NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPT No. 123 of 2014

M/s B. P. Ispat Pvt. Ltd. Through its Director, Shri Jayant Kumar Patel, aged about 28 years, Plot No. 377, Village Masania Kala, Tahsil Sakti, PS Sakti, District Janjgir Champa (C.G.)

---- Petitioner

Versus

1. C.C.E. Raipur, Central Excise Building, Dhamtari Road, Tikrapara, Raipur (C.G.) - 492001

2. The Additional Commissioner, Customs and Central Excise, Central Excise Building, Dhamtari Road, Tikrapara, Raipur (C.G.)

---- Respondents

For Petitioner	:	Mr. Pravin Kumar Tulsyan, Advocate.
For Respective Respondents	:	Mr. Maneesh Sharma and Mr. Vinay Pandey, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

05/04/18

1. The petitioner preferred an appeal under Section 35(1) of the Central Excise Act, 1944 against the order passed by Additional Commissioner, Customs and Central Excise. The Commissioner (Appeals), by order dated 14.03.2014, dismissed the appeal holding that the petitioner's appeal is barred by limitation and it has been held that the Commissioner (Appeal) has no power to condone the delay after expiry of the prescribed period of 60 days, being aggrieved against which this writ petition has been preferred by the petitioner.

2. Learned counsel appearing for the petitioner would submit that

impugned order is unsustainable and bad in law and is liable to be set aside.

3. Per contra, learned counsel appearing for the revenue would rely upon the decision rendered by this Court in *M/s Shri Sai Rolling Mill v. The Commissioner, Custom Central Excise and Service Tax and Others,* (WPT No. 16 of 2017) decided on 19.04.2017 and would submit that the appeal preferred by the petitioner cannot be entertained.

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

5. Section 35 of the Central Excise act reads as under :-

> **“35. Appeals to [Commissioner (Appeal)]-** (1) Any person aggrieved by any decision or order passed under this Act 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.]”

6. 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 31.01.2013 and he filed appeal on 09.10.2013 it is beyond the period of 90 days and, therefore, it has rightly been dismissed by the appellate authority.

7. In the matter of **Singh Enterprises v. 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 orverrides 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 the appeal to be presented beyond the period of 30 days. The language

1 (2008) 3 SCC 70

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."

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

9. 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 don not find any illegality warranting interference by this Court in the instant writ petition.

10. Accordingly, the writ petition fails and is hereby dismissed.

Sd/-

(Sanjay K. Agrawal)
Judge

Priyanka

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