no. NGP/EXCUS/000/APPL/445/18-19 dated 31st January 2019]

ground of limitation and without going into merits, had dismissed appeal of M/s Prime Logistics against denial of credit and recovery of ₹ 7,43,301 for non-fulfillment of provisions of rule 4(7) of CENVAT Credit Rules, 2004 under section 73 of Finance Act, 1994, along with applicable interest under section 75 of Finance Act, 1994, and imposition of penalty under section 76 and 78 of Finance Act, 1994.

2. Learned Chartered Accountant appearing for M/s Prime Logistics submitted that the order of the first appellate authority has noted receipt of the order impugned therein on 29th September 2017 and, taking into account the delay of eighteen days beyond the period condonable under section 85(3A) of Finance Act, 1994, had dismissed their appeal. He relied upon the decision of the Tribunal in *Yapp India Automotive Systems Pvt Ltd v. Commissioner of Central Excise & Service Tax, Pune- [2018 (9) TMI 690 CESTAT MUMBAI]*, in *Vishal Buildcon v. Commissioner of CGST & Central Excise , Pune–II [2024 (3) TMI 352 – CESTAT MUMBAI]* and in *Rosa Impex Pvt Ltd v. Commissioner of CGST, Thane [2022 (7) TMI 717 –CESTAT MUMBAI]*, which followed the decision in *re Yapp India Automotive Systems Pvt Ltd*, to urge that the matter should be reconsidered on merits by the first appellate authority.

3. Learned Authorised Representative pointed out that the first appellate authority was not statutorily empowered to condone the

delay beyond the stipulated period. He relied upon the decision of the Hon’ble Supreme Court in *Singh Enterprises v. Commissioner of Central Excise, Jamshedpur [2008 (221) ELT 163 (SC)]*.

4. Considering the scope of the statutory limitation, as examined by Hon'ble Supreme Court in *re Singh Enterprises*, and the finality accorded thereby, there are no grounds to interfere with the impugned order. Accordingly, appeal is dismissed.

(Dictated and Pronounced in Open Court)

(C J MATHEW)
Member (Technical)

**/as*