

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH -Court No. I

EXCISE CONDONATION OF DELAY APPLICATION NO. 50350 OF 2019

IN

EXCISE APPEAL NO. 50808 OF 2019

(Arising out of Order-in-Original No. 7147/60-65/COM/DDN/2017 dated 30.06.2017 passed by the Commissioner, Central Excise and Service Tax, Dehradun)

M/s. Tasleem Ahmed

.... Appellant

Versus

**Commissioner of Customs, Central Excise
and Service Tax, Dehradun**

.... Respondent

APPEARANCE:

None Advocate for the Appellant

Shri O.P.Bisht, Authorized Representative for the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MR. P V SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 11/04/2022

FINAL ORDER NO. 50370 /2022

JUSTICE DILIP GUPTA

This appeal was filed on April 08, 2019 by Tasleem Ahmed describing himself as the erstwhile Director of M/s. Sant Steel Alloy Pvt. Ltd. to assail the order dated June 30, 2017 passed by the Commissioner, Central Excise and Service, Dehradun¹. It was accompanied by an application seeking condonation of the delay in filing the appeal.

1. the Commissioner

2. The averments that have been made in the delay condonation application are as follows:

1. That the appellant, had resigned from Directorship of the company M/s Sant Steel Alloy P. Ltd. during July 2014, and his resignation was accepted by the Board of Directors' of the company on 11.12.2014; as is evident from a perusal of Annexure No. 1(colly), to the Appeal Memo.

2. Thereafter, the appellant had nothing to do with the company (qua his resignation from the Directorship of the company, accepted on 11.12.2014).

3. That, on 21.02.2019, consequent to the recovery proceedings initiated by the Superintendent CGST, Range Kotdwar vide his letter dated 13.12.2019 (Annexure No. 2), the appellant requested vide his letter dated 21.02.2019 (Annexure No. 3) that he be provided a certified copy of the O-I-O dated 30.06.2017. The appellant was provided a certified copy of the Adjudication order dated 30.06.2017 (Annexure No. 4) on 21.02.2019 only.

4. That, on 07.03.2019, an appeal u/s 35B, is being filed, in the mandatory period of three months qua the service of the impugned Order in Original upon the appellant on 07.03.2019 only.

5. It is therefore, most respectfully prayed, that on the facts and circumstances of the case; there is no delay in filing an appeal. Therefore, this Condonation of Delay Application be allowed; and it be founded, that there is no delay, in filing the appeal u/s 35B of the Central Excise Act, 1944, i.e. from date of service of Adjudication order dated 30.06.2017 (passed by the Ld. Commissioner CGST, Dehradun) on 07.03.2019; otherwise the appellant shall suffer irreparable loss and injury, which cannot be compensated by any means.

PRAYER

It is therefore most respectfully prayed, that on facts and circumstances of the case; there is no delay in filing an appeal; and that this Condonation of Delay Application be allowed; otherwise the appellant, shall

suffer irreparable loss and injury, which cannot be compensated by any means.

Dated: 02/04/2019

(Tasleem Ahmed)
(Erstwhile Director of M/s Sant Steels & Alloys Pvt.
Ltd.)

VERIFICATION

I, Tasleem Ahmed, S/o Shri Chunna Ahmed, r/o Jabta Ganj, 20 Shiv Mandir Wali Gali, Najibabad, Bijnor (UP), the above named appellant, do hereby solemnly affirm on oath, that the averments made in this Delay Condonation Application, are true and correct, to the best of my information and belief; and nothing has been concealed.

So help me God.

Dated: 02/04/2019

(Tasteem Ahmed)
(Erstwhile Director of M/s Sant Steels & Alloys Pvt.
Ltd.)”

3. In Form No. EA-III that was filed with the appeal, a statement was also made that the appellant received the order appealed against on February 21, 2019.

4. The appellant also gave an undertaking to the following effect:

**“BEFORE THE CUSTOMS, CENTRAL EXCISE AND
SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI**

**UNDERTAKING IN RESPECT OF MATTER NOT
FILED OR PENDING BEFORE ANY OTHER LEGAL
FORUM INCUDING HONORABLE HIGH COURT AND
SUPREME COURT**

The applicant hereby declares and confirms, that he has previously not filed any Appeal, Writ Petition or suit, in respect to the Order in Original No 7147/60-65-COMMISSIONER-DDN-2017 dated 30th June 2017; before any other Court of law, or any other authority, or any other Bench of the Tribunal.

This undertaking is being furnished, pursuant to the Circular No. 01(05)/Circular/CESTAT/2017 dated 27th February 2017, issued by the Ld. Registrar, CESTAT, New Delhi.

(Tasleem Ahmed)
s/o Shri Chunna Ahmed
r/o Jabta Ganj, 20 Shiv Mandir Wali Gali,
Najibabad, Bijnor (UP) – 246763

Dated: 02/04/2019”

5. The appellant also executed a vakalatanama in favour of Mr. Pulak Raj Mullick and Shri Sahil Mullick, as is clear from page 44 of the memo of appeal.

6. What, therefore, transpires from the aforesaid facts is that the appellant had not only stated in Form-III that was submitted with the appeal that the appellant had received the copy of the order dated June 30, 2017 only on February 21, 2019, but the delay condonation application that was filed by the appellant also specifically stated that the appellant was provided with a certified copy of the order June 30, 2017 only on February 21, 2019.

7. On September 09, 2019, time was given to the learned authorized representative appearing for the department to seek instructions on the averments made in the delay condonation application.

8. When the matter was taken up on January 27, 2022, the learned authorized representative appearing for the department placed the letter dated March 12, 2022 sent by the Joint Commissioner (Review). The letter mentions that against the same impugned order dated June 30, 2017, the appellant had earlier filed Central Excise Appeal No. 50087 of 2018 on October 10, 2017, which appeal was dismissed by the Tribunal on January

11, 2018 because the appellant did not deposit the statutory amount for filing the appeal.

9. The Bench, accordingly, directed the learned counsel for the appellant to file a proper affidavit to explain why a fresh appeal had been filed against the order dated June 30, 2017, when the earlier appeal to assail this order had been dismissed. The order passed by the Bench on January 27, 2022 is reproduced below:

“ As directed by the previous order, Id. Departmental Representative has obtained instructions from the Commissionerate. According to the letter dated 12.03.2020 sent by the Joint Commissioner (Review), Dehradun that against the same impugned order-in-original No.60 65/Commissioner /Dehradun / 2017 dated 30.06.2017, this appellant had earlier filed appeal No.50087/2018 on 10.10.2017 before this Tribunal, which appeal was dismissed by Final Order No.50282-50284/2018 dated 11.01.2018 due to non-payment of pre-deposit.

2. Thus, this appears to be suppression of facts by the appellant. Id. Counsel for the appellant is directed to file a proper affidavit as informed by the appellant that why they have resorted to this practice while filing second appeal against the same impugned order.

3. Put up for hearing on **30.03.2022.**”

10. When the matter was next listed on March 30, 2022, learned counsel for the appellant did not appear and the following order was passed:

“ The earlier order dated January 27, 2022 indicates that the appellant had filed Excise Appeal no. 50087 of 2018 to assail the same impugned order that has also been challenged in this appeal and this appeal was dismissed on January 11, 2018. The Bench, therefore, directed the appellant to file an affidavit to explain this. Instead of filing an affidavit, learned counsel appearing for the appellant has sought an adjournment.

2. Very reluctantly we adjourn the matter to April 11, 2022. List on **April 11, 2022** with the records of Excise Appeal no. 50087 of 2018 decided on January 11, 2018.”

11. Pursuant to the order dated March 20, 2022, the office has placed the records of Excise Appeal No.50087 of 2018. It clearly transpires from the record of this appeal that Shri P.R.Mullick, learned counsel had appeared for the appellant on January 11, 2018 and had submitted that due to paucity of funds, the appellant was not able to make the pre-deposit. The appeal was, therefore, dismissed.

12. What also needs to be noted from a perusal of Excise Appeal No. 50087 of 2018 is that in Form Number EA-III, that was filed with the memo of appeal, the appellant had stated that the order dated June 30, 2017, against which the appeal was filed, was received by the appellant on July 08, 2017. This appeal was also filed by Tasleem Ahmed claiming himself to be the, erstwhile Director of M/s. Sant Steel Alloy Pvt. Ltd. and he had also executed a vakalatanama in favour of Shri Pulak Raj Mullick and Shri Sahil Mullick.

13. It is seen that in the present appeal, the appellant has stated in the delay condonation application that consequent to the recovery proceedings initiated by the Superintendent, the appellant made a request, by a letter dated February 21, 2019, that a certified copy of the order dated June 30, 2017 be provided and after the appellant was provided with a certified copy of the order, he filed the appeal on March 07, 2019. The appellant, therefore requested that the period of limitation should be counted from February 21, 2019. This delay condonation application has been verified by Tasleem Ahmed stating therein

that the averments made in the delay condonation application are true and correct to the best of information and belief of the applicant and nothing has been concealed.

14. It is thus clear that not only had Tasleem Ahmed filed both the appeals against the order dated June 30, 2017 through his counsel Shri Pulak Raj Mullick and Shri Sahil Mullick, but in the present appeal neither a mention has been made that the appellant had earlier filed an appeal to assail the order dated June 30, 2017 passed by the Commissioner and the said appeal was dismissed on January 11, 2018, but a false undertaking has also been given by Tasleem Ahmed that the appellant had not filed any appeal before the Tribunal earlier against the order dated June 30, 2017.

15. The appellant has clearly abused the process and has filed this appeal against the order dated June 30, 2017, which order was earlier assailed by the appellant by filing Excise Appeal no. 50087 of 2018 and this appeal was dismissed on January 11, 2018. The certified copy of the order was made available to the appellant on July 08, 2017, as is clearly mentioned in the earlier appeal filed by the appellant, but in the delay condonation application to the present appeal the appellant has stated that he received a certified copy of the order dated June 30, 2017 only on February 21, 2019. Such a wrong averments have been deliberately made to make out a case for condoning the delay in filing the appeal.

16. On January 27, 2022 time has been granted to the appellant to file a proper affidavit to explain why a fresh appeal was filed against the same impugned order.

17. Neither on March 30, 2022, when the matter was listed nor today the learned counsel for the appellant has appeared nor any affidavit has been filed.

18. Such an abuse of the process cannot be over looked and has to be viewed seriously. The appellant has not only concealed material facts but has also deliberately stated false facts before the Tribunal with ulterior motives.

19. It is, therefore, a fit case for imposition heavy cost upon the appellant. We determine the cost at Rs.10 Lakhs, which cost shall be deposited by the appellant within a period of six weeks from today in the PM CARES Fund.

20. The delay condonation application is accordingly dismissed with costs of Rs. 10 Lakhs.

21. As the delay condonation application has been dismissed, the appeal stands dismissed.

22. The matter shall, however, be listed before this Bench on June 02, 2022 with a report whether the cost has been deposited or not.

23. It is made clear that in case the appellant does not deposit this cost, this cost may be directed to be recovered in the same manner as the penalty, that has been imposed by the impugned order, would be recovered from the appellant.

**(JUSTICE DILIP GUPTA)
PRESIDENT**

**(P V SUBBA RAO)
MEMBER (TECHNICAL)**