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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CM-9801-CII-2022 in/and
STA-20-2022 (O&M)
Date of decision: 05.12.2022

Principal Commissioner of Central Tax ......Appellant.

vs.

M/s Munjal Showa Ltd ......Respondent.

**CORAM: - HON'BLE MR JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE SANJIV BERRY**

Present: - Mr. Sourabh Goel, Sr. Standing Counsel for the appellant.
Mr. Amrinder Singh, Advocate, for the respondent.

TEJINDER SINGH DHINDSA, J. (ORAL)

CM-9801-CII-2022

Instant application has been filed under Sub Section 2A of Section 35G of the Central Excise Act seeking condonation of delay of 767 days that has occurred in filing the accompanying appeal.

Notice in the application.

Mr. Amrinder Singh, learned counsel for the sole respondent, accepts notice.

A copy of the application already stood served.

Keeping in view the averments made in the application, that a copy of the impugned order had been received in the office of the appellant on 11.08.2017 and after appointing a counsel from the departmental panel, the appeal had actually been filed in time initially and such factual premise being not disputed by the counsel opposite, we are inclined to accept the prayer.

Application is allowed. Delay of 767 days is condoned.

Application disposed of.

Main case

Instant appeal under Section 35G (i) of the Central Excise Act, 1944 is directed against the final order dated 15.06.2017 (Annexure A-13) passed by the Customs Excise and Service tax Appellate Tribunal, Chandigarh, in Excise Appeal No. ST/612/2012.

Brief factual position is that the respondent- assessee herein had entered into a contract with M/s Showa Corporation on 11.03.2002 and in terms of which intellectual property rights were transferred and for which a royalty amount, as percentage of sale were to be paid by the respondent. The department was of the view that such amounts towards royalty are taxable under the intellectual property service and as such the assessee was liable to pay service tax under reverse charge mechanism under the provisions of the Finance Act, 1994. The adjudicating authority confirmed the demand for the normal period and dropped the demand for the extended period. Two appeals arose against the order of the adjudicating authority i.e., one by the department and the other by the assessee. The Tribunal allowed the appeal of the assessee and dismissed the appeal of the department vide impugned order dated 15.06.2017 (Annexure A-13). The Tribunal took a view that the services were not classifiable under Section 65 (105) (zzr) of the Finance Act, 1994.

Resultantly instant appeal at the hands of the appellant-department.

During the course of arguments today, it emerges that the dispute is with regard to taxable event based upon an agreement dated 11.03.2002. The CESTAT circular dated 27.10.2008 dealing with ITR services was made applicable w.e.f. 10.09.2004. The present case even though pertains to a period even post 10.09.2004 but the taxable event is relatable to a date prior to 10.09.2004.

Counsel for the parties however are *ad idem* that the issue raised in the appeal pertains to taxability.

In view thereof, the instant appeal would not be maintainable in its present form as it is only the Hon'ble Supreme Court which would have exclusive jurisdiction insofar as appeal against CESTAT's orders relatable to taxability of service under Section 35G of the Central Excise Act 1944 read with Section 83 of the Finance Act.

In view of the above and since issue is pertaining to taxability, the present appeal is held to be not maintainable before this Court.

Appeal is accordingly dismissed with liberty to the appellant-department to avail of its appropriate remedy against the impugned order in accordance with law.

Disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

(SANJIV BERRY)
JUDGE

05.12.2022
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whether speaking/non speaking yes/no
whether reportable/non reportable yes/no