(2024) 10 CESTAT CK 1188

In the Customs, Excise And Service Tax Appellate, New Delhi

Case No : Service Tax Appeal No.55553 of 2023

M/s Raj Kumar Mev @APPELLANT @Hash Commissioner, Service Tax & Central Excise @RESPONDENT

Date of Decision : 08-10-2024

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

Citation : (2024) 10 CESTAT CK 1188

Hon'ble Judges : P. V. Subba Rao, Member (T)

Bench : Single Bench

Advocate : Nikita Jaju, Kuldeep Rawat

Final Decision : Allowed

Judgement

P.V. Subba Rao, J

1. M/s Raj Kumar Mew, Indore, the appellant (M.P.) filed this appeal to assail the order-in-appeal dated 18.05.2023 passed by the Commissioner (Appeals) Indore, whereby he rejected the appeal filed by the appellant on limitation without expressing any opinion on the merits of the case. The order-in-original passed by the Deputy Commissioner on 25.02.2022 was received by the appellant on 08.03.2022. The appeal was filed before the Commissioner (Appeals) on 06.06.2022 i.e., after the normal period of limitation of two months, but within the condonable limit of further one month as per section 85 (3A) of the Finance Act, 1994, Finance Act.

2. The Commissioner (Appeals) noted that the limitation of two months for filing the appeal had ended on 07.05.2022. He further recorded that the Commissioner (Appeals) was empowered to condone the delay of one month on sufficient reasons being shown, but the appellant had not requested for condonation of delay in filing the appeal at all. He held that he had no jurisdiction to condone the delay as there were no request for such condonation nor were any grounds shown for the delay. Accordingly, he rejected the appeal without examining the merits of the case.

3. I have heard Ms. Nikita Jaju, learned counsel for the appellant and Shri Kuldeep Rawat, learned authorized representative for the Revenue and perused the records.

4. Learned counsel for the appellant submits that the order-in-original was served on the appellant on 08.03.2022 and its preamble mentioned at Sl. No.2 that an appeal could be filed before the Commissioner (Appeals) within a period of 90 days from the date of receipt of the order-in-original in case of Service Tax and within 60 days from the receipt of the order-in-original in case of Central Excise. Therefore, the appellant was under the bonafide belief that he had to file an appeal within 90 days and he did so. Learned counsel fairly admits that the limit during the relevant period was only of two months and a further condonable period of one month. She, however, submitted that in view of the preamble, the appellant had not submitted any application seeking condonation of delay before the Commissioner (Appeals).

5. Learned authorized representative for Revenue submits that even if an erroneous limit was mentioned in the preamble of the order-in-original, it cannot prevail over the statutory provisions applicable during the relevant period. Section 85 (3A) of the Finance Act merely specified a limit only 2 months to file an appeal before Commissioner (Appeals) and if the Commissioner (Appeals) was convinced that there were sufficient cause for the delay in filing the appeal, he could condone a delay of one month. As no application for condonation of delay was filed, the Commissioner (Appeals) was correct in rejecting the appeal.

6. I have considered these submissions. Learned authorized representative was correct in asserting that the limitation under section 85 (3A) for filing the appeal before Commissioner (Appeals) was two months and the appeal before him was filed beyond this period without an application of condonation of delay. It is equally true that the preamble of the order-in-original erroneously mentioned that an appeal could be filed within a period of 90 days and the appellant trusted the preamble. For this reason, he did not file an application seeking condonation of delay. The erroneous preamble of the order-in-original was sufficient cause for the delay.

7. In view of above, I find that it would meet ends of justice if the delay is condoned and the Commissioner (Appeals) is given an opportunity to examine and decide the issue on merits.

8. I condone the delay in filing the appeal before Commissioner (Appeals) caused due to the erroneous preamble to the order-in-original. I remand the matter to Commissioner (Appeals) to decide it on merits.

9. The appeal is allowed by way of remand to the Commissioner (Appeals).

(Order dictated and pronounced in open court.)