(2016) 05 GAU CK 0103

In the Gauhati High Court

Case No : C. Ex. Appeal No. 2 of 2016

Diamond Engineering Works — APPELLANT

Vs

Commissioner of Central Exice & Service Tax — RESPONDENT

Date of Decision : 09-05-2016

Acts Referred:
Finance Act, 1994 — Section 85

Citation : (2017) 1 GauLR 494 : (2016) 4 NEJ 573

Hon'ble Judges : Mr. Ajit Singh, CJ. and Mr. Suman Shyam, J.

Bench : Division Bench

Advocate : Ms. M. Bhattacharjee, learned counsel, for the Appellant; Mr. S.C. Keyal, learned Assistant Solicitor General of India, for the Respondents

Final Decision : Dismissed

Judgement

Ajit Singh, C.J. - Ms. M. Bhattacharjee, learned counsel for the appellant Mr. S.C. Keyal, learned Assistant solicitor general of India for the respondents. Heard on admission.

This appeal is directed against the order dated 14.10.2015 passed by the Customs, Excise & Service Tax Appellate Tribunal, Kolkata (in short "Tribunal") in Appeal No. EA-75372/15.

2. The appellant was served with a Show Cause-cum-Demand Notice by the Central Excise and Service Tax Authorities demanding Rs. 4,85,899/- as Service Tax & Education Cess which was alleged to be payable for the period 2005-2006 to 2009- 2010. The appellant submitted reply-cum-explanation to the demand notice but it was not to the satisfaction of the adjudicating authority who vide order dated 26.9.2012 confirmed the demanded amount.

3. Aggrieved, the appellant filed appeal under Section 85 of the Finance Act before the Commissioner and since it was filed beyond the maximum prescribed period of 3 months, the Commissioner dismissed the same vide order dated 17.11.2014 on the ground of limitation. The Commissioner held that he had no

jurisdiction to condone the delay if the appeal was filed beyond one month in addition to statutory period of two months prescribed under Section 85 (4) (3A) of the Finance Act, 1994. The appellant then filed another appeal before the Tribunal and it fully agreed with the view of the Commissioner in the light of decision of the Supreme Court in Singh Enterprises v. Commissioner of Central Excise, (2008) 3 SCC 70.

4. Section 85 (4)(3A) of the Finance Act, 1994 reads as under:-

"85 (4) (3A) ? 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."

5. The above quoted provision is identical to Section 35 of the Central Excise Act, 1944. The Supreme Court in the case of Singh Enterprises (supra), while dealing with Section 35 of the Central Excise Act has held that the Commissioner did not have the power to condone the delay beyond the period of 30 days from the day of expiry of 60 days prescribed for filing statutory appeals. We, therefore, having regard to the decision of Supreme Court find no merit in the appeal. It is accordingly dismissed.