AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P. (T) No. 16 of 2017

M/s/ Shri Sai Rolling Mill, a Partnership Firm registered under the Indian Partnership Act, Office works at 171, Light Industrial Area, Bhilai, District Durg (C.G.), represented through its Partner, Suresh Kumar Agrawal, S/o Late Shri Ramchandra Agrawal, aged about 43 years, R/o New Khursipar, Bhiali, District – Durg (C.G.)

---- Petitioner

Versus

1. The Commissioner, Custom Central Excise and Service Tax, Central Excise Building, Tikrapara, Raipur, District Raipur (C.G.)
2. The Commissioner (Appeals), Custom Central Excise and Service Tax, Central Excise Building, Tikrapara, Raipur, District Raipur (C.G.)
3. The Assistant Commissioner, Central Excise, Division-II, Bhilai, 3rd Floor, Central Revenue Building, Hudco, Bhilai, District Durg (C.G.)

---- Respondents

For Petitioner: Mr. Kishore Bhaduri, Advocate.
For Respondents : Mr. Vinay Pandey, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

19/04/2017

(1) The petitioner preferred appeal against the order dated 16.12.2015 passed by Commissioner (Appeals) Custom, Central Excise & Service Tax Appellate Tribunal, which was rejected by that Court holding that the petitioner's appeal is barred by Section 35 (1) of the Central Excise Act as petitioner received copy of

order of appeal on 25.03.2014 whereas appeal was filed on 11.02.2015 and it has been held that the Commissioner (Appeal) cannot condone the delay beyond period prescribed under the Act.

(2) The Appellate Tribunal, by its impugned order dismissed the appeal holding that order passed by the Commissioner (Appeal) is strictly in accordance with law, against which, instant writ petition has been filed questioning the same.

(3) I have heard learned counsel appearing for the parties, considered their rival submissions made and also gone through the order impugned with utmost circumspection.

(4) Section 35 of the Central Excise Act reads as under:-

> "**35. Appeals to [Commissioner (Appeals)].-** (1) Any person aggrieved by any decision or order passed under this Act by a Central Excise Officer lower in rank than a [Commissioner of Central Excise] may appeal to the [Commissioner of Central Excise (Appeals)] [hereinafter in this Chapter referred to as the [Commissioner (Appeals)] [within sixty days] from the date of the communication to him of such decision or order:
>
> [Provided 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 sixty days, allow it to be presented within a further period of thirty days.]"

(5) The aforesaid provision clearly provides that the Appellate authority can condone the delay up to 30 days at the most. Therefore, if the appeal is not filed beyond 90 days, the Appellate Authority has no jurisdiction to condone the delay. In the instant case, the petitioner has received the copy of order of appeal on

25.03.2014 and he filed appeal on 11.02.2015, it is beyond the period of 90 days and, therefore, it has rightly been dismissed by the appellate authority.

(6) In the matter of **Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur and others**[1], their Lordships of the Supreme Court has considered the aforesaid question and clearly held that provision of Section 5 of the Limitation Act is not applicable as Section 35 of the Act has overrides the provisions of Section 5 of the Limitation Act and 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 up to which the prayer of condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the 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 sub-section (1) of section 35 makes the position crystal clear that the appellate authority has no power to allow

1 (2008) 3 SCC 70

> 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 up to 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 expiry of 30 days' period.”

(7) The aforesaid decision has been followed with approval again by the Supreme Court in the matters of **Commissioner of Customs, Central Excise, Noida Vs. Punjab Fibres Ltd, Noida**[2] & **Goodearth Steels (P) Ltd Vs. Commissioner of Central Excise, Kanpur**[3].

(8) In view of the aforesaid legal position, the appellate authority has no jurisdiction to condone the delay beyond 30 days in filing the appeal and learned Tribunal is justified in dismissing the appeal as barred by law, in which I do not find any illegality warranting interference by this Court in the instant writ petition.

(9) Accordingly, the writ petition fails and is hereby dismissed.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

2 (2008) 3 SCC 73
3 (2008) 3 SCC 77