THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

and

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CENTRAL EXCISE APPEAL No.16 of 2015

ORDER: **(per RR, J)**

This appeal under Section 35(G) of the Central Excise Act is preferred against the order of the Customs, Excise & Service Tax Appellate Tribunal (CESTAT) dated 22.07.2014.

The appellant herein invoked the jurisdiction of the Tribunal aggrieved by the order of the Commissioner of Appeals refusing to condone the delay in preferring an appeal. The order of the adjudicating authority is said to have been communicated to the appellant on 05.12.2011, but the appellant had declared the date of receipt, of a copy of the order, as 25.01.2012. The Commissioner (Appeals) observed that, even if the date of receipt is taken as 25.01.2012, the appeal should have been filed on or before 25.03.2012 within the normal period; however, the appeal was filed on 24.12.2012; and as he lacked power to condone the delay, beyond the extended period of thirty days after expiry of the stipulated period of sixty days for preferring the appeal, the appeal was liable to be rejected.

In the order under appeal before us, the CESTAT followed the judgment of the Supreme Court in **SINGH ENTERPRISES v. CCE JAMSHEDPUR** wherein it was held that, when the Statute prescribed a specific period for filing an appeal and also the condonable period, thereafter no authority has the power to go beyond the Statute and condone the delay. The CESTAT rejected the appeal affirming the appellate order of the Commissioner. Aggrieved thereby, the petitioner has invoked our jurisdiction under Section 35(G) of the Central Excise Act (hereinafter called 'the Act').

Section 35 of the Act provides for an appeal to the Commissioner of Appeals and, under sub-section (1) thereof, any person aggrieved by any decision or order passed under the Central Excise Act, by a Central Excise Officer lower in rank than a Principal Commissioner of Central Excise or Commissioner of Central Excise, may appeal to the Commissioner of Central Excise (Appeals) within a period of sixty days from the date of communication to him of such decision or order.

Even accepting the appellant's contention that they received the copy of the adjudication order on 25.01.2012, the period of sixty days expired on 25.03.2012. Under the proviso to Section 35(1), the Commissioner is empowered, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, to allow it to be presented within a further period of thirty days. The discretion conferred on the Commissioner of Appeals, under the proviso to Section 35(1), is only to condone the delay, in the extended period of thirty days, that too if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal. Even this extended period of thirty days expired by 25.04.2012. The appeal was in fact presented long thereafter on 24.12.2012. As the Commissioner lacked jurisdiction to condone the delay in preferring the appeal after 25.04.2012, he rightly refused to entertain the appeal on the ground that it was filed belatedly. The Tribunal committed no error in confirming the order of the Commissioner of Appeals. We find no error in the order of the CESTAT, much less a substantial question of law, necessitating interference in appeal under Section 35(G) of the Central Excise Act.

The appeal is, accordingly, dismissed.

Miscellaneous Petitions, if any pending, also stand dismissed.

RAMESH RANGANATHAN, J

1st DECEMBER, 2015.

M.SATYANARAYANA MURTHY, J

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