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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CUSAA 28/2021

M/S SHAMBHU SYNTHETICS PVT. LTD Appellant

Through: Mr. Sholab Arora, Adv.

versus

COMMISSIONER OF CUSTOMS Respondent

Through: Mr. Satish Kumar, Sr. Standing
Counsel with Ms. Vaishali
Goyal, Adv.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

04.10.2023

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1. The solitary question which appears to arise in the instant appeal is whether the provisions of Section 5 of the Limitation Act, 1963 could have been resorted to for the purposes of an appeal presented under Section 128 of the Customs Act, 1962 [**Act**].

2. The Customs, Excise and Service Tax Appellate Tribunal [**CESTAT**] has taken note of the language as employed in that provision to hold that the appeal could have been preferred within the maximum period of 90 days. This since while sub-section (1) of Section 128 of the Act enjoins that an appeal may be presented within 60 days, the Proviso thereto confers a discretion on the Commissioner to extend the period of limitation by a further period of 30 days provided sufficient cause is shown.

3. The CESTAT has rested its conclusions on the judgment



rendered by the Supreme Court in **Singh Enterprises vs. Commissioner of Central Excise, Jamshedpur & Ors.** [(2008) 3 SCC 70] which while construing Section 35 of the Central Excise Act, 1944, which clearly comes forth as a *pari materia* provision, and has held as follows: -

“8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of statute are not vested with jurisdiction to condone the delay beyond the permissible period provided under the statute. The period up to which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Limitation Act, 1963 (in short “the Limitation Act”) can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days' time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only up to 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days' period.”

4. In view of the aforesaid, we find no merit in the instant appeal. The same shall stand dismissed.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

OCTOBER 4, 2023

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