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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 23.02.2024

+ W.P.(C) 2752/2024 & CM APPL. 11183-84/2024

M/S WHITE MOUNTAIN TRADING PVT. LTD. Petitioner

versus

ADDITIONAL COMMISSIONER,
CGST APPEALS-II, DELHI

..... Respondent

Advocates who appeared in this case:

For the Petitioner

Mr. Srijan Sinha and Mr. Naveen Soni, Advocates.

For the Respondents:

Mr. Harpreet Singh, Sr. Standing Counsel with Mr.
Jatin Kumar Gaur, Advocates.**CORAM:-****HON'BLE MR. JUSTICE SANJEEV SACHDEVA****HON'BLE MR. JUSTICE RAVINDER DUDEJA****JUDGMENT****SANJEEV SACHDEVA, J. (ORAL)**



1. Petitioner impugns order dated 15.01.2024 passed by the Commissioner of Central Tax Appeals-II whereby the appeal filed by the petitioner impugning the order in original dated 04.05.2023 was dismissed holding that the same is barred by limitation.
2. Issue notice. Notice accepted by learned counsel for respondent. With the consent of parties, the petition is taken up for hearing today.
3. As per the impugned order, the order in original is dated 04.05.2023 and the last date for filing the appeal in terms of Section 107 (1) of the Central Goods and Service Tax Act 2017 (hereinafter referred to as the Act) being 3 months, was 03.08.2023. The impugned order records that the appeal was actually filed on 25.09.2023 after a delay of more than one month. As per the Commissioner Appeals only a delay upto one month, in filing an appeal, could be condoned under Section 107 (4) of the Act if sufficient cause is shown.
4. Commissioner Appeals held that since the appeal was filed with a delay of more than one month, Commissioner Appeals was not vested with the power to Condon the delay.
5. It is pointed out that the petitioner had filed the appeal through an online process on 02.09.2023. The date noticed in the impugned order, i.e. 25.09.2023 is the date when the petitioner physically filed



the appeal after the filing done on 02.09.2023 through the online process.

6. It is not in dispute that the appeal is to be filed through an online process and thereafter the physical copy is to be supplied to the department.

7. The date of filing is always taken as the date of initial filing through the online mode if other steps as required in the law are also taken by the appellant.

8. Since in the present case the appeal was filed on 02.09.2023, we hold that the appeal was filed with a delay not exceeding one month and as such the Commissioner Appeals was empowered to consider the application seeking condonation of delay.

9. As the Commissioner Appeals has erroneously not considered the application seeking condonation of delay solely on the ground that appeal same was beyond the period prescribed under Section 107 (4) of the Act and thus beyond the powers vested in the Commissioner Appeals, we set aside the said order and remit the matter to the Commissioner Appeals to consider the application seeking condonation of delay in accordance with law.

10. The petition is accordingly disposed of with the aforesaid



directions.

11. The Commissioner Appeals shall expeditiously dispose of the proceedings.

12. It is clarified that this Court has neither considered nor commented on the merits or the contention of either party or the merits of the application seeking condonation of delay.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

FEBRUARY 23, 2024/ss