Complete text of the judgment on the aforesaid issue argued by APRA & Associates LLP is reproduced below: -

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI

PRINCIPAL BENCH – COURT NO. 1

SERVICE TAX COD APPLICATION No. 50848 of 2019

IN

SERVICE TAX Appeal No. 52321 of 2019

[Arising out of Order–in-Original No. 12-13-PK/GST/DE/2017-18 dated 13.02.2018 passed by Commissioner of Central Tax, Delhi East Commissionerate, New Delhi]

Commissioner of Central Goods and Service Tax,

Delhi East, New Delhi-110002 .... Appellant

VERSUS

M/s. CHL Ltd.

Crowne Plaza Surya, New Friends Colony New Delhi-1100025 .... Respondent

APPEARANCE:

Mr. A. Thaplial, Authorised Representative for the Appellant

Mr. Varun Gaba, Mr. Anmol Gupta, Advocate and Chartered Accountant for the Respondent

CORAM: HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)

Date of Hearing/ Decision: 16 October 2019

FINAL ORDER No.: 51426/2019

JUSTICE DILIP GUPTA

The Commissioner of Central Goods and Service Tax, Delhi East1 filed this appeal before the Customs, Excise and Service Tax Tribunal2 on 18 September 2019 to assail the order dated 31 January 2018 passed by the Commissioner. The Appellant in column no. 8 of form ST-7 has clearly mentioned that the Committee of the Chief Commissioners received the order dated 31 January, 2018 on 13 February 2018.

2. Section 86 of the Finance Act 19943 deals with appeals to the Tribunal. Though, under sub-section (1) of Section 86 of the Act the time period prescribed for filing an appeal to the Tribunal by an assessee is three months from the date of the receipt of the order, sub-section (2) provides that the Committee of Chief Commissioner may direct the Principal Commissioner or Commissioner to appeal to the Tribunal if it objects to any order passed by the Commissioner and sub-section (3) of Section 86 provides that every appeal shall be filed within the four months from the date on which the order sought to be appealed against is received by the Committee of Chief Commissioners.

3. Since the appeal was filed after the expiry of four months from the date of receipt of the order by the Committee of Chief Commissioners, the appeal was accompanied by an application for condoning the delay. The averments that have been made in the said application are reproduced below:

> "1. It is humbly submitted that this condonation for delay application is before this Hon'ble Customs, Central Excise & Service Tax Appellate Tribunal, New Delhi against the impugned order-in-original No. 12-13/PK/GST/DE/2017-18 dated 13.02.2018 passed by the Commissioner, Central Tax, Delhi East Commissionerate, New Delhi communication received on 13.02.2018.
>
> 2. It is humbly submitted that this prayer for condonation of delay for an extension of time to file this petition before this Hon'ble Customs, Central Excise & Service Tax Appellate Tribunal as the last date of filing appeal i.e. 12.06.2018 has lapsed. It is submitted that due to re-organisation of the jurisdiction of the assesses in new GST formations led the concerned file getting mixed up thereby delaying appeal filing process which was not intentional at all and the Review Directions issued by the Committee of Chief Commissioners vide Review order No. 07/ST/2019-20 dated 13.09.2019 was received in this office on 13.09.2019. In compliance of Review order, appeal is being filed at the earliest by this office.

3. Further, it is gathered that the respondent has preferred an appeal against the order-in-original no. 12-13/PK/GST/DE/2017- 18 dated 13.09.2018 before this Hon'ble Tribunal. Therefore, it is requested to tag up the departmental appeal with the respondent's appeal so that two appeals are heard together by the Hon'ble CESTAT.

4. It is humbly prayed that based upon the totality of the circumstances mentioned above, this Hon'ble Tribunal may be pleased to consider the prayer of the applicant in granting the condonation for delay of 463 days in appearing before this Hon'ble Tribunal for justice and equity.

5. It is humbly submitted that this Hon'ble Tribunal on scrutinizing facts and circumstances in the accompanying application, may please construe facts and circumstances as "sufficient cause" for condoning the delay. The facts and circumstances elucidated in the accompanying application involve the question of "substantial justice", where gross delay of days only, deserves to be condoned in the overall interest of justice. On the other hand if condoning the delay being denied it would seriously undermine the cause of justice, resulting into miscarriage of justice for the complainants."

4. Learned Authorised Representative of the Department has placed reliance upon paragraph 2 of the application and has submitted that the delay in filing the appeal had occurred because the file got mixed up due to reorganization of the jurisdiction of the assessee in the new Goods and Service Tax formation. Learned Authorised Representative pointed out that as soon as the Committee of Chief Commissioners took a decision on 13 September 2019, the appeal was filed within five days on 18 September 2019. It is, therefore, his submission that the delay should be condoned and the appeal should be heard on merits, more particularly when the assessee has also filed an appeal to assail the impugned order.

5. Shri Varun Gaba learned Counsel appearing for the respondent has, however, submitted that there is an enormous delay of 463 days in filing the appeal, which delay has not been satisfactorily explained. Learned Counsel pointed out that the Committee of Chief Commissioners had received the order on 13 February 2018 and when the period prescribed for filing the appeal by the Department is four months from the date of receipt of the order by the Committee of Chief Commissioners, a decision should have been taken by the Committee of Chief Commissioners within four months so as to have enabled the Department to file the appeal within the period stipulated in Section 86 (3) of the Act, but the Committee of Chief Commissioners took a decision after a period of one year and seven months on 13 September 2019 and even the order passed by the Committee of Chief Commissioners does not give any reason as to why it took so much time to take a decision. Learned Counsel, therefore, submitted that the application should be rejected and in support of his contention learned Counsel has placed reliance upon a decision of the Bench of the Tribunal at Mumbai in **Commissioner of Service Tax, Mumbai vs. P.N. Writer & Co. Pvt. Ltd.**

6. We have considered the submissions advanced by learned Authorised Representative of the Department and the learned Counsel appearing for the respondent.

7. The delay in filing the appeal is of 465 days as it is not in dispute that the Committee of Chief Commissioners received the impugned order dated 31 January 2018 on 13 February 2018 and the appeal was actually filed before the Tribunal on 18 September 2019.

8. Section 86 of the Act deals with appeals to the Appellate Tribunal. Sub-section (1) of Section 86 provides that an assessee aggrieved by an order passed by the Principal Commissioner or Commissioner, may appeal to the Appellate Tribunal within three months of the date of the receipt of the order.

9. Sub-section (2) of Section 86 provides that the Committee of Chief Commissioners may, if it objects to any order passed by the Commissioner direct the Commissioner to appeal to the Appellate Tribunal against the order. Sub-section (3) of Section 86 provides that every appeal under sub-section (2) shall be filed within four months from the date on which the order sought to be appealed against is received by the Committee of Chief Commissioners.

10. Sub-section (5) of Section 86 of the Act, however provides that the Appellate Tribunal may admit an appeal or permit the filing of the memorandum of cross-objections after expiry of the relevant period if it is satisfied that there was sufficient cause for not presenting it within that period.

11. According to the Appellant, the delay has occurred "due to reorganization of the jurisdiction of the assessee in the new GST formations led the concerned file getting mixed up thereby delaying appeal filing process which was not intentional at all".

12. In the first instance this averment is very vague as a general statement has been made in a very casual manner. What has to be noticed is that Goods and Service Tax was introduced w.e.f. 1 July 2017 and the impugned order was passed much later on 31 January 2018 by the **Commissioner of Central Goods and Service Tax, Delhi East Commissionerate.** The file was, therefore, available on 31 January 2018 when the order was passed by the Commissioner and it cannot be said that the file was „mixed up". The file was also available before the Committee of Chief Commissioners on 13 February 2018. The period prescribed for filing the appeal by the Department is four months from the date of receipt of the order by the Committee of Chief Commissioners. Thus, even though no time may be prescribed for the Committee of Chief Commissioners to take a decision, yet since the period for filing the appeal by the Department is four months, it can safely be said that a decision has to be taken by the Committee of Chief Commissioners before four months so as to enable the Department to file an appeal before the Tribunal within four months.

13. A perusal of the decision taken by the Committee of Chief Commissioners on 13 September 2019 for filing the appeal does not give any reason why it took them one year and seven months to take a decision, when in fact the period prescribed for filing the appeal before the Tribunal is four months from the date they receive the order. The application also does not give any specific reason as to why so much time was taken by the Committee of Chief Commissioner to pass an order for filing the appeal.

14. The Mumbai Tribunal in **P N Repair Company Pvt Ltd** also dealt with such a ground taken by the Department that because of reorganization and restructuring on account of introduction of GST, the appeal was filed beyond the stipulated period and the observations of the Tribunal are as follows:

> "5.6 It is matter of record that GST regime in the country was introduced with effect from 1 July 2017. Since then Appellant revenue has undergone structural and organizational changes which are natural consequences of shift in the tax regime. **However, whether the said changes were the cause of such delay or it was sheer negligence on the part of authorities in presenting the appeal. In the affidavit filed Appellant Commissioner has not given any reason to explain the delay on account of such structural changes. Not even an iota of whishper in the application or the affidavit filed explaining how such change in regime has caused the delay in pursuing the appellate remedy in present case. Except for a sweeping**

statement of fact, that GST was under implementation nothing has been stated.

5.7 **Further can in the present case when the order in original under challenge was dated 26.03.2018 and was received by the Committee of Chief Commissioners on 25.04.2018, can delay in filing the appeal that was to be filed by 24.04.2018 be attributed to the implementation of GST. GST as stated earlier was implemented with effect from 1 July 2017. In this case the order in original is dated 26.03.2018, i.e. nearly nine months after such implementation. This order has been received by the Committee of Chief Commissioners on 25.04.2018, i.e. ten months after the date of implementation of the GST. It is nowhere sated that after the date of order in original and date of receipt of order by the Committee of Chief Commissioner there has been organizational and structural changes in the scheme of things. It is not even stated that any filed was transferred from one jurisdiction to any other jurisdiction after the said dates.** We do not find any reason to accept the reasons for delay in filing the appeal can be attributed to implementation of GST.

5.9 From the facts as referred in the above decision it is quite evident that the approval for filing the appeal was taken towards end of June 2017, and GST was introduced from 1 July 2017. After introduction of GST and on account of restructuring certain files were in relation to the appeal to be filed before the High Court were transferred from one jurisdiction to another jurisdiction. It was as result of such shifting of files from one jurisdiction to another on account of re-structuring and reorganization as sequel to implementation of GST, there was delay in filing the appeal. In that case the delay in filing the appeal was adequately explained. However, in the present case even the adjudication order is passed after implementation of GST and there is no turmoil in handling the files on account they being shifted from one jurisdiction to another. In the present case jurisdiction of the Commissioner and Committee of Chief Commissioner during the period of delay has not under gone any change or re-structuring. Hence, this decision of the Hon'ble Bombay High Court cannot be made applicable in the present case."

[emphasis supplied]

15. It is true that sub-section (5) of Section 86 does provide that the Appellate Tribunal may admit an appeal or permit the filing of the appeal of memorandum of cross-objection after the expiry of the relevant period if it is satisfied there was sufficient cause for not presenting the appeal within that period, but as noticed above, the facts stated in the application filed for condoning the delay do not mention anything that may satisfy the Tribunal that there was sufficient cause for not presenting the appeal within the stipulated period of four months.

16. At this stage, it also needs to be mentioned that the assessee, which is a respondent in this appeal, had also filed an appeal before the Tribunal on 18 May 2018 and the Registry of the Tribunal by a letter dated 7 June 2018 sent by registered post with acknowledgment due informed the Appellant that the appeal filed by the assessee will be heard by the Tribunal in due course. A copy of the memorandum of the appeal was also enclosed with a clear mention that it may be treated as notice under the provisions of the Act. Sub-section (4) of section 86 of the Act provides that the Principal Commissioner or an assessee as the case may be, notwithstanding that he may not have appealed against such an order within the 45 days of the receipt of the notice, file a memorandum of cross-objections and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within time.

17. It is not the case of the Department that the communication dated 7 June 2018 sent by the Registry of the Tribunal was not received by the Appellant. In fact in the application filed for condoning the delay, it has been stated that the assessee had filed an appeal and the present appeal may be connected with the appeal filed by the assessee. The Department could have filed cross-objections also within the time stipulated but that was not done.

18. Thus, for all the reasons stated above, there is no good reason to condone the delay. The application is, accordingly, rejected. The appeal, therefore, stands dismissed.

(Dictated and pronounced in the open Court)

(JUSTICE DILIP GUPTA)

PRESIDENT

(BIJAY KUMAR)

MEMBER (TECHNICAL)