THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

CENTRAL EXCISE APPEAL No.55 of 2017

23.11.2017

Between:

Tadipatri Municipality, Tadipatri

..Appellant

And

The Commissioner of Central Excise,
Customs & Service Tax, State of Andhra Pradesh,
Guntur and another

..Respondents

Counsel for the appellant: Mr.V.Farooq for Mr.Md.Sallem,
standing counsel for Municipalities

Counsel for the respondents: Mr.B.Narasimha Sarma

The Court made the following:

<u>JUDGMENT</u>: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This appeal is filed by Tadipatri Municipality, Tadipatri, against final order No.A/31422/2016, dated 14.11.2016, in appeal No.ST/21035/2015, on the file of the Customs, Excise and Service Tax Appellate Tribunal, Regional Bench at Hyderabad, (for short 'CESTAT').

2. We have heard the counsel for the appellant and perused the record.

3. Feeling aggrieved by levy of service tax, the appellant filed an appeal before the Commissioner of Customs, Central Excise and Service Tax (VIZAG APPEAL – II). Along with the appeal, it also filed an application for condonation of delay of 1472 days. The said application was dismissed on the ground that in terms of Section 85 of the Finance Act, 1994 (for short 'the Act'), appeals pertaining to service tax have to be filed before the Commissioner (Appeals) within three months from the date of receipt of the copy of the order and if the Commissioner (Appeals) is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, he can allow the appeal to be presented within a further period of three months and that applying the said provision, the last date for filing the appeal was 09.12.2011, but the appellant filed the appeal on 09.03.2015, which is beyond the condonable period of delay. The Commissioner has further held that as per the provisions of Section 35 of the Central Excise Act, 1944, which were made applicable to service tax matters by virtue of Section 83 of the Act, the Commissioner (Appeals) has no power to condone the delay beyond the period of three months after the expiry of initial period of three months prescribed as limitation for filing the

appeal. In support of this conclusion, the Commissioner has relied upon the judgment of the Supreme Court in **Singh Enterprises vs. CCE, Jamshedpur**[1]. The order of the Commissioner was questioned in a further appeal before the CESTAT, which has dismissed the said appeal by holding that the decision of the Commissioner is in conformity with the law laid down by the Supreme Court in **Singh Enterprises** (supra).

4. In **Singh Enterprises** (supra), the Supreme Court held that when an enactment prescribed a particular period of limitation and conferred jurisdiction on the appellate authority to condone the delay of a specified period, such authority cannot condone the delay caused in excess of the prescribed period by applying Section 5 of the Limitation Act, 1963. In the light of this settled legal position, the orders of the Commissioner as well as the CESTAT are perfectly in consonance with the law laid down by the Supreme Court and the same cannot be interfered with.

5. For the aforementioned reasons, this Appeal is dismissed.

6. As a sequel to dismissal of the Central Excise Appeal, C.E.A.M.P.No.93 of 2017 filed by the appellant for interim relief shall stand dismissed as infructuous.

C.V.NAGARJUNA REDDY, J

T.AMARNATH GOUD, J

23rd November, 2017
GHN

[1] 2008(221) E.L.T. 163 (S.C.)