(2024) 03 CESTAT CK 0009

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Early Hearing Application No. 75733 Of 2023 IN Service Tax Appeal No. 75685 Of 2023

Kalyan Gogoi — APPELLANT

Vs

Commissioner Of Central Excise & Service Tax — RESPONDENT

Date of Decision : 05-03-2024

Acts Referred:
Finance Act, 1994 — Section 85(3)A

Citation : (2024) 03 CESTAT CK 0009

Hon'ble Judges : Ashok Jindal, Member (J);K. Anpazhakan, Member (T)

Bench : Division Bench

Advocate : M.P.Bagaria, S. Mukhopadhyay

Final Decision : Disposed Of

Judgement

Ashok Jindal, Member (J)

1. The appellant is in appeal against the impugned order wherein their appeal has been dismissed as time-barred. As a huge amount is involved in the matter, the applicant is seeking early hearing of the Appeal.

2. Considering the fact the Ld. Commissioner (Appeals) dismissed the Appeal on limitation only, under the circumstances, we take up the appeal itself for disposal as agreed by both the sides.

2.1. We find that against the Order-in-Original dated 04.02.2022, the appellant filed an appeal before the Ld. Commissioner(Appeals) on 5th May, 2022. In the impugned order, the Ld. Commissioner (Appeals) has recorded the findings that the time prescribed u/s 85(3)A of the Finance Act, 1994 is two months from the date of receipt of the order, which is 26.04.2022 and the Appeal has been filed on 05.05.2022; therefore, the same has been held as barred by limitation.

2.2. We are pertinent to mention that the Ld. Commissioner (Appeals) has failed to exercise his power to condone the delay of 9 days in filing the Appeal although provision of the statute gives power to the Ld. Commissioner (Appeals) to condone the delay.

2.3. The appellant has explained the proprietor of the appellant was suffering from back pain and produced medical certificate before the Ld. Commissioner (Appeals), but he did not consider the same. As the reason has been explained by the appellant for delay satisfactorily, therefore, the delay in filing appeal before the Ld Commissioner (Appeals) is condoned. Further, we find that the Ld. Commissioner (Appeals) has not disposed the appeal on merits, under the circumstances, we set aside the impugned order and the Ld. Commissioner (Appeals) is directed to decide the merits of the issue within thirty days from the date of receipt of this order and pass an appropriate order in accordance with law.

3. The appeal as well as Miscellaneous Application are disposed off in the above manner.