

GAHC010148662022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : C.Ex.App./5/2022

M/S NAMRUP ENGINEER COMPANY
A PARTNERSHIP FIRM HAVING ITS OFFICE AT DILLIDWANIA (NEAR SBI)
NAMRUP, PARBATPUR, DIBRUGARH, ASSAM, 786623
REPRESENTED BY ITS MANAGING PARTNER SRI GOVINDHAN
SASIDHARAN PILLAI

VERSUS

THE UNION OF INDIA AND 3 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA.
DEPARTMENT OF REVENUE, MINISTRY OF FINANCE, NORTH BLOCK, NEW
DELHI 110001

2:COMMISSIONER (APPEALS)
CENTRAL EXCISE
CUSTOM AND SERVICE TAX
GUWAHATI
ASSAM 781001

3:THE CUSTOMS
EXCISE AND SERVICE TAX APPELLATE TRIBUNAL EASTERN ZONAL
BENCH
KOLKATA 700014

4:ASSISTANT COMMISSIONER

CENTRAL GOODS AND SERVICE TAX
DIBRUGARH DIVISION
DIBRUGARH. 78600

For Appellant(s) : Mr. B. Chakraborty, Adv.

For Respondent(s) : Mr. S.C. Keyal, Sr. SC, CBIC

BEFORE
HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE MITALI THAKURIA

ORDER

15.05.2023

[Sandeep Mehta, CJ]

The instant appeal under Section 35G of the Central Excise Act is directed against the final order dated 06.04.2022 passed by the learned Custom Excise and Service Tax Appellate Tribunal, East Zonal Bench, Kolkata, whereby, the appeal preferred by the appellant was dismissed as being delayed and the order dated 01.05.2019 passed by the Assistant Commissioner, CGST, Dibrugarh, confirming the demand of ₹ 21,37,427/- raised from the appellant with interest and penalty towards financial years 2013-14, 2014-15, 2015-16 and 2016-17 was affirmed.

2. Learned counsel Mr. Chakraborty placed reliance on a judgment in the case of ***Commissioner of Income Tax-12 v. Pheroza Framroze and Company***, reported in ***(2017)11 SCC 730*** and urged that in the said judgment, while dealing with *pari-meteria* provisions of Income Tax Act, Hon'ble the Supreme Court held that the High Court has inherent jurisdiction to condone the delay occasioned in filing of the appeal. He also placed reliance on a Supreme Court judgment in the case of ***M/s Shekhar Resorts Limited (Unit Hotel Orient Taj) Vs. Union of India & Ors.***, reported in ***(2023)0 Supreme (SC) 15***, and urged that the Hon'ble Supreme Court clearly postulated in the said judgment that the litigant should not be made to suffer for no fault of his own and be rendered remediless and denied the benefit/relief though it was impossible for it to carry out certain acts. He contended that during the relevant period after passing of the impugned assessment order, the appellant Mr. G.S. Pillai being the active partner of the appellant firm fell seriously ill and was shifted to Christian Medial College, Vellore, in

emergency where, he was subjected to angiography. A stand was fixed so as to ameliorate his cardiac issues. He thus urged that a sympathetic view deserves to be taken and the CESTAT be directed to entertain and decide the appeal filed by the appellant on merits by condoning the delay.

3. Per contra, Mr. S.C. Keyal, learned standing counsel, GST, has drawn the Court's attention to the judgment rendered by Hon'ble the Supreme Court in the cases of ***Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur & Ors.***, reported in ***(2008)3 SCC 70***, ***Chaudharana Steels Private Limited Vs. Commissioner of Central Excise, Allahabad***, reported in ***(2009)15 SCC 183*** and ***Amchong Tea Estate Vs. Union of India & Ors.***, reported in ***(2010)15 SCC 139*** and urged that the issue regarding there being no power with the Commissioner Appeals and the CESTAT to condone the delay occasioned in filing of the appeal is no longer *res integra* and the issue having been settled by Hon'ble the Supreme Court that such delay cannot be condoned, no fault can be found in the order passed by the CESTAT dismissing the appeal of the appellant as being time barred.

4. We have given our thoughtful consideration to the submissions advanced at Bar and have gone through the material placed on record.

5. At the outset, we may note that the plea of illness put forth by the appellant for explaining the delay caused in filing of the appeal to the Commissioner (Appeals) is on the face of the record untenable. The demand notice of which the appellant is aggrieved was passed by the Assistant Commissioner, CGST, Dibrugarh Division on 01.05.2019. The limitation for filing appeal against this order to the Commissioner (Appeals) is 60 days which may be further extended by 30 days as per Section 35 of the Central Excise Act. The appellant has annexed the documents of his medical condition and the travel documents along with the writ petition, a perusal whereof would reveal that the appellant proceeded from Dibrugarh to Chennai on 02.07.2019. The discharge summary issued from the VSM Hospital reveals that the appellant complaint of retrosternal chest pain on the morning of 27.07.2018 and got himself admitted at the said hospital. He was

hospitalized for a period of 3 days and during this period, he underwent coronary angiogram associated with stenting. Thus, the appellant was not suffering from any such medical condition from 01.05.2019 to 27.07.2018 which could have prevented him from filing an appeal against the order dated 01.05.2019 within the stipulated period of limitation.

6. Law is well settled by a catena of judgments, some of which have relied upon by Mr. Keyal (*supra*) that the limitation for filing appeal as provided under Section 35 of the Central Excise Act overrides the provisions of Section 5 of the Limitation Act and hence, the delay cannot be condoned beyond 30 days from the statutory period of appeal i.e. 60 days of communication of the order to the aggrieved person.

7. In the present case, admittedly the appellant filed the appeal against the order dated 01.05.2019 to the appellate authority i.e. Commissioner (Appeals) on 03.10.2019 which is well beyond the period of 60 days and further extended by 30 days. In the memo of appeal filed along with the writ petition, there is no indication justifying the reasons for delay in approaching the Commissioner (Appeals) against the order in original. It was for the first time in the appeal before the CESTAT that the appellant made a request seeking condonation of delay and extension of time to file appeal before the Commissioner (Appeals). However, on a perusal of the memorandum of appeal filed before the CESTAT, we do not find any justifiable cause because even in this memorandum, it is clearly stated that the order imposing service tax passed by the Assistant Commissioner was received by the appellant on 23.05.2019. As per discharge summary (page-31), the appellant was hale and hearty till 27.07.2018 on which date he was admitted in the hospital in relation to cardiac issues which manifested in the morning of 27.07.2018. The appellant was discharged from the hospital on 30.07.2018 but the appeal came to be filed as late as on 03.10.2019.

8. Hence, considering the statutory bar prescribed under Section 35 of the Central Excise Act and the law as laid down by Hon'ble the Supreme Court in the judgments referred to *supra*, the appeal to the Commissioner (Appeals) could not have been

entertained on merits as the same was time barred. The judgment relied upon by the appellant's counsel in ***M/s Shekhar Resorts Limited*** (supra) dealt with the extension of a scheme issued under the service tax regime. In the said case, Hon'ble the Supreme Court held that the appellant therein was not responsible for not availing the benefits of the scheme in time. Thus, the said judgment is clearly distinguishable that the same has no application to the controversy at hand. In the case of ***Pheroza Framroze and Company*** (supra), the Hon'ble Supreme Court while considering the provisions of Section 268 of the Income Tax Act, held that the High Court has inherent jurisdiction to condone the delay. The said judgment also, does not deal with the mandatory provisions of the Central Excise Act and hence, is not applicable for deciding the controversy involved in this appeal.

9. In view of the above discussion, we are of the firm view that the CESTAT was absolutely justified in refusing to entertain the appeal filed by the appellant and in refusing to direct the Commissioner (Appeals) to condone the delay in filing of the first appeal, as stated above. As a consequence, the appeal lacks merit and is dismissed as such.

Sd/- *Mitali Thakuria*
JUDGE

Sd/- *Sandeep Mehta*
CHIEF JUSTICE

Comparing Assistant