

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

REGIONAL BENCH - COURT NO.I

**Service Tax Appeal No.70347 of 2025**

(Arising out of Order-in-Appeal No.403/ST/ALLD/2024 dated 11.11.2024 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Allahabad)

**M/s Success Solution,**

**.....Appellant**

(Prop. Suresh Tripathi,  
5/4, EWS Colony, Purana Durga Puja Park,  
Govindpur, Prayagraj-211002)

*VERSUS*

**Commissioner of Central Excise &  
CGST, Allahabad**

**....Respondent**

(38, M.G. Marg, Civil Lines, GST Bhawan  
Allahabad-211001)

**APPEARANCE:**

Shri Nishant Mishra, Advocate for the Appellant

Shri A. K. Choudhary, Authorized Representative for the Respondent

**CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)**

**FINAL ORDER NO.- 70877/2025**

DATE OF HEARING : 31.10.2025  
DATE OF PRONOUNCEMENT : 17.12.2025

The present appeal has been filed by the Appellant assailing the Order-in-Appeal No.403/ST/ALLD/2024 dated 11.11.2024 passed by the Commissioner (Appeals), Customs, CGST & Central Excise, Allahabad, by which the appeal filed by the Appellant namely M/s Success Solution, a proprietorship firm of Shri Suresh Tripathi, has been rejected on limitation.

2. Brief facts of the case are such that during the period 2014-15, the Appellant was working as a distributor of M/s Vodafone Idea Ltd<sup>1</sup>, wherein the Vodafone was selling SIM cards and recharge coupons through the Appellant and was paying commission to the Appellant, out of the consideration received

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<sup>1</sup> Vodafone

from customers on which service tax liability was discharged by Vodafone.

3. On the basis of third party information received from the Income Tax Department, the Revenue formed an opinion that the Appellant has received an amount of Rs.13,81,305/- against sale of taxable services but has not discharged service tax liability. A Show Cause Notice<sup>2</sup> dated 09.12.2020 came to be issued on the address available with the Department and it is the case of the Appellant that since the Appellant was earlier operating from a rented premises and subsequently vacated the said premises, hence the Appellant was not aware about the same, which led to an *ex-parte* order dated 22.09.2023 passed by Assistant Commissioner confirming demand of service tax of Rs.1,70,729/- along with interest and penalties against the Appellant by invoking extended period of limitation.

4. It is also the case of the Appellant that the order dated 22.09.2023 was dispatched at the same address of the Appellant and it was only in the last week of October' 2023, when the occupants of the said rented premises, through its landlord, informed the Appellant regarding service of some order and their refusal to accept the same. The Appellant made enquiries from the office of the Assistant Commissioner, whereupon on 27.10.2023 the Appellant was provided with the copy of the order dated 22.09.2023. It is also the case of the Appellant that when the Appellant provided the copy of order dated 22.09.2023 to its Counsel for drafting of appeal, the Counsel found that page numbers 5 & 6 of the order were missing. In these circumstances, the Appellant again approached the office of Assistant Commissioner and obtained complete copy of order on 07.12.2023, after which the appeal was filed in the office of Commissioner (Appeals) on 08.03.2024 with a delay around twenty nine days.

5. By the impugned order dated 11.11.2024, the Commissioner (Appeals) has rejected the appeal as barred by limitation, which has been assailed in the present appeal.

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<sup>2</sup> SCN

6. Ld. Counsel for the Appellant submits that the Commissioner (Appeals) has wrongly concluded that the appeal was barred by limitation of time as the appeal was filed within the condonable period and therefore the appeal may be treated as filed within time and the same may be heard on merits, otherwise the Appellant shall suffer from irreparable loss and injury.

7. Per contra, the learned Departmental Authorized Representative appearing for the Revenue supported the findings recorded in the impugned order and prayed that the appeal filed by the Appellant, being devoid of any merits, may be dismissed.

8. Heard both the sides and perused the appeal records.

I find that the only issue involved in the present appeal is whether the appeal filed by the Appellant before the Commissioner (Appeals) was barred by limitation or not.

9. A perusal of the impugned order shows that the same records contention of the Appellant that the address on which correspondence was made by the Department was vacated in the year 2016. The impugned order further shows that the Commissioner (Appeals) also noticed the other contention of the Appellant that the order was initially served on 27.10.2023, the counsel was busy and it was in the first week of December'2023 he found that some pages of the order were missing. I find that once the contention of the Appellant regarding initial service of order at the old address has not been rejected in the impugned order, then the service at the old address of the Appellant is not a valid service. This takes us to the question as to whether 27.10.2023 can be taken as the date of service of adjudication order on the Appellant. I find that having noticed the contention of the Appellant regarding missing pages in adjudication order, the Commissioner (Appeals) has not rejected the contention and therefore it is beyond doubt that the copy of order served on the Appellant on 27.10.2023 was not complete but some pages of the adjudication order were missing.

10. Once the contention of the Appellant regarding missing pages in adjudication order has not been rejected in the

impugned order, it has to be held that 27.10.2023 cannot be treated as the date of service of adjudication order, as service can be said to be completed in law only when a complete copy of order is served on the assessee. This is more so when pages 4 & 5 of the adjudication order contains the discussion and finding part which contains the reasons on the basis of which order is passed against the assessee.

11. In somewhat similar facts, the jurisdictional High Court in *Duaji Ispat Pvt. Ltd. vs. State of U.P.* 2022 (59) G.S.T.L. 263 (All) has held as under:-

*"6. In view of such facts it has to be accepted in law that the impugned order does not contain reasons. This conclusion is being drawn as unless the complete copy of the order containing the reasons is served on the petitioner/assessee, he may never have any right to challenge the same before any forum including the appellate forum. The fact that the Assessing Officer may have available to it another copy of the same order which may contain reasons therefor, may be of no help to the Revenue Authority as such copy of the order has not been served on the petitioner/assessee. Therefore, it cannot be relied upon to any extent."*

12. Therefore, when the right to challenge crystallizes on a date when the complete copy is made available to the assessee, the date 27.10.2023, when incomplete copy of adjudication order was provided to the Appellant cannot be treated as the date of service of order. I further find that the Appellant has contended before Commissioner (Appeals) that the complete copy of adjudication order was made available to him only on 07.12.2023, which contention has not been rejected in the impugned order and therefore, 07.12.2023 is treated as the date of service of order in the present case.

13. Now the question which arises for consideration is when the adjudication order was served on 07.12.2023, the appeal

filed by the Appellant on 08.03.2024 is barred by limitation. Once the order was served on the Appellant on 07.12.2023, the limitation period for filing appeal commences from 08.12.2023 as provided under Section 12 of the Limitation Act, 1963. Appeal to Commissioner (Appeals) has been provided under Section 85 of the Finance Act, 1994 and relevant part of the same is as under:-

*"(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."*

14. A perusal of above provision shows that appeal can be presented within a period of two months and if the appeal is filed after a period of two months the Commissioner (Appeals) can allow it to be presented within a further period of one month. Also, it is important to note that the aforesaid provision contemplated period of limitation with reference to months, as contrasted with days. Therefore, the period of two months and one month mentioned in Section 85(3A) refers to period of calendar month and not 60 days or 30 days. After taking into account the law on the subject, the Hon'ble A.P. High Court in Cotton Corporation of India vs. Assistant Commissioner (2025) 27 Centax 158 (A.P) has held as under:-

*"7. The Hon'ble Supreme Court in the case of Himachal Techno Engineers (supra) were considering the time limit of three months set out in Section 34 of the Arbitration and Conciliation Act, 1996. In that case, the award had*

*been passed, on 05.11.2007, and a petition under Section 34 was filed, on 11.03.2008. The said application was rejected on the ground that the period within which the application should have been filed was three months which would be 90 days reckoned from 11.11.2007 and ending on 10.11.2007 and a further grace period of 30 days which would end on 10.03.2008 whereas the application was filed on 11.03.2008. The Hon'ble Supreme Court after considering this issue had held as follows:*

*The High Court has held that 'three months' mentioned in section 34(3) of the Act refers to a period of 90 days. This is erroneous. A 'month' does not refer to a period of thirty days, but refers to the actual period of a calendar month. If the month is April, June, September or November, the period of the month will be thirty days. If the month is January, March, May, July, August, October or December, the period of the month will be thirty one days. If the month is February, the period will be twenty nine days or twenty eight days depending upon whether it is a leap year or not.*

*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.*

**8.** *On this basis, the Hon'ble Supreme Court held that the petition filed, on 11.03.2008, was well in time and was not barred by limitation.*

**9.** *The Hon'ble Supreme Court, while considering this issue and after noticing that Section 3(35) of the General*

*Clauses Act, 1897 defines a "month" as meaning a month reckoned as a British calendar, has also noted the Judgment of the House of Lords in Dodds. The House of Lords while considering the period within which a tenant can approach the Court under the Landlord and Tenant Act, 1954 had observed as follows:*

*This simple general rule which Cockburn C.J. in Freeman v. Read (1863) 4 B. AND S. 174, 184 described as being "in accordance with common usage... and with the sense of mankind," works perfectly well without need for any modification so long as there is in the month in which the notice expires a day which bears the same number as the day of the month on which the notice was given. Such was the instant case and such will be every other case except for notices given on the 31st of a 31 day month and expiring in a 30 day month or in February, and notices expiring in February and given on the 30th or the 29th (except in leap year) of any other month of the year. In these exceptional cases, the modification of the corresponding date rule that is called for is also well established: the period given by the notice ends upon the last day of the month in which the notice expires.*

**10.** *The aforesaid Judgments clearly laid down the principle that, when a period, available for a certain action, is defined in terms of months, it would mean that the corresponding date of the corresponding month would be the cutoff date. In the present case, the cutoff date for issuing an order is 28.02.2025. The three months period which would elapse from this date would be 28.11.2024. Since the notice was issued on 30.11.2024, it would be beyond the time stipulated under Section 73(2) of the GST Act."*

15. Thus, since Section 85(3A) uses the expression 'month' in contrast to 'days', the two months period from 08.12.2023 elapsed on the corresponding date of corresponding month i.e. on 08.02.2024 and similarly the period of month under proviso to Section 85(3A) elapsed on 08.03.2024 i.e. the date on which the appeal was presented by the Appellant. Thus, the conclusion is that the appeal presented by the Appellant on 08.03.2024 was not barred by limitation but was presented within the condonable period and the Commissioner (Appeals) erred in law in rejecting the same.

16. Having reached this conclusion, normally this Tribunal would have remanded back the matter to the Commissioner (Appeals) to consider the delay condonation application on merits. However, since the matter pertains to the period 2016-17 and the reasons given by the Appellant explaining the delay are not disputed in the impugned order and the same are otherwise found acceptable, hence in the interest of justice the delay in filing of appeal is condoned and the Commissioner (Appeals) is directed to decide the appeal on merits, preferably within a period of three months from today.

17. In view of the above discussion, the present appeal is allowed by way of remand to learned Commissioner (Appeals) for decision on merits.

(Order pronounced in open court on - **17.12.2025**)

**Sd/-**  
**(P. K. CHOUDHARY)**  
**MEMBER (JUDICIAL)**

LKS