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

PRINCIPAL BENCH - COURT NO. 1

# Excise Condonation of Delay Application No. 50085 of 2021
# IN
# Defect Diary No. 50471 of 2019

(Arising out of Order-in-Appeal No. 02-09/Commr/Dehradun/2018 dated 23.02.2018 passed by Commissioner CGST , Dehradun)

**Diamond Entertainment Technologies Pvt. Ltd.** ......**Appellant**

VERSUS

**Commissioner, Customs CGST- Dehradun** ..... **Respondent**

**APPEARANCE:**

Shri Piyush Kumar and Ms. Reena Rawat, Advocates for the Appellant
Shri O.P. Bisht, Authorized Representative of the Department

**CORAM: HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**
**HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

**DEFECT MISCELLANEOUS ORDER NO.49/2021**

**DATE OF HEARING: July 23, 2021**

**JUSTICE DILIP GUPTA**

The appeal was filed in the office on February 15, 2019 to assail the order dated February 23, 2018 passed by the Commissioner. An application for condoning the delay in filing the appeal has, therefore, been filed.

2. It has been stated that the aforesaid order dated February 23, 2018 was received by the Appellant only on May 10, 2018, whereafter the appellant filed a writ petition in the Uttarakhand High Court, which petition was dismissed on July 26, 2018 on the ground that the writ petitioner (the appellant herein) had a

statutory alternative remedy of preferring an appeal before the Tribunal. Thereafter, the Appellant moved a Miscellaneous Application before the Tribunal on September 19, 2018 for issuing directions to the respondent to comply with the earlier order dated January 31, 2017 passed by the Tribunal. This Miscellaneous Application was rejected by the Tribunal on January 11, 2019 for the reason that the proper remedy available to the applicant was to file an appeal before the Tribunal against the order dated February 23, 2018. It has, therefore, been stated that after dismissal of the application, the appeal was preferred before the Tribunal on February 15, 2019.

3. Shri Piyush Kumar, learned Counsel for the applicant submitted that in the facts and circumstances of the case, the delay in filing the Appeal is not deliberate and Tribunal should take a lenient view. His submission is that the period from May 10, 2018 to January 28, 2019 should be excluded as the applicant had pursued remedies in a bonafide manner.

5. Shri O.P. Bisht, learned Authorized Representative appearing for the Department has, however, strongly opposed the application and has submitted that there was no good reason for the applicant not to have filed a statutory appeal before the Tribunal. Learned Authorized Representative also submitted that even after the order was passed by the High Court on September 26, 2018, the applicant preferred a Miscellaneous Application before the Tribunal instead of filing an appeal before the Tribunal.

6. The submissions advanced by learned Counsel appearing for the applicant and the learned Authorized Representative appearing for the Department have been considered.

7. Against the order passed by the Commissioner on February 23, 2018, the appellant had a statutory alternative remedy of preferring an appeal before the Tribunal. The appellant, however, preferred a writ petition before the High Court on July 16, 2018, which petition was dismissed on July 26, 2018 for the reason that the writ petitioner had a statutory alternative remedy of preferring an appeal before the Tribunal. There is no good reason as to why, after the order was passed by the High Court dismissing a writ petition on the ground that the writ petitioner had a statutory alternative remedy of preferring an appeal before the Tribunal, the applicant preferred a Miscellaneous Application before the Tribunal for compliance of the earlier directions issued by the Tribunal on January 31, 2017. What needs to be noted is that in this application the applicant concealed the filing of writ petition before the High Court and its dismissal. The Miscellaneous Application was ultimately rejected by the Tribunal on September 19, 2018 for the reason that the applicant, if aggrieved, should have preferred an appeal before the Tribunal. It clearly, therefore, transpires that an appeal should have been filed after the dismissal of the writ petition, but it was not filed.

9. Though there is a considerable delay in filing the appeal, but having regard to the fact that the applicant had approached High Court and, thereafter, had filed a Miscellaneous Application before

the Tribunal we consider it appropriate to condone the delay but on imposition of cost upon the Appellant.

10. The delay condonation application is, accordingly allowed on payment of cost of Rs.1 lakh, which shall be paid by the applicant within a period of one month from today in the account of **Prime Minister's National Relief Fund.** The Applicant should inform the Tribunal of the said deposit. If the amount is not deposited within the aforesaid period, the delay condonation application shall stand dismissed as a result of which the appeal shall also stand dismissed.

11. List this appeal with the office report regarding compliance of the order on **August 31, 2021**.

(Order dictated and pronounced in the open court)

**(JUSTICE DILIP GUPTA)**
**PRESIDENT**

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

Rekha