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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11738 OF 2024

Sharad Ramchandra Jadhav … Petitioner

Versus

Commissioner of CGST & CEX Appeals & Anr. … Respondents

Mr. Sachin Punde a/w Mr. Jotiram R. Jadhav for the Petitioner.

Mr. Y. R. Mishra a/w Mr. Abhishek Mishra for the Respondents.

CORAM : M.S. Sonak & Jitendra Jain, JJ.

DATED : 30 June 2025

PC. (M. S. Sonak, J.) :-

1. Heard learned counsel for the parties.

2. Rule. The rule is made returnable immediately at the request and with the consent of the learned counsel for the parties.

3. Learned counsel for the petitioner, at the outset, admits that there is some mistake in the prayer clause (a) regarding the dates of the impugned order. Accordingly, we grant leave to amend. Amendment to be carried out forthwith. Reverification is dispensed with.

4. The challenge in this petition is to the Order-in-Original dated 29 December 2022 and the order dated 29 January

2024 made by the Commissioner (Appeals) rejecting the petitioner's appeal on the ground of bar of limitation.

5. The record shows that the Order-in-Original dated 29 December 2022 was served upon the petitioner only on 9 March 2023. The appeal was filed on 29 March 2023. Thus, from the date of service of the order and the date of knowledge of the contents of the order, the appeal was well within the prescribed period of limitation.

6. The Commissioner (Appeals) was therefore not justified in rejecting the appeal by invoking the bar of limitation. On this short ground, we set aside the impugned order dated 29 January 2024 and remand the matter to the Commissioner (Appeals) for disposal of the petitioner's appeal in accordance with law and on its own merits as expeditiously as possible.

7. Besides, Mr. Punde, learned counsel for the petitioner, pointed out that this is the matter where service tax is sought to be levied upon a practicing advocate. He points out that this Court in the case of ***Adv. Pooja Patil Vs. Deputy Commissioner & Ors.***[1] and ***Ish Kiran Jain Vs. The Assistant Commissioner & Ors.***[2] has held that no service tax can be imposed upon practising advocates. He submits that by wrongfully invoking the bar of limitation, the Commissioner (Appeals) has not considered the above decisions.

8. Now that we are setting aside the impugned order dated 29 January 2024 and remanding the matter to the Appellate Authority, we are sure that the Appellate Authority will take

1 2023 SCC OnLine Bom 2857

2 Writ Petition (L) No.25269 of 2023 decided on 16 October 2023

into consideration the above-referred precedents. In any event, all contentions of all parties, including the contentions on behalf of the respondents, as to why the decisions are inapplicable, are left open to be determined by the Appellate Authority.

9. The rule is made absolute in the above terms without any order for costs.

10. All concerned must act on the authenticated copy of this order.

(Jitendra Jain, J) **(M.S. Sonak, J)**