

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

REGIONAL BENCH - COURT NO.II

Service Tax Appeal No.70627 of 2025

(Arising out of Order-In-Appeal No.65-ST-APPL-ALLD-2025, dated 19.03.2025 passed by Commissioner (Appeals) CGST & Central Excise, Allahabad)

M/s Vandana Beauty ParlourAppellant
(Prop Vandana Mishra, 201 Mona Apartment 7/158A,
Swaroop Nagar, Kanpur Nagar, Uttar Pradesh 208002)

VERSUS

Commissioner, CGST & Central Excise, Kanpur
....Respondent
(117/7, Sarvodya Nagar, Kanpur Nagar, Uttar Pradesh 208005)

APPEARANCE:

Shri Mayank Arora, Advocate for the Appellant
Shri Santosh Kumar, Authorized Representative for the Respondent

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

FINAL ORDER NO. -70879/2025

DATE OF HEARING : 25.11.2025
DATE OF DECISION : 25.11.2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-In-Appeal No.65-ST-APPL-ALLD-2025, dated 19.03.2025 passed by Commissioner (Appeals) CGST & Central Excise, Allahabad. By the impugned order, appeal filed by the Appellant has been dismissed on the ground of limitation as the same was filed beyond thirty days from the prescribed period of limitation of two months. Commissioner (Appeal) could not have condoned delay beyond thirty days.

2. I have heard Shri Mayank Arora, Advocate for the Appellant and Shri Santosh Kumar, Authorized Representative for the Revenue.

3. I find that on 17.11.2025 Counsel for the Appellant submitted as under:-

- *First Appellate Authority has rejected the appeal of the Appellant solely on the basis of limitation without considering the fact that the Appellant has been served with the impugned Order - in - Original only on 20-02-2024 due to various factors as already mentioned in the Appeal.*
- *Due to technical limitation relating to ACES portal like login id, password, the requisite Court Fees for Rs. 24,000=00 was deposited on 23-05-2024 and subsequently the Appeal was filed on 31-05-2025. The delay was unintentional and with any default or latches on the part of the Appellant.*

4. Taking note of the above submission, Bench vide Order Sheet dated 17.11.2025 directed as follows:-

*"Matter is adjourned for production of necessary evidences with regards to delay in making the pre-deposit before the Commissioner (Appeals). **List on 25.11.2025.**"*

5. On 25.11.2025 matter was heard and Appellant made following submissions:-

"The Appellant has filed the Appeal in Form ST - 4 before the Ld. Commissioner (Appeals) on 31-05-2024 against the Order-in-Original No. 37/ST/Vandana Beauty/Div KD/AC/2023 dated 27-03-2023 for the FY 2016-17. The said order was received by the Appellant on 20-02-2024 and as such appeal should have been filed on or before 20-04-2024, but it was filed on 31-05-2024 due to the reasons given the application for condonation for delay. The delay was unintentional and beyond the control of the Appellant she was required to make pre deposit of Rs. 24,000=00 by generating the challan online from the ACES Service Tax portal. Since due to non availability of login id and password, the Appellant approached the Department who also could deliver the same only on 08-05-2024. The Appellant had made repeated and numerous requests both formal (written) and informal (oral) to provide her the

required id and password, but it was not possible until 08-05-2024.

Further, even after logging the same on the website w.e.f. 08-05-2024, there were still many issues and as such the Appellant was not able to generate the challan online due to some technical glitch on the portal. The Appellant again requested the Department to look into the matter and finally the same was generated from the end of the Department on 23-05-2024, which was duly deposited on the same date, i.e. 23-05-2024.

Copies of relevant correspondences are attached herewith for your kind perusal and record.

The Appellant had submitted the copy of Appeal on 24-05-2024 before Assistant Commissioner, CGST Division - II, Kanpur but due to certain health issues in the family of the Appellant, she could reach Allahabad (Prayagraj) on 31-05-2024 to file the said appeal immediately without any further delay.

Thus, it is clear that the Appellant was facing severe technical limitation in accessing the id password and subsequent generation of challan, which resulted in this unintentional delay beyond the control of the Appellant. So therefore, it is most kindly requested that explanation for delay be accepted and oblige.

Date - 22/02/2024

To
Superintendent
CGST and Central Excise
Kanpur Dehat

Sub: Request to issue id / password for M/s Vandana Beauty Parlour of
Service Tax - REGN. NO. AQQPM98Z0NSD001

Respected Sir

An order of Service Tax has been received by me Vandana Mishra Prop. of M/s Vandana Beauty Parlour, Swaroop Nagar, Kanpur on 20/02/2024, in which there is demand of Rs. 311974/- which is not correct. On advise of my Counsel, I am intending to file an appeal to contest this demand, but I have no id and password for Service Tax. I have been told that certain payment is to be made online for filing of appeal. So I am humbly requesting you to kindly issue my id and password so that I may pay the required tax and file an appeal.

My new email is vandanamakeup@yahoo.com
My new Mobile No. 9838993968
Please do the needful.

Thanking You
Yours faithfully
Vandana Mishra

Date - 11/03/2024

To
Superintendent
CGST and Central Excise
Kanpur Dehat

Sub: Reminder of Request to issue Id / password for M/s Vandana Beauty
Parlour of Service Tax - REGN. NO. AQQPM9820NSD001

Respected Sir

An order of Service Tax has been received by me Vandana Mishra Prop. of M/s Vandana Beauty Parlour, Swaroop Nagar, Kanpur on 20/02/2024, in which there is demand of Rs. 311974/- which is not correct. On advise, I am intending to file an appeal to contest this demand, but I have no id and password for Service Tax. I have been told that certain payment is to be made online for filing of appeal. I have also requested your goodself on 22/02/2024 for same and I was told that it would be given to me very soon. But after so much time I have not received the same. So I am humbly requesting you to kindly issue my id and password so that I may pay the required tax and file an appeal.

My new email is vandanamakeup@yahoo.com
My new Mobile No. 9838993968
Please do the needful.

Thanking You
Yours faithfully
Vandana Mishra

Date - 27/03/2024

To
Superintendent
CGST and Central Excise
Kanpur Dehat

Sub: Reminder of Request to issue Id / password for M/s Vandana Beauty
Parlour of Service Tax - REGN. NO. AQQPM9820NSD001

Respected Sir

An order of Service Tax has been received by me Vandana Mishra Prop. of M/s Vandana Beauty Parlour, Swaroop Nagar, Kanpur on 20/02/2024, in which there is demand of Rs. 311974/- which is not correct. On advise, I am intending to file an appeal to contest this demand, but I have no id and password for Service Tax. I have been told that certain payment is to be made online for filing of appeal. I have also requested your goodself on 22/02/2024 and on 11/03/2024 for same and I was told that it would be given to me before Holi. But after Holi also I have not received the password. So I am humbly requesting you to kindly issue my id and password so that I may pay the required tax and file an appeal. I have been told that 20/04/2024 is the last date for appeal, so send me quickly the id and password.

My new email is vandanamakeup@yahoo.com ✓
My new Mobile No. 9838993968 ✓
Please do the needful.

Thanking You
Yours faithfully
Vandana Mishra

Id
pw -

Date - 15/04/2024

To
Assistant Commissioner
CGST and Central Excise
Kanpur Dehat

o/c

Sub: Reminder of Request to issue Id / password for M/s Vandana Beauty Parlour of Service Tax - REGN. NO. AQQPM9820NSD001

Respected Sir

An order of Service Tax has been received by me Vandana Mishra Prop. of M/s Vandana Beauty Parlour, Swaroop Nagar, Kanpur on 20/02/2024, in which there is demand of Rs. 311974/- which is not correct. On advise, I am intending to file an appeal to contest this demand, but I have no id and password for Service Tax. I have been told that certain payment is to be made online for filing of appeal.

I have also requested to your Department through letters on 22/02/2024, 11/03/2024 & 27/03/2024 for same and I was told that it would be given to me very soon. But after such a long time, I have not received the password. Due date for filing appeal is also approaching very near. So it is most kindly requested that necessary action be taken to kindly issue the id and password. Below are the email and mobile number

My new email is vandanamakeup@yahoo.com
My new Mobile No. 9838993968
Please do the needful at the earliest and oblige.

Thanking You

Yours faithfully
Vandana Mishra

Vandana Mishra

Date - 29/04/2024

To
Assistant Commissioner
CGST and Central Excise
Kanpur Dehat

Sub: Application for issuance of Id / password for M/s Vandana Beauty Parlour of Service Tax - REGN. NO. AQQPM9820NSD001 - Reminder

Respected Sir

The applicant is sorry to say that she has still not received the id and password of Service Tax portal for filing appeal against the order received on 20/02/2024. In spite of numerous personal requests and also formal requests through letters from 22/2/2024, I have still not received any id and password on my mobile / email. Due to which I am unable to make any payment and file appeal at Allahabad. Time for filing appeal has also ended on 20/04/2024 and the applicant is in urgent need to make payment and file appeal. Every time I have been assured that login id and password would be given to me, but nothing has been done.. Kindly look into the matter and make necessary technical corrections so that my work may be done. It is my personal request to please do the needful.

My new email is vandanamakeup@yahoo.com
My new Mobile No. 9838993968

Yours faithfully

Vandana Mishra

Vandana Mishra

29-4-24

Date - 14/05/2024

To
Superintendent / Assistant Commissioner
CGST and Central Excise
Kanpur Dehat

Sub: Application for making of challan for Rs. 24000 for filing appeal for M/s Vandana Beauty Parlour of Service Tax - Regn No. AQQPM9820NSD001

Respected Sir

The applicant has received the required id and password for filing of Appeal in case of M/s Vandana Beauty Parlour, but the applicant is unable to generate the challan on the ACES portal. The portal is giving a message 'Please try after some time' and the session is being logged out. After contacting the technical person from your office on 10/05/2024, who assured that it would be completed after some time and the reason is due to some portal glitch. But even after 4-5 days, the same error message is coming. So please do the needful in issuing challan of Rs. 24000 so that appeal can be filed without any more delay.

Thanks
Yours faithfully

Vandana Mishra
Vandana Mishra

Date - 19/05/2024

To
Superintendent / Assistant Commissioner
CGST and Central Excise
Kanpur Dehat

Sub: Application for making of challan for Rs. 24000 for filing appeal for M/s Vandana Beauty Parlour of Service Tax - Regn No. AQQPM9820NSD001 - Reminder

Respected Sir

Inspite of numerous repeated request, no challan has been provided to the applicant for filing of Appeal in case of M/s Vandana Beauty Parlour. Time for filing appeal is also ending. I have requested so many times to please provide some technical solution for generation of challan so that it may be deposited. So kindly understand the urgency of the applicant and please do the needful in issuing challan of Rs. 24000/- so that appeal can be filed without any more delay.

Thanks
Yours faithfully

Vandana Mishra
Vandana Mishra

6. Learned Authorized Representative for the Revenue reiterates the finding recorded in the impugned order.

7. I have considered the impugned order alongwith the submissions made in the appeal and during the course of argument.

8. The impugned order records as follows:-

"5.1 Before going to the merit of the issue some relevant provisions are required to be dealt. In this regard it is observed that under Section 85(3A) of the Act-

(34) 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.

Further as per Rule 8 of Rule -

An appeal under Section 85 of the Act to the [Commissioner] of Central Excise (Appeals) shall be in Form ST-4. (1)

(2) The appeal shall be filed in duplicate and shall be accompanied by a copy of order appealed against.

5.2 I have carefully gone through the case records, and find that the appeal has been filed on 31.05.2024 against the impugned order dated 27.03.2023 said to have been communicated on 20.02.2024. Even going by the date of communication the appeal should have been filed on or before 19.04.2024. However I notice that the appeal has not been filed within a period of two months. The Act further empowers to condone delay of one month on satisfactory reasons. But I see that the instant appeal was

not even during the prescribed period of condonation i.e. on or before 19.05.2024.

5.3 On cross-examining the statutory provisions with the facts of the case, it becomes apparent that the present appeal has been filed on 31.05.2024 i.e. beyond condonable limit of one month as enshrined in the statute.

6.0 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 merit of the case, in the light of the statutory provision as above the appeal is rejected on the ground of being time barred."

9. I also note that the Appellant in response to the directions have produced copies of certain letter which do not provide any evidences of receipt with the concerned authorities neither inward number nor receipt is shown on any letter thus these evidences needs to be rejected for this very reason.

10. I also note that the Order-In-Original against which the Appeal was filed by the Appellant before the Commissioner (Appeals) is dated 27.03.2023 and bearing dispatch number of that date evidencing that the letter was dispatched to the Appellant at that time on that date. Going by the Section 27 of the General Clause Act, 1862 order should have been received by the Appellant within a reasonable time if not returned back to the dispatcher. It is evident that the order in original was not received back, and was delivered at the address stated. In case of P BhoormalTirupati [2000 (126) E.L.T. 65 (Mad.)] Hon'ble Madras High Court observed as follows:

"3. *The only point that arises is whether the service by registered post effected on 13-5-1969, which was returned with the endorsement 'Left', is sufficient notice. Section 153 of the Act states that any order or decision passed or any summons or notice issued under the Customs Act, shall be served (a) by tendering the order, decision,*

summons or notice or sending it by registered post to the person for whom it is intended or to his agent; sub-section (b) of Section 153 need not be referred to as it does not arise in this case. A notice had been sent by registered post duly addressed to the Appellant. The section requires that notice shall be served by sending it by registered post to the person for whom it is intended. The section does not require that effective service should be effected by the appellant receiving it. This position is made clear by reference to section 27 of the General Clauses Act which states that where any Central Act requires any document to 'be served by post, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing pre-paying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. The normal presumption, unless the contrary is proved, is that the service shall be deemed to have been properly effected when a letter is properly addressed, pre-paid and posted by registered post. That the notice was sent to proper address, pre-paid and posted by registered post is not under dispute. No other attempt has been made to prove the contrary. The endorsement 'left' is not sufficient to prove the contrary. Apart from it, a reading of the section indicates that the proof to the contrary can only be limited to proving that the service had not been effected at the time at which the letter would be delivered in the ordinary course of post. We find no difficulty in coming to the conclusion that there has been proper service of notice. The Writ Petition was rightly dismissed."

Hon'ble Bombay High Court has in the case of Technicom Systems (I) Pvt. Ltd [2019 (367) E.L.T. 597 (Bom)] held as follows:

11. *Since it is the case of the Petitioners that the Petitioners' factory premises were closed since 2001 or that factory premises were in possession of the bank between year 2002 to 2007, the minimum that was expected from the Petitioners was that they intimate this circumstance to the Respondents. This was necessary because the Petitioners were very much aware that only provisional assessment had taken place in respect of imported goods which were ultimately released under Bond and final assessment was yet to be completed. The registered address of the Petitioners continues to remain the same. No action was taken by the Petitioners to change this registered address in the records or to intimate the authority of the change, if any. In such circumstances, the Petitioners cannot be heard to complain of non-service, when there is material on record to suggest that notices as well as the order-in-original were indeed sent by RPAD to the address in the official records as well as address furnished by the Petitioners themselves.*

12. *The affidavit in reply filed by Mr. Debashis Benarjee, Assistant Commissioner of Customs sets out in detail the manner in which the service of notice as well as the order-in-original came to be effected upon the Petitioners. The Petitioners do not appear to have been quite candid in making the true and correct averments on the aspect of their address. The Petitioners have merely made some vague reference to the factory premises being closed from 2001 to 2007. The material on record does indicate that the Petitioners have themselves brought about this situation and therefore the Petitioners cannot now urge in alleged non-compliance with the provisions of Section 153 of the said Act.*

13. *As noted earlier Section 153 of the said Act provides that any order of decision passed or any summons or notice issued under the Customs Act, 1962 shall be served*

inter alia..... "sending it by registered post.....". There is material on record which indicates that the notice as well as the order-in-original was indeed sent to the Petitioners by registered post. To such situation, the presumption available under Section 27 of the General Clauses Act, 1897 will apply. The Petitioners have placed no material on record to rebut such presumption.

14. *In Harihar Banerji and Ors. v. Ramshashi Roy and Ors. - AIR 1918 Privy Council 102 it is held if a letter properly directed, is proved to have been put into the post office, it is presumed that the letter reached destination at the appropriate time according the regular course of business of the post office and received by the person to whom it was addressed.*

15. *In the precise context of the provision of Section 153 of the said Act, the Division Bench of the Madras High Court in P. Bhoormal Tirupati v. The Additional Collector of Customs - AIR 1974 Madras 224 = 2000 (126) E.L.T. 65 (Mad.) has held that Section 153 of the said Act only requires that the notice shall be served by sending it by registered post to the person for whom it is intended, it does not require that effective service should be effected upon the person receiving it. Read with Section 27 of the General Clauses Act, it becomes clear that when a document to be served is sent by registered post to the proper address with prepaid postage its service is deemed to be effected at the time at which the letter would be delivered in the ordinary course of post, unless the contrary is proved. Based upon all these, we are unable to accept the Petitioners' contention that there has been no proper service as contemplated under Section 153 of the said Act."*

11. Appellant submits that they have never received the said Order-In-Original for the reason that there was change in their address of the Appellant. However they agree that the fact of

change of address never communicated to the concerned Authorities. They have prayed for exclusion of this period should for computing the period of limitation.

12. I observe that it is an admitted fact that the Appellant never informed the Departmental Authorities about the change in address neither got their address amended in their registration certificate. Even in the challans of pre-deposit made after more than 01 year, the address of the Appellant appears to be as same as the address at which the Order-In-Original was sent. This is evident from the two challans for making the pre-deposit and Order-In-Original's Preamble:-

Central Board of Indirect Taxes and Customs (CBIC)					
e-Receipt for Central Excise & Service Tax Payments					
CTIN Number :	2506762097	CTIN Date:	9/6/25 1:55 PM	CTIN Expiry Date:	24/6/25 12:00 AM
Payment Particulars					
Transaction Acknowledgement Number :	IG2060920250157512691523734355				
IG Reference Number :	002000STZW02050150241886875941				
CIN :	2044000326	CIN Date :	12-06-2025		
Name of the Bank :	Reserve Bank of India	BSR Code :			
Details Of the Assessee					
Registration Number :	AQQPM9820NSD001	Assessee Name :	VANDANA MISHRA		
Address :	128/495 K - Block Kidwai Nagar Kidwai Nagar K - Block Kidwai Nagar				
Mobile Number :	9838993968	Email Id :	vandanamakeup@yahoo.com		
Commissionerate :	KANPUR	Commissionerate Code :	ZW		
Division :	DIVISION-II	Division Code :	02		
Range:	RANGE-XI	Range Code :	05	Location Code :	ZW0205
Details of Deposits					
Central Excise/ Service Tax	Description of Duty	Accounting Code	Amount Tendered		
ST	Beauty parlours /beauty treatment	0209	7500		
Total Amount (in Rs.)	7500				
Total Amount (in Words.)	Rupees Seven Thousand Five Hundred Only				
Payment Mode :	offline	Payment Channel :	PG		
NOTES :					
1. Status of the Transaction can be tracked under "Track Challan" under Menu-->Epayment					
2. Payment status will be set as "PAID" for this Transaction					
3. This is a system generated Receipt					

Receipt for Central Excise & Service Tax Payments					
CTSI Number :	20230327	CTSI Date :	27/03/2023	CTSI Class/Batch :	2023/03/01
Payment Particulars					
Transaction Acknowledgment Number :	N075210240184379070299487				
SI Reference Number :	90200272002002100127780043				
ESI :	K01740000		CTSI Date :	23-03-2023	
Name of the Bank :	Reserve Bank of India		BAR Code :		
Details Of the Assessee					
Registration Number :	A00P0102060101		Assessee Name :	VANDANA BEAUTY	
Address :	128495-K - Block Kidwai Nagar Kidwai Nagar K - Block Kidwai Nagar				
Mobile Number :	981911208		Email Id :	vandanabeauty@yahoo.com	
Classification Code :	KANPUR	Commodity Code :	20		
Division :	ST/ST/02/0	Division Code :	60		
Range :	KANUR-01	Range Code :	01	Location Code :	ZW000
Details of Deposits					
Central Excise Service Tax	Description of Duty		Assessing Code	Amount Taxable	
ST	Beauty parlour Beauty treatment		000	2400	
Total Amount (in Rs.)	2400				
Total Amount (in Words)	Rupees Twenty Four Thousand Only				
Payment Mode :	online		Payment Channel :	NE	
NOTES :					
1. Status of the Transaction can be tracked under "Track Challan" under Menu of payment					
2. Payment status will be set as "PAID" for this Transaction					
3. This is a system generated Receipt					

E-mailed

**OFFICE OF THE ASSISTANT COMMISSIONER
CGST & CENTRAL EXCISE, DIVISION - KANPUR DEHAT
11/7, SARVODAYA NAGAR, KANPUR-208005**

पत्रसंख्या- GEXCOM/ADJN/ST/2444/2021-TECH/CGST/D-II/Knpr DATED 27.03.2023

मूलआदेश संख्या: 37/ST/ Vandana Beauty/Div.-KD/AC/2023 dated 27.03.2023

DIN- 20230353ZW040000FDB2

अधिकारी जिसने पारित किया- सहायक आयुक्त, केन्द्रीय वस्तु एवं सेवाकर, मण्डल-कानपुर देहात

01. आदेश की यह प्रति उस व्यक्ति के निजीउपयोग के लिए नि:शुल्क दी जाती है जिसको यह जारी किया गया है।

02. इस आदेश से स्वयं को व्यथित माननेवाला कोई भी व्यक्ति इस आदेश के विरुद्ध निम्नलिखित के पास अपील कर सकता है-

क. आयुक्त, अपील, केन्द्रीय उत्पाद शुल्क, इलाहाबाद।

ख. अपील पार्टी को व्यक्तिगत रूप से आदेश सौंपे जाने या उसको डाक द्वारा प्राप्त होने की तिथि के 60 दिन के भीतर प्रस्तुत की जानी चाहिए। इस पर रु. 4/- चार रुपये मात्र का न्यायालय शुल्क स्टाम्प लगा होना चाहिए। इसके साथ निम्नांकित संलग्नक अवश्य लगे होने चाहिए:-

ए. अपील की एक प्रति।

बी. आदेश की यह प्रति अथवा एक दूसरी प्रति, जिस पर निम्नलिखित न्यायालय शुल्क स्टाम्प अवश्य लगा होना चाहिए।

1- यदि विषय वस्तु की राशि या मूल्य रुपये पचास या पचाससे कम है तो रु. 0.5

2- यदि इस प्रकार की राशि या मूल्य रु. पचाससे अधिक है तो रु. 1.75

3- यदि किसी अन्य केन्द्रीय उत्पाद शुल्क दरतावेज की प्रति प्रस्तुत की जाती है, तो इस पर भी प्रति 350 शब्दों या उसके भाग के लिए रु. 0.50 का न्यायालय शुल्क स्टाम्प अवश्य लगा होना चाहिए।

4- यदि आयुक्त अपील, केन्द्रीय उत्पाद शुल्क, कानपुर के पासवकालतनामा प्रस्तुत किया जाता है, तो इस पर रु 8/- आठ रुपये मात्र का न्यायालय शुल्क स्टाम्प लगा होना चाहिए।

पार्टीकानाम:-

To, M/s Vandana Beauty Parlour
128/495-K Block Kidwai Nagar
Kanpur-208011

Vandana Mishra

13. It is a settled position in law that no one should be allowed to take advantage of his own wrong '***Nullus commodum capere potest de injuria sua propria***'. Hon'ble Supreme Court has in case of Binod Pathak and Others v. Shankar Choudhary and Others [2025 INSC 842=2025 LiveLaw (SC) 699] observed as follows:

"51. Thus, the principle that no party can take advantage of his/her own wrong i.e. 'nullus commodum capere potest de injuria sua propria' is squarely attracted in the event of a failure in complying with the provision of Rule 10A of Order XXII of the CPC, and any abatement as a result of such wrongdoing or failure ought not to be validated by the courts.

52. In Kusheshwar Prasad Singh v. State of Bihar, (2007) 11 SCC 447, it was held that the aforesaid maxim is based on elementary principles, is fully recognised in courts of law and of equity, and, admits of illustration from every branch of legal procedure. The relevant observations read as under:—

*"14. In this connection, our attention has been invited by the learned counsel for the appellant to a decision of this Court in Mrutunjay Pani v. Narmada Bala Sasmal [AIR 1961 SC 1353] wherein it was held by this Court that where an obligation is cast on a party and he commits a breach of such obligation, he cannot be permitted to take advantage of such situation. This is based on the Latin maxim *commodum ex injuria sua nemo habere debet* (no party can take undue advantage of his own wrong).*

15. In Union of India v. Major General Madan Lal Yadav [(1996) 4 SCC 127: 1996 SCC (Cri) 592] the accused army personnel himself was responsible for delay as he escaped from detention. Then he raised an objection against initiation of proceedings on the ground that such proceedings ought to have been

initiated within six months under the Army Act, 1950. Referring to the above maxim, this Court held that the accused could not take undue advantage of his own wrong. Considering the relevant provisions of the Act, the Court held that presence of the accused was an essential condition for the commencement of trial and when the accused did not make himself available, he could not be allowed to raise a contention that proceedings were time-barred. This Court (at SCC p. 142, para 28) referred to Broom's Legal Maxims (10th Edn.), p. 191 wherein it was stated:

"It is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognised in courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure."

16. It is settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, "a wrongdoer ought not to be permitted to make a profit out of his own wrong".

(emphasis supplied)

53. We would like to remind the High Court of this very important legal maxim of 'nullus commodum capere potest de inuria sua propria'. It is the duty of the court to ensure that dishonesty or any attempt to abuse the legal process must be effectively curbed and the court must ensure that there is no wrongful, unauthorised or unjust gain for anyone by abusing of

the process of the court. No one should be permitted to use the judicial process for earning undeserved gains for unjust profits. The courts' constant endeavour should be to ensure that everyone gets just and fair treatment.

14. In find that in the case of Airef Engineers Pvt. Ltd.[2020 (34) G.S.T.L. 433 (Tri. - Del.)] the Tribunal has held as under:-

"5. As is seen from above, the Bench, while deciding the issue has considered the same elaborately and has come to a clear finding that the ongoing works contract would attract the higher rate of duty with effect from 1-3-2008. The appellant's contention now that Calcutta High Court decision was not taken into consideration, even though the same was not placed before the Bench, cannot be appreciated. The reliance on the Larger Bench decision of the Tribunal in the case of Hindustan Lever Ltd. v. CCE, Mumbai - 2006 (202) E.L.T. 177 (Tri. - LB) laying down that non-consideration of a decision on the issue would be an error apparent from the records requiring rectification is not applicable to the facts of the present case inasmuch as the Calcutta High Court decision, which the applicant now seeks to rely upon, requires consideration and its applicability to the facts of the present case and does not lay down the law directly on the issue. The Tribunal in the case of Balaji Action Buildwell v. CCE vide its Misc. Order No. 50281/2018, dated 15-5-2018 has referred to the Hon'ble Supreme Court's decisions and has observed that it is not necessary to discuss each and every argument of the appellant and in the name of ROM review of appeal is not permissible. For better appreciation we reproduce Paras 8 and 9 of the said decision :

"8. It may be mentioned that it is not necessary to discuss each and every argument of the appellant. Only the cumulative effect will have to be mentioned in the

order as per the ratio laid down in the case of *CIT v. Karam C. Thappar - 176 ITR 535 SC.*

9. In the name of ROM review of the appeal is not permissible as per the ratio laid down in the following cases :-

- (i) *Prajatantra Prachar Samity v. CIT - 264 ITR 160 Orissa;*
- (ii) *CIT v. Mcdowell & Co. Ltd. - 269 ITR 451 Karnataka;*
- (iii) *M/s. Bhagat Construction Store v. CIT, 197 Taxation 263 Guwahati; and*
- (iv) *CIT v. Malwa Texturising (P) Ltd. - 292 ITR 488 (MP).*

6. Apart from above, we may also take note of the Hon'ble Supreme Court's decision in the case of *Deva Metal Powders Pvt. Ltd. v. Commissioner of Trade Tax, U.P. - 2008 (221) E.L.T. 16 (S.C.)*. The Hon'ble Supreme Court has held that power to rectify mistake does not cover cases where a revision or review of the order is intended. A mistake which can be rectified is the one which is patent and is obvious and whose discovery is not dependent on argument or elaboration. Rectification of an order does not mean obliteration of order originally passed and its substitution by a new order. Where an error is far from self evident and is not confined to clerical or arithmetical mistake, it ceases to be an error apparent on records. What the appellant is seeking in the present case, is the reversal of the conclusion already arrived at by the Tribunal, which can be changed only by long drawn process of argument by both the sides. As such, it cannot be said that the error pointed out by the Learned Advocate is an error apparent on the face of the records."

15. In the case of *Sunbeam Garments Pvt. Ltd. V/s Commissioner of Customs* reported at 2010 (255) E.L.T. 383 (Guj.) Hon'ble Gujarat High Court has held as under:-

17. *As can be seen from the impugned order passed by the Tribunal at Annexure L dated 15-11-2007, in para 3 it is specifically observed that there is no satisfactory explanation given for the gross delay and there was no explanation at all for the delay between 19-6-2006 and 14-5-2007 when the appeal was filed. In other words, even if it is accepted for the sake of argument that the order-in-original with the notice was served only in June, 2006, still, the appeal came to be filed on 14-5-2007 after about a year for which no satisfactory explanation has been offered. The Tribunal has, therefore, observed, "ordinarily, we would have rejected the application simply on the ground that there was absolutely no explanation given for the period from 19th June, 2006 to 14th May, 2007 for the gross delay in the filing of the appeal and that even the explanation for the earlier period was wholly unsatisfactory. However, keeping in view the facts and circumstances of the case, as emanating from the record and the impugned order and the statement of the learned counsel for the applicant about readiness of the applicant to deposit Rs. 50 lakhs in order to show the bona fides of the applicant as against the impression that the proceedings of the recovery have got protracted for about seven years, we direct that on the applicant depositing Rs. 50 lakhs (Rupees Fifty lakhs only) within eight weeks from today with the revenue authorities, there shall be condonation of delay in filing of this appeal."*

18. *This order came to be passed on 17-1-2008 by the Tribunal and further Misc. Application for modification was filed, which is at Annexure 'M' wherein it is stated in para 2 that the applicant had handed over the papers to Shri Hardik Modh, the advocate appearing before the Tribunal, in the month of August, 2007. As learned advocate Mr. Modh had been out of station he had given instruction to one Mr. Rahul Gajera, advocate, to seek adjournment and as learned advocate Mr. Gajera had no instruction, the order was passed and he was informed over the phone by the*

director Shri Babulal Lath that the company was not in a position to deposit Rs. 50 lakhs and at the most would try to give bank guarantee. That bank guarantee is also not given. It has been contended that the applicant had not instructed the learned advocate that the applicant would deposit the amount. Therefore, when the said appeal along with order passed came before the Tribunal, the Tribunal has reflected clearly that the delay was condoned on the basis of the statement of the learned advocate that he was ready to deposit the amount of Rs. 50 lakhs as pre-deposit in order to show their bona fides. It is on the basis of this that the Tribunal/Bench accepted and the delay was condoned. Thereafter, the learned advocate submitted the misc. application for modification to wriggle out of the said commitment. Not only that, learned advocate Mr. Modh, as it is recorded, makes an offer to deposit an amount of Rs. 10 lakhs.

19. *In view of the sequence of events reflecting the conduct of the petitioner which has been noted as stated hereinabove, it does not require any lenient view or indulgence.*

20. *Therefore, the submissions made by learned Sr. Counsel Mr. Kavina much emphasising about the violation of rules of natural justice or the fact that the order-in-original was never served, show cause was never served, etc. will be of no help, particularly when there is no explanation with regard to the delay for the period from 19th June, 2006 to 14th May, 2007 as admittedly on 19th June, 2006 Shri Babulal Lath, director of the petitioner-company, was served with the order. As stated above, in fact, he tried to confirm from different offices with regard to the status and having confirmed that the papers are not traceable, tried to move the Tribunal challenging the order-in-original with an application for condonation of delay. Therefore, the Tribunal, having taken a lenient view and specifically observing that there was no explanation for the gross delay,*

in order to provide an opportunity, passed an order to condone the delay on pre-deposit of Rs. 50 lakhs as against the liability of Rs. 2,75,08,740/-. Having obtained this order, in order to wriggle out, a misc. application was filed stating that it is not possible to comply with it and if Shri Babulal Lath had on telephone specifically instructed learned advocate Mr. Gajera, then there was no need for learned advocate Mr. Modh on the next occasion to make an offer that they are prepared to deposit an amount of Rs. 10 lakhs. On earlier occasion if it was specifically informed and the order was passed, there was no need for making an offer by learned advocate Mr. Modh on behalf of the petitioner to deposit Rs. 10 lakhs. This reflects the attitude and falsehood.

21. *Much emphasis is given by learned Sr. Counsel Mr. Kavina that for proceeding the show cause notice was not served or the order-in-original was not served till June, 2006. As it is reflected hereinabove, the Asst. Commissioner of Central Excise made an inquiry and the unit was found closed and there is nothing to show that the petitioner-company or the director had made any declaration at the time of closure of the unit or had any communication about the change of the premises or the residence and when he wanted information he has addressed a letter which is replied and it is on the basis of this the respondents have served Shri Babulal Lath, the director of the petitioner-company, for which the grievance is made that subsequently it is served at his residential address and nothing has been served to the company at the address mentioned.*

22. *Though, strictly, the provisions of CPC may not apply, but the analogy would be applicable that when the person or the party claims that he should be served with the communication or the notice, it is also obligatory for them to make necessary declaration, once there is a change in the address or if the unit is closed. The petition is filed in*

the name of the Company by the Director and if the unit was closed or whatever the development has taken place, it was obligatory to make declaration as the forms as prescribed would have been filled in at the relevant time disclosing the address and therefore the submissions that notice has not been served, cannot be accepted. Reliance is placed by learned counsel referring to Section 28 regarding non-service of the notice, therefore would not help.

16. In the case of Rajora Glass (P) Ltd. V/s Commissioner of Central Excise, Jaipur reported at 2006 (205) E.L.T. 675 (Tri.-Del.) has held as under:-

2. The appellants have no doubt also alleged that their factory was closed four years back but there is nothing on the record to suggest if any change in address was communicated by Shri Ramji Lal, Director, to the Department for communication. It has not been disputed before me that the copy of the Order-in-Original was received by Shri Ramji Lal, Director at factory premises. The Deptt. therefore, rightly sent the copy of the Order-in-Original at the factory premises.

17. In the case of National Hydroelectric Power Corporation Ltd. V/s Commissioner of Customs, Kolkata reported at 2004 (177) E.L.T. 351 (Tri. Kolkata) Tribunal held as under:-

"2. Shri N.K. Mishra, learned JDR for the Revenue has submitted a judgment of Madras High Court in the case of P. Bhoormal Tirupati v. Additional Collector of Customs, Madras reported in 2000 (126) E.L.T. 65 (Mad.) and a judgment of the Tribunal in the case of M/s. Shree Narattom Udyog (P) Ltd. v. Commissioner of Central Excise, Shillong, vide Tribunal's Order No. S-1229/A-1280/KOL/2002, dated 20-11-2002. The Madras High Court has held that normal presumption, unless the contrary proved, service shall be deemed to have been properly effected when a letter properly addressed, pre-paid and posted by registered post.

Section 153 of the Customs Act, 1962 states that any order or decision passed or any summons or notice issued under the Customs Act, shall be served by tendering the order, decision summons or notice or sending it by registered post to the person for whom it is intended or to his agent. In this case, we find that the applicant/appellant-company had approached the Assistant Commissioner of Customs, Kolkata on 13-7-87, whereas the Order was passed on 14-7-87, and the applicant/appellant-company did not care to know the outcome of the case for more than fourteen years. We do not find any justifiable ground for condonation of delay. The Commissioner (Appeals) was right when he rejected the appeal as time-barred. We uphold the Order of the Commissioner (Appeals), and the appeal is accordingly rejected. Stay Petition also stands disposed of."

18. This view of the Tribunal has been affirmed by the Hon'ble Calcutta High Court reported as 2016 (42) S.T.R. 963 (Cal.) holding as under:-

"8. So far as the second ground is concerned, no material has been placed on record at the behest of the petitioner to suggest that the petitioner had taken any steps with regard to the adjudicatory proceedings from July 13, 1987 till 2002. This conduct of the petitioner cannot be said to be prudent. The petitioner cannot be allowed to take advantage of such a conduct. Essentially, the petitioner is seeking to take advantage of its negligence in not keeping itself abreast with the developments of the adjudicatory proceedings.

9. On the first ground, it has been contented that without an actual proof of service, the petitioner cannot be said to have been served with the original order dated July 14, 1987 in spite of the fact that the same was sent by registered post with acknowledgment due card.

10. *None of the three decisions relied upon on behalf of the petitioner is on a factual situation where after 14 years a proof of delivery is sought to be examined. In the present case, the petitioner had approached the Commissioner (Appeals) after 14 years from the date of the original order dated July 14, 1987. It is for the petitioner to establish that, in spite of all reasonable steps being taken on behalf of the petitioner the order dated July 14, 1987 was not made available to it. It has failed to discharge such onus. The onus to prove delivery of the order dated July 14, 1987 has not shifted to the authorities, in the facts of this case. To allow the petitioner to have an appeal heard on the ground of laches actual proof of delivery more particularly given the conduct of the petitioner as noted above, would be miscarriage of justice."*

19. In view of the above and the decision of the Hon'ble Supreme Court in the case of Singh Enterprises V/s Commissioner of C.Ex., Jamshedpur reported at 2008 (221) E.L.T. 163 (S.C.) and in the case of Asstt. Commr. (CT), LTU, Kakinad V/s Glaxo Smith Kline Consumer Health Care Ltd. reported at 2020 (36) G.S.T.L. 305 (S.C.) I do not find any merits in any of the submissions made in the appeal.

20. Appeal is dismissed.

(Operative part of the order is pronounced in open court)

**Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)**

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