CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax ROM Application No. 86485 of 2024
(on behalf of Respondent)

In

Service Tax Appeal No. 85294 of 2021

(Arising out of Order-in-Appeal No. PUN-CT-APPII-000-044-2020-21 dated 30.09.2020 passed by Principal Commissioner (Appeals-II), Central Tax, Pune.)

M/s Vishal Buildcon **.... Appellant**
S. No.1A, F-Building, Office No.2,
Mantri Market, Hadapsar,
Pune – 411028.

Versus

Commissioner of CGST & Central Excise, Pune-II **.... Respondent**
GST Bhavan, 41/A, Sasson Road,
Pune - 411 001.

Appearance:

Shri Prateek Jha, Advocate for the Appellant

Shri Manish Mohan, Auth. Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/87426/2024

Date of Hearing: 02.12.2024

Date of Decision: 02.12.2024

Per: S.K. Mohanty

Revenue has filed this miscellaneous application under Section 35C(2) of the Central Excise Act, 1944 for rectification of mistake in the Final Order No. A/85268/2024 dated 06.03.2024 passed by the Tribunal. Revenue has contended that the Tribunal has erred in recording the observation that the Principal Commissioner (Appeals) has the power to condone the delay, beyond the permissible time limit prescribed under the statute.

2. Learned Authorized Representative (AR) appearing for Revenue submitted that the appellant had filed the appeal before the Commissioner (Appeals) after the expiry of the normal period of two months and also the condonable period of one month thereafter, from the date of receipt of the original order. Thus, it was contended that the appeal filed by the appellant cannot be entertained under the provisions of Section 85(3A) of the Finance Act, 1994. In context with the time frame, within which the appeal should be preferred before the Commissioner (Appeals), learned AR has relied upon the judgment of the Hon'ble Supreme Court in the case of *Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur - 2008 (221) ELT 163 (S.C.)*. He further submitted that though the Tribunal in the Final order dated 06.03.2024 has referred to the said judgement delivered in the case of Singh Enterprises (supra), but order for remanding the matter to the original authority is contrary to the ratio laid down by the Hon'ble Supreme Court. Therefore, there is apparent mistake in the said order passed by the Tribunal, which can be rectified in the interest of justice. In support of such contention, learned AR has relied upon the judgement of Hon'ble Supreme Court, delivered in the case of *M/s Poothundu Plantations P. Ltd. Vs. Agricultural I.T.O., Chittoor* – 2004 (178) E.L.T. 16 (S.C.).

3. On the other hand, learned Advocate appearing for the appellant has vehemently opposed to the stand taken by Revenue, in support of consideration of the rectification of mistake application.

4. Heard both sides and perused the case records.

5. On reading of the provisions contained in Section 85(3A) of the Finance Act, 1994, we find that it has been mandated that any person aggrieved by any decision or order passed by the adjudicating authority shall file an appeal within two months from the date of the receipt of such order. The proviso clause appended to sub-section (3A) of Section 85 *ibid* provides that the Commissioner (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. On conjoint reading of sub-section (3A) of Section 85 *ibid* and the proviso clause appended thereto, it transpires that the Commissioner (Appeals) is not empowered under the statute to condone the delay, if the appeal is filed before him,

beyond a period of three months from the date of receipt of the adjudication order by the appellant. In the present case, since the present appeal was preferred by the appellant beyond the prescribed time limit of two months and thereafter, beyond the condonable period of further one month, the appeal filed before the Commissioner (Appeals) against the adjudication order, cannot be entertained by him. However, we find that this Tribunal in the order dated 06.03.2024, inadvertently has considered that the Commissioner (Appeals) has power to condone the delay and accordingly, by condoning the delay in later filing of appeal, has remanded the matter back to the original authority for fresh adjudication of the matter.

6. Since the statute in clear and unambiguous terms provides that the Commissioner (Appeals) is not competent to condone the delay beyond the prescribed period of three months, we are of the view that there is an apparent mistake in the order dated 06.03.2024 passed by the Tribunal, which can be considered for rectification in terms of sub-section (2) of Section 35C of the Act of 1944, made applicable to service tax matters in terms of Section 83 of the Finance Act, 1994. Therefore, the order dated 06.03.2024 is recalled and the appeal is restored to its original number, for a decision on merits. Accordingly, the Miscellaneous Application filed by Revenue for rectification of mistake in the Order dated 06.03.2024 is allowed.

7. In so far as filing of appeal before the learned Commissioner (Appeals) is concerned, the statute in clear terms has mandated that the same should be filed within two months from the date of the receipt of adjudication order. The said authority has been vested with the power to condone the delay upto a further period of one month, beyond the expiry of normal period of two months. In other words, if the appeal is presented for whatsoever reason, beyond the period of three months, then, no authority has been vested upon the Commissioner (Appeals) to condone the delay and to entertain the appeal. The issue with regard to the time limit for filing of appeal before the Commissioner (Appeals) came up for consideration before the Hon'ble Supreme Court in the case of *Singh Enterprises (supra)*. Upon considering the factual matrix of the case, and the time line prescribed in the statute, the Hon'ble Supreme Court in the said case 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 subsection (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."*

7. We find that there were divergent views expressed by the Tribunal with regard to the issue of condonation of delay in late filing of appeal before the Commissioner (Appeals). The conflict mainly arose, owing to the reason, whether the provisions of the indirect taxing statutes viz., Central Excise, Customs and Service Tax have to be looked into for determining the limitation aspect for consideration of filing of appeal before the Commissioner (Appeals), or, that of the provisions contained in the Limitation Act, 1962. Further, one more question also arose for consideration, 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.

8. We find that considering various divergent views expressed by different Benches of the Tribunal, this Bench in case of *Siddhi Developers Vs. Commissioner of CGST, Pune* (Service Tax Appeal No. 85294 of 2021) in Final order dated 10.05.2023, has allowed the appeal filed by the Revenue, holding that there is no power of condonation beyond ninety days from the date of the receipt of the adjudication order; Section 5 of the Limitation Act, 1962 shall not be applicable to the

statute(s), where specific provisions have been made for filing of appeal within the prescribed time frame; and neither the Commissioner (Appeals) nor the Tribunal, being the creatures under the statute, have been vested with any jurisdiction to condone the delay beyond the time line prescribed in the statute. To put it differently, it can be said that the period upto which the prayer for condonation can be accepted, is statutorily provided. The relevant paragraph in the said order dated 10.05.2023 is extracted herein below: -

> *"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."*

9. In view of the foregoing discussions, supported by the authoritative judgements delivered by the Hon'ble Supreme Court (referred supra), we are in agreement with the submissions made by the Revenue that the appeal filed by the appellant is not maintainable on the ground of limitation. Therefore, the impugned order sustains and the appeal filed by the appellant is dismissed.

(Dictated and pronounced in open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha