CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.II

Excise Appeal No.70420 of 2025

(Arising out of Order-in-Appeal No.GZB/EXCUS/000/APP-MRT/189/2024-25 dated 22/10/2024 passed by Commissioner (Appeals) Central Excise & CGST, Ghaziabad)

M/s C S Designs, **.....Appellant**
(SA-34, Shastri Nagar, Ghaziabad-201002)

VERSUS

Commissioner of Central Excise &

Service Tax, Ghaziabad **....Respondent**

(Commissionerate, Ghaziabad)

APPEARANCE:

Shri Satyendra Mittal, Advocate for the Appellant
Shri Santosh Kumar, Authorised Representative for the Respondent

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

FINAL ORDER NO.70709/2025

DATE OF HEARING : 09 October, 2025
DATE OF DECISION : 09 October, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.GZB/EXCUS/000/APP-MRT/189/2024-25 dated 22/10/2024 passed by Commissioner (Appeals) Central Excise & CGST, Ghaziabad. By the impugned order following has been held:-

"7. Accordingly, without going into the merits of the case, I hereby reject the subject appeal [Appeal No. 08-ST/APPL-MRT/GZB/2024-25 dated 12.04.2024] filed by M/s C S Designs, SA 34, Shastri Nagar, Ghaziabad (U.P.) - 201002, being barred by time limitation in terms of the provisions of Section 35 of the Central Excise Act, 1944, as made

applicable to service tax cases vide Section 85 of the Finance Act, 1994."

2.1 Against the Order-in-Original 29-D(I)/AC/CGST/Div.-II/GZB/2023-24 dated 23.01.2024, appellant filed appeal on 12.04.2024 before Commissioner (Appeals).

2.2 As the appeal has been filed beyond the statutory period of limitation and also the period which could have been condoned, Commissioner (Appeal) dismissed the appeal, stating that the Order-in-Original was received by appellant on 23.01.2024.

3.1 I have heard Shri Satyendra Mittal Counsel for the appellant and Shri Santosh Kumar, Authorized Representative for the revenue.

4.1 I have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 I find that the appeal was filed before Commissioner (Appeals) and he has not decided the appeal before him on merits and dismissed the same on the ground of limitation.

4.3 Section 37 C of the Central Excise Act, 1944 reads as follows:

"37C. Service of decisions, orders, summons, etc.—

(1) Any decision or order passed or any summons or notices issued under this Act or the rules made thereunder, shall be served,—

(a) by tendering the decision, order, summons or notice, or sending it by registered post with acknowledgment due or by speed post with proof of delivery or by courier approved by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963), to the

person for whom it is intended or his authorised agent, if any;

(b) if the decision, order, summons or notice cannot be served in the manner provided in clause (a), by affixing a copy thereof to some conspicuous part of the factory or warehouse or other place of business or usual place of residence of the person for whom such decision, order, summons or notice, as the case may be, is intended;

(c) if the decision, order, summons or notice cannot be served in the manner provided in clauses (a) and (b), by affixing a copy thereof on the notice-board of the officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision or order passed or any summons or notice issued under this Act or the rules made thereunder, shall be deemed to have been served on the date on which the decision, order, summons or notice is tendered or delivered by post or courier referred to in sub-section (1) or a copy thereof is affixed in the manner provided in sub-section (1).

4.4 This section provides the manner of service of orders etc., to the concern person. The appeal was filed before Commissioner (Appeals) with a delay of 21 days from the date of order which is within the condonable period. Commissioner (Appeals) has dismissed the appeal of the appellant without considering specifying any reason for not condoning the delay. I observe that no Condonation of Delay application was filed before him.

4.5 Impugned order records as follows:

"6.2 I find that the subject order dated 23.01.2024 has been stated to have been received by the appellant on 23.01.2024 as stated in the Form ST- 4 and the subject appeal has been filed on 12.04.2024 implying thereby that

the same has been filed beyond the stipulated time period of two months and is delayed by 21 days. I find that Section 85 of the Finance Act, 1994. sub-section (3A) thereof, stipulates that "An_appeal shall be presented within two months from the date of receint of the decision or order of such adiudicating authority, made on and after the Finance Bil|, 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 this regard, I find that the appellant has not submitted any application for condonation of delay and thus I have no reason to condone the said delay of 21 days in filing of the subject appeal in terms of the provisions of Section 85 of the Finance Act, 1994."

4.6 Statute itself provides that the delay upto 30 days in filing the appeal before the Commissioner (Appeal) can be condoned after recording the reason for condoning the delay. It is settled law that nobody gains by filing the appeal beyond the prescribed period of limitation. In Collector Land Acquisition Vs. Mst. Katiji and others [1987 (28) E.L.T. 185 (S.C.)], Hon'ble Supreme Court held as follow:

"3.*The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice - that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiable liberal approach in* *matters instituted in this Court. But .the message does not -appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-*

1. *Ordinarily a litigant does not stand to benefit by lodging an appeal late.*
2. *Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*
3. *"Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.*
4. *When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*
5. *There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*
6. *It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.*

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State' *which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even handed manner. There is no warrant for according a step-motherly treatment when the 'State' is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides."*

4.5 After hearing the learned Counsel appearing for the appellant on condonation of delay application and the reasons as explained, I find justification in the grounds for the delay of 21 days and am of the view that the delay in filing the appeal should have been condoned. In any case Commissioner (Appeal) could have been more judicious and transparent by asking the appellant to file an application for condonation of delay and recorded his reasons for agreeing or not agreeing with the same.

5.1 Appeal is allowed and matter is remanded back to the Commissioner (Appeals) to decide the appeal on merits without raising the aspect of limitation.

5.2 Since the matter is quite old, Commissioner (Appeals) should decide on the appeal within a period of three months from date of receipt of this order.

(Dictated and pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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