

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT No. II

Service Tax Appeal No.70455 of 2024

(Arising out of Order-in-Appeal No.341-ST/APPL/LKO/2023 dated 17/05/2023 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Lucknow)

M/s Harish Rajput, Lucknow

....Appellant

(72/8, MLD Road, Charbagh, Lucknow-226004)
VERSUS

Commissioner of Central Excise &

CGST, Lucknow

....Respondent

(3/194, Vishal Khand Gomtingar, Lucknow-226010)

APPEARANCE:

Shri Arun Kumar Srivastava, Advocate for the Appellant

Shri Santosh Kumar, Authorised Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70565/2025

DATE OF HEARING : 11 August, 2025

DATE OF DECISION : 11 August, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.341-ST/APPL/LKO/2023 dated 17/05/2023 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Lucknow. By the impugned order following has been held:-

"In this regard I find that Commissioner (Appeals) being creature of law is bound by the machinery provisions contained in the statute and cannot exceed the jurisdiction contained in the statute. Thus, without going into merits of the case, in the light of the statutory provision as above the appeal is rejected on the ground of being time barred."

2.1 I have heard Shri Arun Kumar Srivastava, learned Counsel appearing for the appellant and Smt Chitra Srivastava learned Authorized Representative appearing for the revenue.

2.2 Learned Counsel sought to argue the matter on the merits of the case by referring to Notification No 25/2012-ST dated 20.06.2012.

2.3 Learned Authorized Representative re-iterated the findings recorded in the impugned order.

3.1 I have considered the impugned order along with the submissions made in appeal and during the course of arguments.

3.2 I find that the issue involved in the present appeal is with respect of condonation of delay in filing the appeal by the Commissioner (Appeal). In the present case the appeal has been filed as observed by the Commissioner (Appeal) after more than the stipulated time, after the receipt of the order of original authority. Section 85 (3A) of the Finance Act, 1994 provides as follows:

"SECTION 85. Appeals to the Commissioner of Central Excise (Appeals).—

(3A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 receives the assent of the President, relating to service tax, interest or penalty under this Chapter :

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 two months, allow it to be presented within a further period of one month."

In terms of the above, it is observed that the appeal was to be filed before the Commissioner (Appeal) within two months of the date of the receipt of the order in original by the appellant. As per the proviso Commissioner (Appeal) has been granted the power to condone delay of one month in filing the appeal on sufficient cause being shown. In the present case appeal was filed before the Commissioner (Appeal) after more than the time provided by the law from the date of receipt of order in original. Hence Commissioner (Appeal) has rightly held that appeal was

filed beyond the prescribed period of limitation and has dismissed the same on this ground alone.

3.2 This issue is squarely covered by the decision of Hon'ble Supreme Court in the case of M/s Singh Enterprises [2008 (221) E.L.T. 163 (SC)], wherein it has been held that Commissioner (Appeals) could not condone the delay beyond the 30 days in filing the appeal before him, relevant part of the said decision are reproduced bellow for ready reference:-

"6. *At this juncture, it is relevant to take note of Section 35 of the Act which reads as follows :*

"35. Appeals to Commissioner (Appeals). - (1) *Any person aggrieved by any decision or order passed under this Act by a Central Excise Officer, lower in rank than a Commissioner of Central Excise, may appeal to the Commissioner of Central Excise (Appeals) [hereafter in this Chapter referred to as the Commissioner (Appeals)] within sixty days from the date of the communication to him of such decision or order :*

Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.

(2) Every appeal under this section shall be in the prescribed form and shall be verified in the prescribed manner."

7. *It is to be noted that the periods "sixty days" and "thirty days" have been substituted for "within three months" and "three months" by Act 14 of 2001, with effect from 11-5-2001.*

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.***

9. *Learned counsel for the appellant has emphasized on certain decisions, more particularly, I.T.C.'s case (supra) to contend that the High Court and this Court in appropriate cases condoned the delay on sufficient cause being shown.*

10. *Sufficient cause is an expression which is found in various statutes. It essentially means as adequate or enough. There cannot be any straitjacket formula for accepting or rejecting the explanation furnished for delay caused in taking steps. In the instant case, the explanation offered for the abnormal delay of nearly 20 months is that the appellant concern was practically closed after 1998 and it was only opened for some short period. From the application for condonation of delay, it appears that the appellant has categorically accepted that on receipt of order*

the same was immediately handed over to the consultant for filing an appeal. If that is so, the plea that because of lack of experience in business there was delay does not stand to be reason. I.T.C.'s case (supra) was rendered taking note of the peculiar background facts of the case. In that case there was no law declared by this Court that even though the Statute prescribed a particular period of limitation, this Court can direct condonation. That would render a specific provision providing for limitation rather otiose. In any event, the causes shown for condonation have no acceptable value. In that view of the matter, the appeal deserves to be dismissed which we direct. There will be no order as to costs."

3.2 Accordingly, I do not find any merits in this appeal filed by the appellant.

4.1 Appeal is dismissed.

(Dictated and pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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