

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

PRINCIPAL BENCH, COURT NO. IV

SERVICE TAX APPEAL NO. 50117 of 2020 (SM)

[Arising out of the Order-in-Appeal No. BHO-EXCUS-001-APP-198-18-19 dated 31/08/2018 passed by The Commissioner (Appeals), CGST & Central Excise, Bhopal (M.P.).]

M/s Al Jamshed Tour & Travels

Appellant

VERSUS

**The Commissioner,
CGST & Central Excise,
Jabalpur (M.P.).**

Respondent

**WITH
SERVICE TAX APPEAL NO. 50118 of 2020 (SM)**

[Arising out of the Order-in-Appeal No. BHO-EXCUS-198-APP-201-18-19 dated 31/08/2018 passed by The Commissioner (Appeals), CGST & Central Excise, Bhopal (M.P.).]

M/s Al Jamshed Tour & Travels

Appellant

VERSUS

**The Commissioner,
CGST & Central Excise,
Jabalpur (M.P.).**

Respondent

**AND
SERVICE TAX APPEAL NO. 50119 of 2020 (SM)**

[Arising out of the Order-in-Appeal No. BHO-EXCUS-201-APP-201-18-19 dated 31/08/2018 passed by The Commissioner (Appeals), CGST & Central Excise, Bhopal (M.P.).]

M/s Al Jamshed Tour & Travels

Appellant

VERSUS

**The Commissioner,
CGST & Central Excise,
Jabalpur (M.P.).**

Respondent

Appearance

Shri Arya Bhatt, Advocate – for the appellant.

Shri P. Juneja, Authorized Representative (DR) – for the Respondent.

CORAM: **HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)**

FINAL ORDER NO. 51240-51242/2021

DATE OF HEARING : 06/04/2021.

DATE OF DECISION: 06/04/2021.

RACHNA GUPTA :-

Present order disposes off following appeals. The order of Commissioner (Appeals) being common to them.

Appeal No.	Order-in-Appeal No. and date	Order-in-Original No. and date	Show cause Notice No. and date	Date of refund claim and amount
ST/50117/2020	BHO-EXCUS-001-APP-198-18-19 dated 31/08/2018	22/REFUND/ST/JBP/2013-14 dated 25/03/2014	V(ST)18-18/JBP/Ref/13-14 dated 08 July 2014	30/12/2013 & Rs. 1,07,672/-
ST/50118/2020	BHO-EXCUS-198-APP-201-18-19 dated 31/08/2018	22/REFUND/ST/JBP/2013-14 dated 25/03/2014	V(ST)18-18/JBP/Ref/13-14 dated 08 July 2014	30/12/2013 & Rs. 20,776/-
ST/50119/2020	BHO-EXCUS-201-APP-201-18-19 dated 31/08/2018	22/REFUND/ST/JBP/2013-14 dated 25/03/2014	V(ST)18-20/JBP/Ref/13-14 dated 08 July 2014	30/12/2013 & Rs. 53,251/-

2. The appellants herein are the private tour operators providing services to the pilgrims for Hajj and Umrah. They are registered with the Service Tax Department. Refund claim of the amount in the above table was filed by the appellants on 30 December 2013 for the period for 01/04/2011 to 31/03/2012 being the amount of of service tax paid on services which got specifically exempted from the payment of service tax in terms of Rule 3 (1) (ii) of the Export Service Rules, 2005. The said refund claim was sanctioned to them and the amount was refunded by cheque. However, an appeal was preferred against the said refund on the ground that the amount has been erroneously refunded without appreciating as to whether the claimant is unjustly enriched. Accordingly, show cause notices, as mentioned above, were served upon the appellants proposing the recovery of the amount so refunded to them. The said proposal was

confirmed vide the order-in-original, as mentioned above. The appeal thereof has been rejected vide the impugned order-in-appeal.

3. I have heard Shri Arya Bhatt, learned Counsel for the appellant and Shri P. Juneja, learned Authorized Representative for the Department. It is submitted on behalf of appellant that the Commissioner (Appeals) has dismissed the appeal on the ground of limitation. It is submitted that another such appeal in the appellant's own matter has also been dismissed by this Tribunal. The appropriate order accordingly is requested. Learned Departmental Representative has submitted that since the appeal before Commissioner (Appeals) was filed after a delay of one month and 20 days and the Commissioner (Appeals) had no power to condone the said delay in view of Section 35 of Central Excise Act, as such, there is no infirmity in the order under challenge. Appeal is prayed to be dismissed.

4. After hearing both the sides, it is observed and held as follows :

There is no denial that the impugned appeals were filed before Commissioner (Appeals) after a delay of one month and 20 days. There is also no denial to the fact that no sufficient reason was explained to Commissioner (Appeals) for the said delay. Learned Counsel for appellant even today has not cited any reason which may be considered as sufficient cause for the impugned delay of one month and 20 days for filing an appeal before Commissioner (Appeals) in terms of Section 35 of Central Excise Act, 1944. The prescribed period for filing appeal before Commissioner (Appeals) is two months, however, delay of one month is condonable by the Commissioner subject to a sufficient cause being shown to him by the appellant. As is apparent from the impugned order, there is no such sufficient cause shown.

5. Resultantly, I do not find any infirmity in the order under challenge where the Commissioner (Appeals) has followed the statutory mandate of Section 35 of Central Excise Act. I draw my support from **Singh Enterprises versus Commissioner of Central Excise, Jamshedpur – 2008 (221) E.L.T. 163 (S.C.)**, wherein it has been held that :-

“8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of Statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the Statute. The period upto which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of [Section 5](#) of the Indian 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 upto 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”.

6. In result of above discussion, all the three appeals stand dismissed.

(Operative part of the order pronounced in open court.)

(Rachna Gupta)
Member (Judicial)