CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 87659 OF 2024

[Arising out of Order-in-Appeal No: PKB/205/APPL/ST/NGP/2024-25 dated 28th August 2024 passed by the Commissioner CGST, Customs & Central Excise (Appeals), Nagpur]

New Khaira Roadlines
H.No.3-3-866/2,Dashmesh Nagar, Nanded – 431602 … ***Appellant***

versus

Commissioner of CGST & Central Excise
P.O.BOX No.81, GST Bhvan, Nagpur – 440001 ***…Respondent***

APPEARANCE:

Shri Ananta Khandait, Advocate for the appellant

Shri Priyesh Bheda, Joint Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: 85693/2025

DATE OF HEARING: 18/02/2025
DATE OF DECISION: 18/02/2025

PER: C J MATHEW

This appeal lies against disposal of challenge that tax liability of ₹ 1,22,73,587 under section 73 of Finance Act, 1994, along with applicable interest under section 75 of Finance Act, 1994, and imposition of penalty under section 70, 77 and 78 of Finance Act, 1994 fastened by the original authority was, by order[1] of Commissioner CGST, Customs & Central Excise (Appeals), Nagpur, held to have attained finality from non-maintainability owing to delay in filing of appeal beyond the period prescribed in section 86 of Finance Act, 1994 and also for having not complied with the requirement of pre-deposit stipulated in section 35F of Central Excise Act, 1944, as made applicable under section 83 thereof to Finance Act, 1994.

2. According to Learned Counsel for appellant, the demand had been affirmed by the original authority merely from the difference in receipts declared under Income-tax Act, 1961 and the returns filed under Finance Act, 1994.

3. We have heard Learned Authorised Representative.

4. We observe that the appeal has not been disposed off on merits but dismissed at the threshold on two counts, *viz.*, for failing to make the prescribed pre-deposit and for not having filed the appeal within the period stipulated in Finance Act, 1994.

5. Insofar as the first of the deficiencies is concerned, the appellant has, since, made the pre-deposit to have appeal admitted in

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[1] [order-in-appeal no. PKB/205/APPL/ST/NGP/2024-25 dated 28th August 2024]

the Tribunal. Accordingly, that deficiency has ceased to exist even insofar as the first appellate authority is concerned.

6. Turning to the issue of delay in filing the appeal, it has been noted in the impugned order that the appeal was filed within 36 days of receipt of the order as claimed by the appellant despite which, it has held that

> *'7.2 Aggrieved by the impugned order, the appellant has filed the present appeal.*
>
> *The appellant received the impugned order dated 10.03.2023 on 28.08.2023 and filed appeal on 04.10.2023. However, the Appellant has not given any explanation regarding receiving the order dated 10.03.2023 after 169 days. The Appellant has not produced any documentary evidence such as correspondence with Range/Division office regarding non-receipt of impugned order. They also failed to explain how postal department has taken 169 to deliver the impugned order send by Speed Post. Thus, the claim that, impugned order dated 10.03.2023 was received by them on 28.08.2023 is not acceptable and the Appeal is held as time barred.'*

7. The appellant has placed on record therein request for the order and its receipt on 28th August 2023. In the light of the finding *supra,* and the submission of the documents before us, it appears that dismissal of the appeal without offering an opportunity to the appellant herein for submission of the relevant of documents was inappropriate.

8. We, therefore, set aside the impugned order and remand the matter back to the first appellate authority to determine the issue on merits after examining the claim made by the appellant on compliance with time-lines prescribed in section 86 of Finance Act, 1994.

9. Appeal is, thus, allowed by way of remand.

(Operative part of the order pronounced in the open court on 18th February 2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*