Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO. 02

Service Tax Appeal No. 199 of 2012

[Arising Out Of OIA-01-03/2012/BVR/COMMR-A-/RBT/RAJ Dated- 23/01/2012 passed by the Commissioner (Appeals), Central Excise- Rajkot]

SWAN DEFENCE AND HEAVY INDUSTRIES LIMITED .....Appellant
Piparav Port, Post Ucchaiya,
Bhavnagar, Gujarat-365560

VERSUS

C.C.E. & S.T.-Bhavnagar .....Respondent
Plot No.6776/B-1...Siddhi Sadan, Narayan Upadhyay Marg,
Beside Gandhi Clinic, Near Parimial Chowk,
Bhavnagar, Gujarat-364001

WITH

Service Tax Appeal No. 200 of 2012

[Arising Out Of OIA-01-03/2012/BVR/COMMR-A-/RBT/RAJ Dated- 23/01/2012 passed by the Commissioner (Appeals), Central Excise- Rajkot]

SWAN DEFENCE AND HEAVY INDUSTRIES LIMITED .....Appellant
Piparav Port, Post Ucchaiya,
Bhavnagar, Gujarat-365560

VERSUS

C.C.E. & S.T.-Bhavnagar .....Respondent
Plot No.6776/B-1...Siddhi Sadan, Narayan Upadhyay Marg,
Beside Gandhi Clinic, Near Parimial Chowk,
Bhavnagar, Gujarat-364001

AND

Service Tax Appeal No. 201 of 2012

[Arising Out Of OIA-01-03/2012/BVR/COMMR-A-/RBT/RAJ Dated- 23/01/2012 passed by the Commissioner (Appeals), Central Excise- Rajkot]

SWAN DEFENCE AND HEAVY INDUSTRIES LIMITED .....Appellant
Piparav Port, Post Ucchaiya,
Bhavnagar, Gujarat-365560

VERSUS

C.C.E. & S.T.-Bhavnagar **.....Respondent**
Plot No.6776/B-1...Siddhi Sadan, Narayan Upadhyay Marg,
Beside Gandhi Clinic, Near Parimial Chowk,
Bhavnagar, Gujarat-364001

APPEARANCE:
Shri. P D Rachchh, Advocate for the Appellant
Shri. Rajesh R Kurup, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)
HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)

Final Order No. 10632-10634/2025

DATE OF HEARING:02.07.2025
DATE OF DECISION:08.08.2025

SOMESH ARORA

M/s. Swan Defence and Heavy Industries Ltd., Pipapvav (Herein after referred to as appellant) has filed 3 appeals against the Order-in-Appeal No. 01 to 03/2012(BVR)/COMMR(A)/RBT/RAJ dated 23.01.2012, by which the learned Commissioner (Appeals) had rejected the appeals of the party on the ground that in light of statutory provisions of the Finance Act, 1994 (Section 85), the maximum period for filing appeal before him is 3 months and further delay of additional 3 months can be condoned. However, the appeal has been filed exceeding the 6 months time limit provided in the statute and therefore, the appeal is liable to be dismissed on the grounds of limitation as the delay exceeding the statutory time limit cannot be condoned by his office. In the above findings, the learned Commissioner (Appeals) has found out that copies of the refund orders passed by the Assistant/Deputy Commissioner were received by the appellant on 13.06.2011, though the party claims receipt date as 15.062011. However, on confirmation from the field unit, it is revealed that the impugned orders were received by the authorised person of the appellant on 13.06.2011. The Jurisdictional Assistant Commissioner (JAC) has submitted copies of the dated acknowledgements of authorized person of the appellant in respect of the impugned orders vide his letter F. No. V/18-17/ST/Div/06-07/Ref. dated 03.01.2012. As per Section 85(3) of the Finance Act, 1994, the appeal was to be presented *within 3 months from the date of receipt of the orders* i.e. up to 13.09.2011 whereas appellant filed the appeals on 15.12.2011 along with application for condonation of delay. On plain reading of the said provisions, the appeal should have been filed on or before 13.12.2011 so as to avail the benefit of extended period of 3 months but the appeal has been filed on 15.12.2011 is clearly hit by limitation.

2. The matters were heard on 06.05.2025 wherein the Bench asked the appellant to produce copy of the letter dated 03.01.2012 along with its enclosures. Next date of hearing was fixed on 02.07.2025.

2.1 On 02.07.2025, the Advocate of the appellant submitted copy of letter dated 19.07.2012 of the Superintendent (Appeals), Central Excise, Rajkot inter alia enclosing photo copies of letter dated 03.01.2012 and 3 letters dated 13.06.2011 etc. He drew attention of the Bench towards three letters all dated 13.06.2011 of the Assistant Commissioner, Service Tax Division, Bhavnagar addressed to the appellant inter alia enclosing copy of Orders-in-Original, A/C payee cheques dated 13.06.2011 and also stamp of the authorised signatory of the appellant with signature (but without date) with remarks “Received with enclosures dated 13.06.2011”.

2.2 Based on this, the Learned Advocate submitted that there is no date of receipt of the Orders-in-Original on the body of the said letters as the date mentioned in the remarks is date of enclosure i.e. date of account payee cheque (as evident from the letter and enclosure). He further argued that the appellant is situated at Pipavav and the office of the Assistant Commissioner is situated at Bhavnagar, so it is not possible that on the date of letter i.e. 13.06.2011, appellant’s authorised signatory had visited on the same date at Bhavnagar office.

2.3 He also invited attention of the bench towards Page 18 of the appeal memorandum i.e. Order-in-Original No. R/06/2011 dated 09.06.2011 which bears "DoR 15.06.2011 with initial of the recipient of the orders" i.e. appellant's concern person as well as in column 04 of Form ST-4 at page 25 of the appeal memorandum wherein date of communication is mentioned 15.06.2011 based on the said remarks only. Based on the above facts, it was submitted that the learned Commissioner (Appeals) has baselessly found that on confirmation from the JAC, it is revealed that the impugned orders were received by the authorized person of the appellant on 13.06.2011; that the JAC has submitted copies of the dated acknowledgements of authorized person in respect of impugned orders vide his letter dated 03.01.2012. As submitted in para supra and as evident from the copies of the said letter dated 03.01.2012 and letters dated 13.06.2011, neither the Assistant Commissioner has adduced any evidence about the authorized person of the appellant having visited his office and collected three orders for his claim about the date of receipt of OIO as 13.06.2011 nor the JAC has submitted dated acknowledgments with the said letter dated 03.01.2012. Thus, the above stated findings of the learned Commissioner (Appeals) are totally unfounded and contrary to facts viz. documentary evidences available before him.

2.4 In addition, it was submitted that as per provisions of Section 9 read with Section 3(35) of the General Clauses Act, 1897 and Section 85(3) of the Finance Act, 1994 for the purpose of time limit of three months from the date of receipt of the decision or order and further period of three months, first in series of days is to be excluded and month means calendar month only. So as per said provisions of Section 9 ibid, 3 months period starts from 16.06.2011 and completes on 15.09.2011 and further period of three months is from 16.09.2011 to 15.12.2011. In absence of exact date of receipt of OIO on the said letters, the date of receipts has to be considered as 15.06.2011 and not 13.06.2011. Therefore, appeals were filed well within three months plus 3 months time limit as provided under Section 85 of the Finance Act, 1994.

2.5 In support of above, the Appellant referred and relied upon the decision of Hon'ble Apex Court in the case of State of H.P. & Anr Vs. M/s. Himachal Techno Engineers & Anr. in Civil Appeal No. 5998 of 2010 (Arising out of SLP (C) No. 4063/2010) dated 26.07.2010. Para 11, 12 & 13 of the said order is reproduced as under :-:

> ***"11. Section 3(35) of the General Clauses Act, 1897 defines a month as meaning a month reckoned according to the British calendar. In Dodds v. Walker - (1981) 2 All ER 609, the House of Lords held that in calculating the period of a month or a specified number of months that had elapsed after the occurrence of a specified event, such as the giving of a notice, the general rule is that the period ends on the corresponding date in the appropriate subsequent month irrespective of whether some months are longer than others. To the same effect is the decision of this Court in Bibi Salma Khatoon v. State of Bihar - (2001) 7 SCC 197. Therefore when the period prescribed is three months (as contrasted from 90 days) from a specified date, the said period would expire in the third month on the date corresponding to the date upon which the period starts. As a result, depending upon the months, it may mean 90 days or 91 days or 92 days or 89 days.***
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> ***12. As the award was received by the Executive Engineer on 12.11.2007, for the purpose of calculating the three months period, the said date shall have to be excluded having regard to Section 12(1) of Limitation Act, 1963 and Section 9 of General Clauses Act, 1897. Consequently, the three months should be calculated from 13.11.2007 and would expire on 12.2.2008. Thirty days from 12.2.2008 under the proviso should be calculated from 13.2.2008 and, having regard to the number of days in February, would expire on 13.3.2008. Therefore the petition filed on 11.3.2008 was well in time and was not barred by limitation.***
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> *13. In view of the above, the appeal is allowed and the order of the High Court is set aside. The delay of twenty eight days on the part of the appellant in filing the application under section 34 of the Act being within the limit of condonable delay, is condoned, as sufficient cause was shown. The matter is remanded to the High Court for consideration of the petition under section 34 of the Act on merits, in accordance with law."*

2.6 Appellant further submitted that it has taken over the company by the order of Hon'ble NCLT under the Insolvency and Bankruptcy Code, 2016 and majority of the staffs/employees of earlier management have left the company. However, new management has tried its best to check from the old employees who were dealing with Service Tax Related work/matters about the person who had collected those 3 letters dated 13.06.2011 by putting his signature and date but nobody is able to recollect being old matter for more than 13 years. So in this peculiar facts and circumstances of the case, appellant is not in a position to submit any affidavit of the concern person who had acknowledged the said 3 letters dated 13.06.2011.

2.7 Therefore, it was prayed that in the facts and circumstances of the present case in absence of any specific date of acknowledgement on the said three letters, date of receipt of the Orders-in-Original / Refund Orders may be considered as 15.06.2011 based on the remarks put on the body of the said order (s) by the ex-employee/concern person of the appellant. Appellant further submitted that learned Commissioner (Appeals) is bound to condone the delay of further 3 months on the grounds stated in miscellaneous applications for condonation of delay in filing appeal. Therefore, the impugned Order-in-Appeal dated 23.01.2012 may be set aside and directions be issued to the Commissioner (Appeals) to decide the appeals on merit considering the date of receipt of orders as 15.06.2011 and the appeals were filed well within 3 months plus further period of 3 months as provided under Section 85. On the basis of grounds of appeals, the appellant be allowed to make further written and oral submissions in the matter before the Commissioner (Appeals).

3. Learned AR on the other hand relies on the details in the findings to justify rejection of appeal.

3.1 As per him, date of receipt of Refund OIO by the authorized person of the Appellant is on 13.06.2011. The copies of dated acknowledgement(s) of authorized person of the appellant in respect of the impugned orders has already been submitted by the division office vide letter F.No. V/18-17/ST/DIV/06-07/Ref. dated 03.01.2012. As per Section 85(3) of the Finance Act, 1994, the appeal has to be filed within 3 months from the date of receipt of orders i.e. 13.09.2011 whereas the appeal was filed on 15.12.2011 along with COD. The Appellant has wrongly computed the months in their appeal memo at page 11 by saying that 3 months time has to be computed from 14.06.2011 to 14.09.2011 and further, period of 3 months to be computed as 15.09.2011 to 15.12.2011.

3.2 The Commissioner (Appeals) has rightly held that the appeal should have been filed on or before 13.12.2011 so as to avail the benefit of extended period of 3 months. As the appeal has been filed on 15.12.2011, the Commissioner (Appeals) has correctly held that the appeal has been filed exceeding 6 months time limit provided in the statute itself and therefore, the appeal is liable to be dismissed on the grounds of limitation as the delay exceeding the statutory time limit cannot be condoned by this authority. Therefore, without going into the merits of case, the Commissioner (Appeals) has rightly rejected the appeal on limitation.

3.3 Taking into consideration the date of actual receipt of the OIO as per their acknowledgment i.e. 13.06.2011 and after excluding this date, 3 months will be computed from 14.06.2011 to 13.9.2011 and further 3 months (if sufficient cause is shown,) to be computed from 14.09.2011 to 13.12.2011. As the appeal was filed on 15.12.2011 which is beyond the time period as per Section 85(3) the Commissioner (Appeals) has rightly rejected the appeal on grounds ofon limitation.

3.4 Learned AR relied upon the following decisions to buttress his position:-

- Final Order No. A/2333/WZB/AHD/09 dated 11.11.2009
- SOFT HOSIERY MILLS VS CCE, TRICHY-2012 (26) S.T.R. 67 (Mad.)
- RAJA MECHANICAL CO. (P) LTD. VS CCE, DELHI-I-2012 (279) E.L.T. 481 (S.C.)
- VIJAY BABURAO PETKAR VS CST, AHMEDABAD-2007 (210) E.L.T. 59 (Tri. - Mumbai)
- SIDDRAMAPPA S. YALAMALLI vs CCE BELGAUM-2011 (22) S.T.R. 658 (Tri. - Bang.)

- 2010 (17) S.T.R. 442 (Tri. - Bang.) KOUNI TRAVELS PVT. LTD. VS CST, BANGALORE

3.5 Learned AR also submitted that the appeal period available is not a continuous duration of six months. The further period of three months as per proviso to sub-section (3) of Section 85 has to be computed after expiry of first three months available to a person in terms of this Section. This computation will be governed by Section 9 of the General Clauses Act. He referred to para 7 of the decision in the case of KOUNI TRAVELS PVT LTD, cited supra. The relevant part of para 7 is as under:-

> *"In the instant case, the three months period after receipt of the order by the appellant ended on 10th December 07. The next three months has to be computed by excluding the first day of the next block of three months i.e., 11th December. Further three months therefore ends on 11th March '08. As the appeal was received by the Commissioner (A) on 12th March '08, the same is received beyond the condonable period of three months. Commissioner (A) has no powers to condone any delay beyond the further period of three months which expired on 11th March 2008. That the impugned order has rightly held the appeal to be barred by limitation, In the Circumstances, WE sustain the impugned order and dismissed the appeal".*

4. We have considered the rival submissions. We find that pleadings have been made by both sides that dispute is about the date of receipt of the order. While as per the department, the same was received by the appellant on 13.06.2011 but as per Advocate of the party, the same was received on 15.06.2011. The party made this claim on the basis of a rounded inscription appearing with signatures and words "DOR/15/06/2011" on the face of the order filed before us. As per the advocate, this was the date on which order was received and the date of receipt taken by the Commissioner (Appeals) as on 13.06.2011 is incorrect and has led to incorrect findings. He pleads that they had submitted before the Commissioner (Appeals) (while requesting for condonation of delay) that the order was received by them on 15.06.2011 but there has been inadequate /no discussion as to why the date of receipt appearing on the face of the order was not acceptable to the department and also why date of 13.06.2011 has been taken as date of receipt of the order in preference to date indicated by them of 15.06.2011.

4.1 The legal provisions of Section 85 (3) of he Finance Act, 1994 is as under:

> *(3) An appeal shall be presented within three months from the date of receipt of the decision or order of [such adjudicating authority], relating to service tax, interest or penalty under this Chapter 3[, made before the date on which the Finance Bill, 2012 receives the assent of the President]*
>
> *Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of three months.*

4.2 After going through the legal provisions and various case laws produced by the AR, we are of the view that the date of receipt on 13.06.2011 as indicated, if is accepted, then limitation period of 3 months for filing appeal from the date of receipt of order would be calculated from 14.06.2011 and end on 13.09.2011. However, if the date of communication of order is 15.06.2011 as has been claimed by the party on the basis of inscription of exhibit at page 18 of the paper book which is Order-In-Original No. R/06/2011 dated 10.06.2011, then the period of 3 months would be calculated from 16.06.2011 and end on 15.09.2011. Further period of 3 months which the Commissioner (Appeals) is empowered to condone on sufficient cause being shown would then be counted from the next date when the normal period is over. That means, if date of receipt of order is on 13.06.2011, then the normal period of filing appeal gets over on 13.09.2011 and further period of 3 months if allowed, would be over on 13.12.2011. In case, date of receipt of order is 15.06.2011, then the normal period of filing appeal would end in on 15.09.2011 and 3 months extended time period would be over on 15.12.2011. As ascertaining of exact date of receipt goes to the root of the matter and can only be determined by the department, we therefore, remit the matter to the Commissioner (Appeals) to ascertain the correct date of receipt of order, if need be, by having a look at the departmental records. If it turns out to be 15.06.2011 as pleaded by the party, then the same is within the condonable period of the Commissioner (Appeals) in which case issue in respect of discretion to condone will arise. The Commissioner (Appeals) will consider the correct date of receipt of order (s) and accordingly exercise his discretion of condonation through reasoned orders, if any.

5. The matter is remanded in above terms. Appeal is allowed by way of remand.

(Pronounced in the open court on 08.08.2025)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Prachi