HC-KAR

NC: 2025:KHC:29736
WP No. 19577 of 2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF JULY, 2025

BEFORE

THE HON'BLE MR. JUSTICE M.NAGAPRASANNA

WRIT PETITION NO. 19577 OF 2025 (T-RES)

BETWEEN:

RAJESH BALAKRISHNA KUMAR
S/O. MR. BALAKRISHNA,
AGE : 48 YRS.
NO. 3-1-147, 'HEMA NIVAS',
BEHIND S.P. OFFICE, V.V. ROAD,
BANNANJE, UDUPI TALUK,
UDUPI DISTRICT-576101.

...PETITIONER

(BY SRI. MAHESH R UPPIN, ADVOCATE)

AND:

1. COMMISSIONER OF GST (APPEALS)
OFFICE OF THE COMMISSIONER OF
CENTRAL GST AND CENTRAL EXCISE (APPEALS),
NO. 71, CLUB ROAD,
BELAGAVI 590 001.

2. ASST. COMMISSIONER OF CENTRAL
EXCISE AND CENTRAL TAX,
UTTARA KANNADA DIVISION,
OPP L.I.C. OF INDIA,
KARWAR-581 301.
UTTARA KANNADA DISTRICT.

...RESPONDENTS

(BY SRI. JEEVAN J NEERALGI, ADVOCATE)

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THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO

QUASH THE ORDER-IN-APPEAL BEARING NO.MLR-EXCUS-000-APP-AS-136-2024-25 DATED 20-02-2025 PASSED BY THE 1ST RESPONDENT MARKED AS ANNEXURE G BY ISSUING A WRIT IN THE NATURE OF CERTIORARI, ETC.

THIS WRIT PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE M.NAGAPRASANNA

ORAL ORDER

The petitioner is before this Court calling in question an order dated 20.02.2025 passed in Appeal No.MLR-EXCUS-000-APP-AS-136-2024-25, whereby the appeal so filed by the petitioner is declined to be entertained, on the ground that the appeal is allegedly preferred by a delay of 24 hours.

2. Heard Sri Mahesh R. Uppin, learned counsel for petitioner and Sri Jeevan J. Neeralgi, learned counsel for respondents.

3. The petitioner, a Civil Contractor, undertakes certain work of construction, repair and reconditioning and had obtained a Service Tax Registration Certificate for the purpose. An order comes to be passed by the Assistant Commissioner of Central Excise and Central Tax - the original authority on

29.05.2024, imposing tax to the tune of ₹10.00 lakhs on the score and collecting a penalty of a sum of ₹10,000/- under Section 77(1)(c) of the Finance Act, 1994 (for short 'the Act'). Against the said order of penalty by the original authority, the assessee has a remedy of filing an appeal. The appeal, but, has to be preferred within sixty days, from the date of communication of the order.

4. Learned counsel for the petitioner submits that the order was communicated on 01.06.2024. Therefore, the appeal, in terms of law, had to be preferred on or before 1st August 2024, which would be sixty days from the date of communication of the order. The appeal which was sent by registered post, was registered on 02.08.2024 by the appellate authority. On the score that the appeal is preferred after a day's delay, the appeal is declined to be entertained and therefore, the petitioner is before this Court in the subject petition.

5. The learned counsel for the petitioner would reiterate the averments made in the petition to contend that the appeal requires a deposit of 7.5% of the tax so imposed. The 7.5%

deposit was sought to be attempted by the petitioner on three occasions. On the third occasion, i.e. on 29.07.2024, the deposit was accepted. He would take the Court through a document appended to the petition to demonstrate that the deposit was accepted on 29.07.2024. Learned counsel for the petitioner would submit that the appellate authority has not considered the same and therefore would contend that the appeal was in time and had to be entertained on its merit.

6. Learned counsel Sri. Jeevan J. Neeralagi, appearing for respondents would refute the submissions in contending that the mandate of the statute is that a person aggrieved against the order of the original authority should file an appeal within sixty days. Condonation of delay application, if preferred, will be entertained, extending the limitation period by another thirty days and not beyond that. He would submit that there is no application seeking condonation of delay. Therefore the order cannot be found fault with and would seek dismissal of the petition.

7. I have given my anxious consideration to the submissions made by the respective learned counsels and have perused the material on record.

8. The afore-narrated facts, dates, link in the chain of events, are not in dispute. The issue lies in a narrow compass as to whether the assessee petitioner has preferred an appeal within time or otherwise. An order against which the petitioner files the appeal is dated 29.05.2024, which is admittedly communicated to him on 01.06.2024. Therefore, the appeal had to be preferred within sixty days i.e. on or before 01.08.2024. The petitioner seeks to deposit the amount at 7.5% of the tax that is necessary to prefer an appeal on several occasions and is accepted on 29.07.2024. The tax challan of the web portal of the Central Board of Indirect Taxes and Customs at Annexure B, is as follows:

SHPK 9135L SD001	YZ0 401	24076 76613	13/08 /2024	Sathish kulal77 @gmail. com	92421 03844	Rajesh Bala krishna Kumar	81,500	29.07. 2024	Hema Nivas 3-1- 147 V V Road Bannanje Udupi Udupi	002000S TYZ0401 0349069 3620608 30	Paid
SHPK 9135L SD001	YZ0 401	24076 76558	13/08 /2024	Sathish kulal77 @gmail. com	92421 03844	Rajesh Bala krishna Kumar	81,500		Hema Nivas 3-1- 147 V V Road		Not Paid

									Bannanje Udupi Udupi		
SHPK 9135L SD001	YZ0 401	24076 76396	11/08 /2024	Sathish kulal77 @gmail. com	92421 03844	Rajesh Bala krishna Kumar	81,500		Hema Nivas 3-1-147 V V Road Bannanje Udupi Udupi		Not Paid
SHPK 9135L SD001	YZ0 401	24076 76394	11/08 /2024	Sathish kulal77 @gmail. com	92421 03844	Rajesh Bala krishna Kumar	81,500		Hema Nivas 3-1-147 V V Road Bannanje Udupi Udupi		Not Paid

9. The dashboard of the track challan is clearly indicative of the fact that the petitioner has deposited a sum of ₹81,500/- at 7.5% on 29.07.2024. Therefore, it was well within limitation of 01.08.2024. Simultaneously, the petitioner has sent the appeal by way of registered post to the appellate authority. This is also not in dispute. It is received by the appellate authority and registered on 02.08.2024. Therefore, the date is taken as 02.08.2024. On 20.02.2025, the appellate authority rejects the appeal. The relevant portion of the order reads as follows:

"6. चर्चा और निष्कष / DISCUSSION AND FINDINGS:

(i) Date of Communication of OIO: 01.06.2024

(ii) Date of Filing Appeal: 02.08.2024

(iii) As per Section 85(3A) of the Finance Act, 1994, an appeal must be filed within two months from the date of communication of the order, with an additional one-month condonable delay period.

(iv) In this case, the statutory deadline for filing the appeal was 01.08.2024, and the appellant filed the appeal on 02.08.2024, making it beyond the permissible period, including the condonable period.

(v) The appellant has not filed any application for condonation of delay.

(vi) The delay in filing the appeal is one day beyond the condonable period, making it liable to be dismissed as time-barred.

7. The appeal has been filed beyond the statutory period prescribed under Section 85(3A) of the Finance Act, 1994, and no application for condonation of delay has been submitted by the appellant. The Hon’ble Supreme Court in the case of Singh Enterprises v. CCE [2008 (221) E.L.T. 163 (S.C.)] has categorically held that the Commissioner (Appeals) has no power to condone the delay beyond 30 days as provided. Similarly, the Hon’ble Tribunal in the case of Zenith Rubber Pvt. Ltd. v. CCE Ahmedabad, 2017 (49) S.T.R. 400 (Tri.-Ahmd.) held that the Commissioner (Appeals) is bound by the statutory provisions and cannot condone delay beyond the prescribed limit.

8. Further, the Hon'ble Supreme Court in the case of Bengal Investments Ltd. v. Assistant Commissioner-2016 (42) S.T.R. J274 (S.C.) has categorically held that Section 85(3A) of the Finance Act, 1994 requires strict adherence, and any relaxation would render the statutory provision ineffective.

9. Therefore, without going into the merits of the case, as per the above judicial precedents, the appeal is liable for rejection on account of delay in filing.

<u>ORDER</u>

The Appeal A.No.129/2024/MR/ST Dated: 02.08.2024 filed by Shri. Rajesh Balakrishna Kumar, 3-1-147, Behind S. P. Office, V. V. Road, Bannanje, Udupi-

576101 against OIO No. MLR-EX-CUS-000-DUK-ASC-RG-4-24-25 dated: 29-05-2024 is rejected on the grounds discussed above.

The Appeal A.No.129/2024/MR/ST Dated: 02.08.2024 stands disposed of accordingly.”

(Emphasis added)

The reasons indicated for passing the afore-quoted order is on the score that there was a delay in filing the appeal of one day beyond the statutory period *i.e.,* on 02.08.2024 and the appeal comes to be dismissed as time-barred as the statutory period commences from 01.06.2024 to 01.08.2024. It also indicates that the appeal is filed beyond the condonable period and there was no application seeking condonation of delay in filing the appeal.

10. Section 85 of the Act deals with filing an appeal before the Commissioner / Collector of Central Excise against an order passed by the Assistant Commissioner of Central Excise, as is done in the case at hand. Section 85 of the Act reads as follows:

“**85. Appeals to the Collector of Central Excise (Appeals)**.— [(1) Any person aggrieved by any decision or order passed by an adjudicating authority subordinate to the Commissioner of Central Excise may appeal to the Commissioner of Central Excise (Appeals).]

(2) Every appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(3) An appeal shall be presented within three months from the date of receipt of the decision or order of [such adjudicating authority], relating to service tax, interest or penalty under this Chapter [, made before the date on which the Finance Act, 2012 receives the assent of the President]:

Provided that the Collector of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of three months.

[(3-A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 receives the assent of the President, relating to service tax, interest or penalty under this chapter:

Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.]

(4) The Collector of Central Excise (Appeals) shall hear and determine the appeal and, subject to the provisions of this Chapter, pass such orders as he thinks fit and such orders may include an order enhancing the service tax, interest or penalty:

Provided that an order enhancing the service tax, interest or penalty shall not be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

(5) Subject to the provisions of this Chapter, in hearing the appeals and making order under this section, the Collector of Central Excise (Appeals) shall exercise the same powers and follow the same procedure as he exercises and

follows in hearing the appeals and making orders under the Central Excises and Salt Act, 1944 (1 of 1944)."

(Emphasis supplied)

11. In the considered view of this Court, the appellate authority has glossed over the fact that on 29.07.2024, the deposit was in place. If only the appellate authority had looked into the dash board of the CBITC that the deposit was in place, the appeal ought to have been entertained. Not for nothing that an assessee would deposit on a particular day and file an appeal after a week. The appeal is also communicated on the same day. It cannot be said that the registration of the appeal on 02.08.2024, eventually in the facts and circumstances of the case would amount to a delay of 24 hours in registering the appeal.

12. In that light, there was no necessity for the petitioner to file any application seeking condonation of delay in the case on hand for the appellate authority to reject the appeal on the ground of delay and no application for condonation of delay being filed. A day's delay *i.e.,* 24 hours delay being taken note of when there is no delay, is not only technical, but hyper

technical, which the authorities ought to have avoided and answered the issue on its merit.

13. For the aforesaid reasons, the petition deserves to succeed. Accordingly, I pass the following:

ORDER

i) The petition is **allowed**;

ii) The impugned order dated 20.02.2025 passed in Appeal No.MLR-EXCUS-000-APP-AS-136-2024-25, by the first respondent vide Annexure G, is hereby quashed.

iii) The appeal is deemed to have been registered within limitation and the appellate authority is directed to consider the same in accordance with law and pass necessary orders thereon.

Sd/-
(M.NAGAPRASANNA)
JUDGE

BMV*
List No.: 1 Sl No.: 39