

DELHI APPELLATE AUTHORITY FOR ADVANCE RULING
C.R Building, I.P Estate,
New Delhi-110002

(Constituted under section 99 of the Delhi Goods and Services Tax Act,
2017(Delhi Act 03 of 2017) vide Govt. of NCT of Delhi's Notification No.
F.3(6)/Fin.(Rev.-I)/2018-19/DS-VI/389 dated 03.09.2019)

BEFORE THE BENCH OF

Smt. Mallika Arya, Member(Centre)

Shri Ankur Garg, Member(State)

Order No. 01/DAAAR/2022-23 / 2011-2016 / 21.06.2022 Date:- 23.05.2022

Sl. No.	Name and address of the Appellant	M/s Indian Institute of Corporate Affairs, B-Wing, 2 nd Floor, Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi-110003 M/s Indian Institute of Corporate Affairs, Plot No. 6, 7 & 8, Sector-5, IMT Manesar, Gurugram-122051 Haryana
1	GSTIN	07AAAB10159A1ZA
2	Advance Ruling Order against which appeal is filed	08/DAAR/2018 dated 28.06.2019
3	Date of filing appeal	14.02.2020
4	Represented by	Sh. Anjani Kumar Sharma, FCA & Ms. Nisha Aggarwal, FCA
5	Whether payment of fees for filing, appeal is discharged. If yes, the amount and challan details	Yes CPIN No:- 20020700089589 dated 13.02.2020



1. At the outset we would like to make it clear that the provisions of CGST, Act 2017 and DGST, Act 2017 are *pari materia* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the DGST Act.

2. The present appeal has been filed under section 100 of the Central Goods and Service Tax Act 2017 and Delhi Goods and Service Tax Act 2017 (herein after referred to as CGST Act, 2017 and SGST Act, 2017) by M/s Indian Institute of Corporate Affairs, B-Wing, 2nd Floor, Paryavaran Bhawan, CGO Complex, Lodhi Road New Delhi (herein after referred to as Appellant) against the advance Ruling No. 08/DAAR/2018 dated 28.06.2019. The date of communication of Advance Ruling to the Appellant was 28.06.2019

Brief facts of the case:

3. The Indian Institute of Corporate Affairs (in short, 'IICA'), the Appellant is a society registered under the Societies Registration Act, 1860. The Appellant has the following registrations and exemptions available:-

- (i) An exemption under Section 10(23C) (iv) and (v) of the Income Tax Act, 1961 for AY 2017-18 onwards.
- (ii) Registration under Section 12A/12AA of the Income Tax Act, 1961 vide registration no. 12A/2009-10/I-1290/593 dated 19.08.2009.

The Appellant is primarily engaged in:-

- (i) Induction and in-service training to Indian Corporate Law Service (ICLS) officers;
- (ii) Capacity building and training programs in the field of competition law, market regulations, finance, corporate governance and public policies;
- (iii) Policy advisory functions, public outreach and stakeholder consultations through seminars, conferences and forums.

3.1 The Appellant has the following network of schools and centres through which it executes the above stated functions:-

- (i) Indian Corporate Law Services Academy
- (ii) School of Competition Law and Market Regulation
- (iii) School of Corporate Governance & Public Policy
- (iv) School of Finance
- (v) School of Corporate Law
- (vi) Centre for E-governance ,
- (vii) Centre for Responsible Corporate Governance



- (viii) Centre for Micro Small & Medium Enterprises
- (ix) Centre for Business Innovation
- (x) Centre for Institutional Partnerships & Corporate Communications
- (xi) Knowledge Resource Centre

3.2 For the purposes of learning and development, providing metadata and implementation of projects in the field of corporate social responsibility, a body called National Foundation for Corporate Social Responsibility (NFCSR) was established at IICA in 2012 to be the apex national institution that aims to build an enabling environment for the corporate sector to work in partnership with the government, non-government and civil society organizations for effective contribution towards sustainable growth and development. It has been provided an initial corpus fund by the Ministry of Corporate Affairs, enabling India to take a leadership position in the area of CSR. The IICA has a specific mandate for the National Foundation on Corporate Social Responsibility (NFCSR) to be the CSR enabler, and to evolve as the apex national level institution that can effectively enable and inform the implementation of the CSR laws and parameters of the country. In order to fulfill this mandate, the NFCSR offers the following facilitation services:-

- (i) Learning & Development (People) through CSR training services and BSE IICA CSR Index
- (ii) Metadata on CSR (Information)
- (iii) CSR Implementing Agency Hub (Partners)
- (iv) Documentation, Assessment & Evaluation, Advocacy & Dissemination & Research (Projects & Implementation)
- (v) Centre of Excellence for Sustainable Development (CESD)

3.3 The Appellant has entered into Memorandum of Understanding (MoU) dated 16.01.2017 with the Agriculture Insurance Company of India Limited ("AICL"), wherein, AICL in order to discharge its corporate social responsibility ("CSR") for the financial year 2016-17, awarded a social welfare assignment on:-

"Implementation of Integrated Village development programme - improving infrastructure facilities in 50 villages in the states of Bihar, Jharkhand, Madhya Pradesh, Maharashtra and Uttar Pradesh as per the study done by the Appellant"

3.4 The sequence of facts and other relevant details are enumerated below:-

- (a) The IICA had entered into MoU with AICL on 03.08.2016 and conducted a comprehensive baseline and need assessment survey with regard to 50 villages in 5 states mentioned above and as a result, IICA submitted a detailed project report (DPR) to the AICL for the



following broad activities to be executed towards discharge of its Corporate Social Responsibility (CSR) for the financial year 2016-17 through IICA, as:-

- (i) Installation, transportation, maintenance and upkeep of Solar street lights.
 - (ii) Installation, transportation, maintenance and upkeep of Solar Water pumps.
 - (iii) Construction of household toilets as per government's Swachh Bharat Gramin design, with comprehensive awareness building and training of community for use and maintenance of toilets.
 - (iv) Healthcare encompassing doctor's consultancy and basic medicine supplies for 1 year.
- (b) Consequently, AICL gave its consent for implementation as per the following details from the detailed project report:-
- (i) Installation of solar water pumps - 122 in Nos;
 - (ii) Installation of solar lights - 1230 in Nos;
 - (iii) Sanitation (construction of toilets) - 3670 in Nos.

SUBMISSIONS OF THE APPELLANT

4 The Appellant preferred an appeal on the following grounds:

4.1 Ground No. 1: The Advance Ruling is bad in law as it arbitrarily treats a grant transaction as service transaction which is bereft of client-service provider relationship as explained by Hon'ble Supreme Court of India in *Apitco Ltd. v. Commissioner of Service Tax, Hyderabad* [2012] 26 taxmann.com 213 (SC). In order to establish that the contract is in the nature of a taxable service it is necessary to establish a client service provider relationship between the two parties. A transaction cannot become commercial in the absence of any client service provider relationship as there will be no 'consideration' or 'supply' as is necessary for invoking the provisions of GST. It is a settled law that any contract executed as a trustee without any profit or profit motive cannot be treated as an activity "in the course or furtherance of business". In order to determine whether there exists 'service provider-client' relationship between the Appellant and the grantee who has assigned the specified jobs stated in the facts to the Appellant, the nature of the amounts paid to the Appellant in consideration of that assignment is very much vital and decisive. A client must not only pay the actual expenses of the service but also the consideration or reward for the service to the service provider. There is a fundamental difference between a service against which an invoice is raised and a service contract under which funds are spent/recovered as per a predetermined budget. In the former the service provider charges a predetermined amount against services irrespective of the actual expenditure. In the latter the service provider only expends funds as per mutually accepted budget there is no scope for profit or loss. The contract of the Appellant is based on actual expenditure of funds provided by the donor. There is no element of profit or reward which would accrued to the



Appellant. In the present case, the amount paid to the Appellant for all the jobs undertaken by it are only the expenses of the service which are totally utilized in undertaking that job and no sum whatsoever has been paid to the Appellant towards reward. Further as stated in the MOU, any unspent amount shall be required to be refunded back to the donors.

4.1.1 In the case *Apitco Ltd. vs. Commissioner of Service Tax, Hyderabad* [2012] 26 taxmann.com 213 (SC) it was held by the Hon'ble Apex Court that if grants-in-aid received from Central and State Governments for implementation of welfare schemes for various sections of society are totally utilized for such purpose, there is no service provider-client relationship between assessee and Government. Only utilisation of money for agreed purposes will not result in service provider-client relationship; a client must not only pay the expenses of the service but also the consideration or reward for the service to the service provider. The Hon'ble Supreme Court affirmed the CESTAT, Bangalore Bench in the case of *APITCO Ltd. vs. Commissioner of Service Tax, Hyderabad* [2010] 29 STT 262

4.1.2 The Appellant has been doing trainings and implementing CSR projects as stated in the Statement of Facts, in the field of competition law, market regulations, finance, corporate governance and public policies, whereby the Appellant has been incurring cost, for which Appellant was in receipt of grant in aid to compensate for the cost of research. Normally, when Appellant has made planning for any research, they would calculate the cost of the research based on which the budget will be prepared. So, it included the budget of various costs, which has been reimbursed by the various organizations as grant in aid as per their policy. The Appellant has been carrying out the research activities on comprehensive base lines and did need assessment survey with regard to 50 villages in 5 states as mentioned in statement of facts and as a result, IICA submitted a detailed project report (DPR) to the AICL for the following broad activities to be executed towards discharge of its Corporate Social Responsibility (CSR) below:-

- a) The IICA had entered into MoU with AICL on 03.08.2016 and conducted a comprehensive baseline and need assessment survey with regard to 50 villages in 5 states and as a result, IICA submitted a detailed project report (DPR) to the MCL for the following broad activities to be executed towards discharge of its Corporate Social Responsibility (CSR) for the financial year 2016-17 through IICA, as:
 - (i) Installation, transportation, maintenance and upkeep of Solar Street lights.
 - (ii) Installation, transportation, maintenance and upkeep of Solar Water pumps.
 - (iii) Construction of household toilets as per government's Swachh Bharat Gramin design, with comprehensive awareness building and training of community for use and maintenance of toilets.
 - (iv) Healthcare encompassing doctor's consultancy and basic medicine supplies for 1 year.



b) Consequently, AICL gave its consent for implementation as per the following details from the detailed project report:

- (i) Installation of solar water pumps - 122 in Nos;
- (ii) Installation of solar lights - 1230 in Nos;
- (iii) Sanitation (construction of toilets) - 3670 In Nos.

It was submitted that for every amount provided by the donor to other organization, it is necessary to distinguish whether the said amount is grant-in-aid or consideration for the supplies.

4.1.3 It is a settled law that the grants for specific activities are not liable for Service Tax. The Hon'ble CESTAT, New Delhi Bench in the case of *Madhya Pradesh Consultancy Organisation Ltd. vs. Commissioner of Central Excise, Bhopal* (2017) 83 taxmann.com 154 (New Delhi - CESTAT)/[2017] 62 GST 58 (New Delhi - CESTAT) held that where assessee, carried out various research, development project, training programmes acting as nodal agency on behalf of Ministries of Central Government and MP Government and received grants-in-aid in respect of these activities, consideration received was not liable to service tax under category of management consultancy services.

The impugned contract of IICA fulfilled the following undisputed criteria:

- (i) The Appellant received a grant for executing specific charitable activities.
- (ii) The entire amount received was subject to actual utilization the Appellant had no right or possibility to generate any surplus out of the contract.
- (iii) The Appellant is a registered charity eligible to undertake grant based activity for charitable purposes.
- (iv) The unspent balance (if any) is subject to refund or directions of the donor.
- (v) There is no reward or benefit offered other than the actual expenditures towards charitable purposes.
- (vi) The above facts have not been disputed by the AAR and therefore the light of the judicial precedence (*supra*) the order is liable to be quashed.

4.2 Ground No. 2: That the advance ruling authority has failed to understand that the entire grant was subject to actual utilization and the unspent balance belonged to the donor; such contract to implement development activity based on mutually agreed budget cannot be treated as 'Towards furtherance of business' under section 2(17)(a) of the GST Act. There is no finding regarding the applicability of section 2(17)(a) of CGST Act, 2017 which clearly states that any supply should be "in the course or furtherance of business". The Appellant is not engaged in any activity which can be considered as "in the course or furtherance of business", it is just utilizing the grants as per actual without any possibility of a surplus, profit motive or any direct or indirect benefit. Further, the



charitable nature of the Appellant as well as the impugned activities is not under question. The Advance Ruling Authority has failed to understand the nature of the memorandum of understanding and had ignored the various clauses which establish that it is a non business grant contract. The Advance Ruling authority has ignored the above clause wherein it is stated that any unspent balance shall be returned back to the donor. If a grant is received with the condition of total utilization as per actuals and the unspent balance is subject to refund then such contracts are trusteeship contracts in the nature of legal obligation.

4.2.1 The AAR failed to appreciate that GST Act would not apply even if there is a 'supply' or 'consideration' unless the activity is proved to be towards 'furtherance of business'. In this case there was no case for treating the activity as a business activity for two reasons:

- (i) the contract clearly established that it was a trusteeship contract as per the principles laid down the Supreme Court.
- (ii) there was no finding or fact placed before the AAR to suggest that a profit motive was involved.
- (iii) the grant money was restricted for pre-decided purposes without any discretion at the end of the Appellant.
- (iv) any unspent balance was subject to return.

4.2.2 For greater clarity it is humbly submitted that the activities of NPOs can be divided into three categories from GST perspective:

- (i) Activities pertaining to grant and donation which are completely without consideration and not in the course or furtherance of business are outside the scope of GST provided no benefit is given back to the donor. There is no client service provider relationship the implement or of the project is a trustee holding legal obligation. In such cases the amount granted should be subject to actual utilization and the unspent balance if any should belong to the donor.
- (ii) Activities having a component of supply which could be considered as "in the course or furtherance of business" are taxable under GST. However, some of such activity may be specifically exempt under GST.
- (iii) Activities having a component of supply but are not "in the course or furtherance of business" are not taxable under GST. In such cases the onus will be on the NPO to establish that the activity was not "in the course or furtherance of business".

4.2.3 The impugned contract fell in the first category as the Appellant is merely implementing the contract on behalf of the donor, the grant is subject to actual utilization and the unspent balance is required to be refunded. Therefore, it cannot be treated as a contract "in the course or furtherance of business" and the provisions of GST cannot be applied.



4.2.3 In GST, for any activity to be considered as supply, it has to first to pass the test of business under section 2(17)(a) of the Act and should also be covered in scope of supply under section 7 of the Act. Further, the term, "supply" has been inclusively defined in the Act. The meaning and scope of supply under GST can be understood in terms of following six parameters, which can be adopted to characterize a transaction as supply:

- a) Supply of goods or services. Supply of anything other than goods or services does not attract GST.
- b) Supply should be made for a consideration.
- c) Supply should be made in the course or furtherance of business.
- d) Supply should be made by a taxable person.
- e) Supply should be a taxable supply.
- f) Supply should be made within the taxable territory.

4.2.4 It was also submitted that while these six parameters describe the concept of supply, there are a few exceptions to the requirement of supply being made for a consideration and in the course or furtherance of business. GST is essentially tax only on commercial transactions. Hence only those supplies that are in the course or furtherance of business qualify as Supply under GST. This aspect 'whether the contract can be considered as towards furtherance of business has not been discussed and this aspect has also not been disputed either. Therefore, in the light of a statutory provisions and the judicial precedence the impugned contract remains a grant contract for charitable purposes not covered within in the scope of GST by virtue of the requirement of section 2(17)(a) regarding furtherance of business.

4.3 Ground No. 3: That the Advance Ruling is bad in law as the Appellant received legal obligation in fiduciary capacity, which cannot be treated as a business or commercial activity for the purposes of GST. All the contracts of the Appellant are towards advancement of charitable purpose in India, this fact has not been disputed in the order. All the activities conducted benefit the public at large and are available in public domain. All the funds have been voluntarily granted by the donor to conduct activities Which will help the society at large. There is nothing in the transactions between the donor and the Appellant to suggest that it is a commercial transaction towards furtherance of business. The Supreme Court of India on several occasions has decided that any receipt for specific charitable purposes cannot be treated as a trade receipt. In the case CIT vs. Bzjli Cotton Mills (P.) Ltd. [1979] 116 ITR 60 Supreme Court debated the issue of certain charity/legal obligation being collected as a part of a commercial invoice. In this particular case the term 'Dharmada' has been used which means 'towards charity'. The court held that any money received from the customers towards charity was under a legal obligation to be spent for a specific purpose, therefore it could not be treated as a trading receipt.



4.3.1 Similar view were expressed by the Supreme Court in the case *CIT vs. Tollygunge Club Ltd.* [1977] 107 ITR 776, here the Supreme Court considered the question substantially similar to the one referred above, in this case the assessee was a social and sports club one of whose activities consisted of conducting horse races with amateur riders. It charged for admission into the enclosure of the club at the time of the races from the race goers. The assessee passed resolution at general meeting for levying surcharge for local charities in addition to admission fees. The receipts from the surcharge were not credited to the profit and loss account but they were carried directly to a separate account styled "charity account". It was held that such income cannot be treated as trade receipt or income of the assessee. Reliance was also placed on the following case laws

- (i) *Vazir Sultan Tobacco Co. Ltd. vs. CIT* (1988) 169 ITR 35 (AP),
- (ii) *Benarasi-lal Rajgharia vs. Central Bank of India* [1972] 76 CWN 807 (Cal.),
- (iii) *CIT. vs. Bengal Mills and Steamers Presbyterian Association* (1983) 140 ITR 586 (Cal)
- (iv) *Commissioner of Income tax vs. Amritsar Transport Co. (P.) Ltd.* [1993] 68 TAXMAN 56 (SC)
- (v) *CIT vs. Bijli Cotton Mills (P.) Ltd.* [1979] 116 ITR 60 (SC)

4.3.2 It was also submitted that IICA is a trustee of funds and unspent balance shall be returned back to the donor. The AAR Delhi had failed to establish that whether the activity could be treated towards furtherance of business under section 2(17)(a) of GST Act. Unless these fundamental issues are resolved one cannot go into the 'exemptions' and the applicability of terms such as 'supply' and 'consideration', which become relevant only if it is established that IICA was engaged "in the course or furtherance of business" and the amount received was not a grant even after applying the principles laid by the Supreme Court of India in *Apitco (supra)*. The Hon'ble Delhi High Court reaffirmed that any grant with specific direction from the donor cannot be treated as income, *DIT vs. Society for Development Alternatives* [2012] 18 Taxmann.com 364 (Delhi). In this case assessee had received grants for specific purposes/projects from the government, non-government, foreign institutions etc. These grants were to be spent as per the terms and conditions of the project grant. The amount, which remained unspent at the end of the year for got spilled over to the next year and was treated as unspent grant. It was held that the unspent grant being a legal obligation/liability cannot be treated as voluntary contribution subject to the provision of utilisation and application as per the Income Tax Act. Though the above case was in context of Income Tax laws but it clearly provides that a legal obligation is an liability for specific purposes and cannot be treated as an income or gain of the recipient.

5. The Appellant therefore prayed

- (i) That Advance Ruling be set aside or dropped;
- (ii) that, the Appellant be granted personal hearing in this matter and to alter or amend the grounds;
- (iii) that, any other or further relief, as deemed fit, may also be granted to the Appellant.



RECORD OF PERSONAL HEARING

6. The matter was posted for Personal Hearing when – and – appeared for Personal Hearing and reiterated the written submissions. During the personal hearing, it was pointed out by the Members that the appeal was filed beyond the period of 60 days from the date of receipt of the advance ruling.

6.1 On being pointed out that the Appeal was hit by limitation of time and hence not maintainable, the Ld. Advocate requested for submission of additional materials on the issue within a fortnight and the same was submitted on 20.4.2022 by email wherein it was primarily contended that the Appellant was under the impression that the Appellate Authority was not constituted and the Appellant had addressed a mail dated 23.01.2020 to the GST Council. In response to which the Appellant received a letter dated 30.01.2020 from the GST Council that the Appellate Authority had been constituted vide Notification dated 3.09.2019. The Appellant relied upon the decision of the Hon'ble Supreme Court in the case of Land Acquisition Collector Vs. State of J & K (1997) 2 SCC 107 in support of their contention as to why the appeal is not hit by limitation.

DISCUSSION AND FINDINGS

7. We have carefully gone through the records of the case and taken into consideration the submissions made by the Appellant in their grounds of appeal and at the time of the personal hearing. We have also carefully gone through the additional submissions submitted by the Appellant on 20.04.2022.

7.1 We find that the appeal is on the limited point of whether the activity of Appellant is taxable under the provisions of CGST Act, 2017.

7.2 Before doing so and getting into the discussion on this issue, we find that there appears to be a delay in filing the appeal and hence we will examine this issue first and only then move forward for deciding the issue raised in the Appeal.

7.2.1 We find that in terms of Section 100 of the CGST Act, 2017 an appeal should be filed within 30 days from the date of communication of the advance ruling order that is sought to be challenged. However, the Appellate Authority is empowered to allow the appeal to be presented within a further period not exceeding 30 days if it is satisfied that the Appellant was prevented by sufficient cause from presenting the appeal within the initial period of 30 days. In the Form ARA-02, the Appellant has stated that the date of communication of the advance ruling order is 28.06.2019. Clearly the appeal has not been filed within the prescribed time period of thirty days from the date of communication of the order. The question arises whether the appeal filed on 14.02.2020 is within the condonable period of another 30 days.

7.3 For this we need to establish when the advance ruling order No 08/DAAR/2018 dated 28.06.2019 was communicated to the Appellant. Section 169 of the CGST Act, 2017 prescribes the



modes of service of orders. It is seen from the records available in the office of the Advance Ruling Authority that the Advance Ruling order was received by the Appellant on 28.06.2019 and an appeal against the same was filed on 14.02.2020.

7.3.1 At this stage, it is extremely relevant to mention that the appeal was filed during the pre-covid period. Therefore, the Larger Bench of the Hon'ble Supreme Court's Order dated 10.1.2022 in Suo Motu writ petition (c) no. 3 of 2020 as ordered in para 5(III) is not available. The relevant portion of the Order is reproduced as under:

"5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply."

7.4 It has been, *inter alia*, the contention of the Appellant that the Appellant was prevented from filing an appeal as the Appellate authority for Delhi Zone was not constituted when the advance ruling order was issued. This contention has been examined and it is seen that in terms of section 99 of the Act, the Appellate Authority for Advance Ruling constituted under the provisions of a State Goods and Service Tax Act, 2017 shall be deemed to be the Appellate Authority in respect of that State.

7.5 In connection with the Notification issued by the Govt of NCT of Delhi, we note that a Notification was issued on 3rd September, 2019 vide F.3(6)/Fin.(Rev.-I)/2018-19-DS-VI/389 wherein the Chief Commissioner of Central Tax, Delhi and Commissioner of State Tax have been designated as Members. The publication in the Official Gazette in the Delhi Gazette: Extraordinary is the method of bringing a rule or subordinate legislation to the notice of one and all. Gazette Notification is an important legal requirement to validate, authenticate and to make effective Acts, Rules, Orders and Notifications made known to the Public at large. Scrutiny of the Delhi Gazette: Extraordinary reveal that the same was uploaded on 05.09.2019 at 22:51:27 and period has to be reckoned from 5th September, 2019. The Advance Ruling Order was passed on 28.06.2019 vide 08/DAAR/2018 and was received by the Appellant on 28.06.2019 whereas appeal was filed against the advance ruling order on 14.02.2020. These are undisputed facts on record. Taking the date of Notification for the purpose filing of appeal i.e. 05.09.2019 as the cutoff date, the appeal was required to be filed by 04.10.2019. The condonable period by the appellate authority expired on 04.11.2019. Consequently, the filing of the Appeal on 14.02.2020 falls beyond the powers conferred under proviso to section 100(2) of CGST



Act, 2017. It is a settled provision of law that law assists those that are vigilant with their rights, and not those that sleep thereupon. The law of limitation in India identifies the need for limiting litigation by striking a balance between the interests of the state and the litigant.

7.6 To buttress our stand that the appeal is hit by limitation of time, we find that the issue of condonation of delay came up for decision before the Hon'ble Supreme Court in *Singh Enterprises Vs. CCE, Jamshedpur* 2008 (221) E.L.T. 163 (S.C.). The Hon'ble Supreme Court examined the provisions of section 35 of the Central Excise Act, 1944, which are *pari materia* to the provisions of section 128 of the Customs Act and observed that the delay can be condoned in accordance with the language of the Statute which confers power on the Appellate Authority to entertain the appeal by condoning the delay only up to 30 days after expiry of 60 days, which is the normal period for preferring the appeal. It is for this reason that the Hon'ble Supreme Court observed that the Commissioner and the High Court were justified in holding that there was no power to condone the delay after the expiry of 30 days period and that the provisions of the Limitation Act would not be applicable. Para 8 of the judgment is reproduced below for the ease of understanding:

"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.

Emphasis applied



7.6.1 The aforesaid ruling of the Hon'ble Supreme Court is squarely applicable to the facts of the case. It is evident that this Appellate Authority being a creation of the statute is empowered to condone the delay of only a period of 30 days after the expiry of the initial period for filing appeal. As far as the language of section 100 of the CGST Act, 2017 is concerned, the crucial words are "not exceeding thirty days" used in the proviso to sub-section (2). Further, we are of the opinion that to hold that this Appellate Authority could entertain this appeal beyond the extended period under the proviso would render the phrase "not exceeding thirty days" wholly otiose. No principle of interpretation would justify such a result. For this reason too, the case of Land Acquisition Collector Vs. State of J & K (1997) 2 SCC 107 is clearly distinguishable.

7.6.1.1 Furthermore, the Hon'ble Supreme Court in the light of the advancement of communication technology(fax, email, video conferencing, etc.) has emphasized the need to file appeal within the stipulated period and has held that the vintage case laws would not be applicable to condone the delay. The Hon'ble Supreme Court in the case of Office of the Chief Post Master General & Ors Vs. Living Media India Limited (2012) 3 SCC 563, Order dated 8.1.2021 in SLP(Criminal) Diary No 24676/2020, Order dated 8.1.2021 in SLP(Criminal) Diary No 24723/2020, Order dated 1.2.2021 in SLP(Criminal) Diary No 24862/2020, Order dated 22.2.2021 in SLP(Criminal) Diary No 24211/2020, Order dated 22.02.2021 in SLP(Criminal) Diary No 14091/2020, etc. refused to condone the delay.

7.6.1.2 Be that as it may, the Appellate Authority is not a "Court" and hence the power to condone beyond the prescribed period does not arise.

7.6.1.3 Furthermore, the provisions of Limitation Act, 1963 does not apply to the appeal proceedings before the appellate authority.

7.6.2 Since the appeal cannot be allowed to proceed on account of time limitation, the question of discussing the merits of the issue in appeal does not arise.

7.7 In the conspectus of the facts and circumstance of the case, we are of the considered view that we are not empowered to condone the delay in filing this appeal. In view of the above we pass the following order



ORDER

We dismiss the appeal filed by the Appellant i.e. M/s Indian Institute of Corporate Affairs, B-Wing, 2nd Floor, Paryavaran Bhawan, CGO Complex, Lodhi Road New Delhi on grounds of time limitation.


(Mallika Arya) 23/5/22
Member(Centre) Member
Appellate Authority for Advance Ruling


(Ankur Garg) 23/05/22
Member(State) Member
Appellate Authority for Advance Ruling

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- 1 The Member(Centre), Advance Ruling Authority Delhi.
- 2 The Member(State), Advance Ruling Authority Delhi.
- 3 The Commissioner of CGST & CX, Delhi East, C.R. Building, New Delhi, along with a spare copy for jurisdictional Assistant Commissioner of CGST & CX.
- 4 Sh. Manoj Kumar Sharma, D.R./Assistant Commissioner of State Tax, (Ward-206)/KCS, Vyapar Bhawan, I.P. Estate, New Delhi-110002, along with a spare copy for jurisdictional Assistant Commissioner of State Tax.

