CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.II
(E-Hearing)

Service Tax Appeal No.70112 of 2026

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APPL-124-25-26 dated 28/07/2025 passed by Commissioner (Appeals) Central Excise & Services Tax, Noida)

M/s Shiv Contracor, **.....Appellant**
(E-73, Senior Citizen Home Coplex,
Near Yatharth Hospital, Sector-Omega I,
Pocket-4, Greater Noida-201310)

VERSUS

Commissioner of Central Excise &

Service Tax, Noida **....Respondent**

(Plot No.C-232A/2 to 232A/3, Sector-48, Noida)

APPEARANCE:

Shri Balram Mishra, Consultant for the Appellant
Smt Chitra Srivastava, Authorised Representative for the Respondent

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

FINAL ORDER NO.70160/2026

DATE OF HEARING : 14 May, 2026
DATE OF DECISION : 14 May, 2026

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.NOI-EXCUS-001-APPL-124-25-26 dated 28/07/2025 passed by Commissioner (Appeals) Central Excise & Services Tax, Noida. By the impugned order, appeal of the appellant has been dismissed on the ground of limitation as the appeal has been filed before Commissioner (Appeals) much beyond the delay which could have been condoned.

2.1 Appellant was registered with the department for providing taxable services under the category of Business Auxiliary

Services, Construction Services other than residential complex, including commercial/industrial buildings or civil structures manpower recruitment/supply agency services under Section 65B of the Finance Act, 1994 read with Section 66B ibid.

2.3 Information was received from the Income Tax Department that during the Financial Year 2016-17 appellant has received Rs.44,93,482/- against the provision of taxable services during that period on which the appellant was required to pay appropriate service tax on the said services.

2.4 An inquiry/investigation was initiated and appellant was asked to produce documentary evidences as follows and to show the details of service tax paid by them:-

1) *Audited Balance sheet along with all annexure for the F.Y. 2015-16 to 2016-17 and Trial Balance for the period April 2017 to June 2017.*
2) *Copies of Form-26AS and Income Tax Returns for the Financial Year 2015-16 to 2016-17 and 2017-18.*
3) *Copies of ST-3 Returns for the period 2015-16 to 2017-18.*
4) *Details of payment of service tax i.e. copies of challans.*
5) *Copies of bills/invoices issued to clients in respect of services provided by the party as a Service provider.*
6) *Details of bills/invoices of services Provider on which the party has paid Service Tax as service Receiver.*
7) *Bank Account Statement for the period 2015-16 to 2017-18 linked with PAN of Firm."*

Appellant did not responded for providing any information. It was also observed that appellant had not filed any ST-3 return during the said period. Service Tax due was calculated as detailed in table below:-

Financial Year	Gross Receipts			Service Tax			
	ITR	ST-3	Difference	@%	Payable	Paid	Short Paid
2016-17	4493482	0	4493482	15	674022	0	674022

2.5 Show cause notice dated 22.10.2021 was issued to the appellant, asking them to show cause as to why:-

1) *Service Tax amounting to Rs. 6,74,022/- (Rupees Six Lac Seventy Four Thousand and Twenty Two Only) (inclusive of Ed. Cess & SH Ed. Cess) should not be demanded and recovered from them under Proviso to Section 73(1) of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017.*
2) *Interest should not be recovered from them under Section 75 of the Finance Act, 1994 read with Section 174 of CGST Act, 2017.*
3) *Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 read with Section 174 of CGST Act, 2017.*
4) *Late fee for not filing ST-3 Returns for the Financial Year 2016-17 should not be recovered from them under Section 70(1) of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017."*

2.6 The said show cause notice was adjudicated as per the Order-in-Original No.75/AC/Div-BSR/GBN/2022-23 dated 24.01.2023 wherein following has been held:-

1. *I confirm the demand of service tax amounting to Rs.6,74,022/- (Rupees Six Lakh Seventy Four Thousand Twenty Two Only) for the above said period and order its recovery from M/s Shiv Contractor under Section 73 (1) of the Finance Act, 1994 read with section 174 of CGST Act, 2017 along with Interest payable on the aforesaid amount under Section 75 of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017.*
2. *I impose a penalty of Rs.6,74,022/- (Rupees Six Lakh Seventy Four Thousand Twenty Two Only) on M/s Shiv Contractor under Section 78 of the Finance Act 1994 read with Section 174 of the CGST Act, 2017 and order its recovery from them.*
3. *I impose a Penalty/Late Fees of Rs.40,000/-(Rupees Forty Thousand Only) on M/s Shiv Contractor under Section 70(1) of Finance Act 1994 read with Section 174 of the*

CGST Act, 2017 for non-filing of ST-3 returns for the period 2016-17 and order its recovery from them."

2.7 Aggrieved appellant have filed appeal before Commissioner (Appeals) which has been dismissed as per the impugned order.

2.8 Aggrieved appellant have filed this appeal.

3.1 I have heard Shri Balram Mishra, Consultant for the appellant and Smt Chitra Srivastava Authorized Representative for the revenue.

3.2 Arguing for the appellant learned Counsel submits that-

- Order-in-Original was not served upon the appellant in initial stage and only after receipt of the orde, they filed the appeal before the Commissioner (Appeal) within the prescribed period of limitation as provided in law from the date of actual receipt.
- The acknowledgement referred in the impugned order is from a person who was unknown to them.
- Thus, the appeal could not have been dismissed by the First Appellate Authority on this ground and decision should have been rendered on merit and they have strong case on merits.

3.3 Learned Authorized Representative reiterates the findings recorded in the orders of the lower authorities.

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

4.2 Impugned order records the findings as follows:-

"5.2 From the provisions quoted above, find that 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. Thus, it is clear that the appellant ought to have filed the instant appeal within two months from the date of receipt of the adjudication order appealed against, and within three months with condonation of delay granted by the competent authority in view of sufficient cause which prevented them from filing the appeal within two months.

5.3 I find that the appellant has mentioned the date of receipt/ the date of communication of the decision or the order-in-original appealed against (Order-in-Original No. 75/AC/DIV-BSR/GZB/2022-23 dated 24.01.2023) as 14.11.2024, that is, the appellant has received the impugned OIO on 14.11.2024. Prima facie, the date of receipt of the impugned order claimed by the appellant as 14.11.2024 seemed to be inappropriate. However, it was verified from the adjudicating authority passing the impugned order or in this case, the Asstt. Commissioner, CGST Division-Bulandshahar, Gautam Budh Nagar Commissionerate. The adjudicating authority vide letter C.No. V(15)Adj./SCN/ST/BSR/GBN/Shiv Contractor/181/ 2021/304/25.07.2025, has informed that the impugned Order i.e. Order-in-Original No. 75/AC/DIV-BSR/GZB/2022-23 dated 24.01.2023, has been received by the party/appellant on 07.02.2023. The adjudicating authority has also enclosed a copy of ACKNOWLEDGEMENT of the appellant i.e. M/s Shiv Contractor, D-37, UPSIDC, Industrial Area, Sikandrabad, Bulandshahar-203205.

"ACKNOWLEDGEMENT

Received Order-in-Original No. 75/AC/D-BSR/GBN/2022-23 Dated 24.01.2023 passed by the Assistant Commissioner, CGST Division Bulandshahar under F.No.V(15)Adj/SCN/ST/BSR/ GBN/ShivContractor/181/2021/66 dated 24.01.202 3 through Superintendent CGST Range-II, Jokhabad, Sikandrabad.

Regard,

Signed/-

7/2/23

9058392334
M/s Shiv Contractor,
D-37, UPSIDC, Industrial Area,
Sikandrabad, Bulandshahar-203205"

5.4 Thus, there is evidence that the appellant has received the impugned Order-in-Original on 07.02.2023; whereas the instant appeal has been filed by the appellant on 30.01.2025 beyond around 20 months after deducting the period of three months under which an assessee can file the appeal with a condonation of delay for one month on the sufficient/convincing ground. Thus, the instant appeal filed by the appellant is grossly time barred."

4.3 The claim made by the appellant that Order-in-Original was served on the person who was unknown to them is nothing but a fraud which appellant/ appellant's Counsel has tried to play before this Tribunal. The acknowledgement receipt has been reproduced in the order and it records all the relevant details. Further I observe that appellant was throughout in possession and knowledge of this order in original from 07.02.2023 the date when it was served and acknowledged by the appellant as per the acknowledgement receipt.

4.4 Authorized Representative appearing for the revenue has correctly pointed out that the Order-in-Original as served in the initial stage is one which is part of the records in appeal before this tribunal. The last page order in original where the adjudicating authority has affixed his is reproduced below:-

Six Lakh Seventy Four Thousand Twenty Two Only) for the above said period and order its recovery from M/s Shiv Contractor under Section 73(1) of the Finance Act, 1994 read with section 174 of CGST Act, 2017 along with Interest payable on the aforesaid amount under Section 75 of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017.

2. I impose a penalty of Rs.6,74,022/- (Rupees Six Lakh Seventy Four Thousand Twenty Two Only) on M/s Shiv Contractor under Section 78 of the Finance Act 1994 read with Section 174 of the CGST Act, 2017 and order its recovery from them.

3. I impose a Penalty/Late Fees of Rs.40,000/-(Rupees Forty Thousand Only) on M/s Shiv Contractor under Section 70(1) of Finance Act 1994 read with Section 174 of the CGST Act, 2017 for non-filing of ST-3 returns for the period 2016-17 and order its recovery from them.

24/01/2023

(Radhey Shyam Meena)
Assistant Commissioner
Central Goods & Services Tax
Division- Bulandshahar, G.B. Nagar

To,
M/s Shiv Contractor,
D – 37, UPSIDC Industrial Area,
Sikandrabad, Bulandshahar – 202305.

Copy submitted for information and necessary action to:
1. The Assistant/Deputy Commissioner (Review), Central GST & Central Excise, Commissionerate, G.B. Nagar.
2. The Superintendent, CGST Range-2 Sikandrabad, Division-Bulandshahar along with copy meant for the party with the request to serve upon the party and the dated acknowledgement may be sent to this office for record.
3. Guard file.

SUPERINTENDENT [ADJ.]
Division- Bulandshahar, G.B. Nagar

For SHIV COTRACTOR
Partner

4.5 From the above, it is evident that appellant has possession over a copy of the order which was originally issued and meant served upon the appellant. If it was not so, then how the originally signed copy of the Order-in-Original has been put on record with this appeal. On perusal of the above, it is evident that this is not an office copy of the order issued to the appellant subsequently, nor the same is attested copy bearing any attestation, it is the original order signed by the Adjudicating Authority which is available with the appellant and has been placed on record.

4.6 Accordingly, I observe that the appellant has not come before this forum or before Commissioner (Appeals) with clean hands and is manipulating the records in his submissions to this tribunal and such fraudulent attempts do not deserve any further consideration.

4.7 I observe that Commissioner (Appeals) has rightly observed that appeal has been filed with a delay of more than 20 months which is much beyond the condonable period of delay i.e. one month. Commissioner (Appeals) cannot condone this delay. 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."*

4.8 In case of Pathapati Subba Reddy (Died) By L.Rs. & Ors. [Order dated 08.04.2024 in Special Leave Petition (Civil) No. 31248 Of 2018] after considering the past precedence Hon'ble Supreme Court has held as follows:-

26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.

4.9 In case of Glaxo Smith Kline Consumer Health Care Ltd. [2020 (36) G.S.T.L. 305 (S.C.)] Hon'ble Supreme Court observed as follows:-

> ***19**. Arguendo, reverting to the factual matrix of the present case, it is noticed that the respondent had asserted that it was not aware about the passing of assessment order dated 21-6-2017 although it is admitted that the same was served on the authorised representative of the respondent on 22-6-2017. The date on which the respondent became aware about the order is not expressly stated either in the application for condonation of delay filed before the appellate authority, the affidavit filed in support of the said application or for that matter, in the memo of writ petition. On the other hand, it is seen that the amount equivalent to 12.5% of the tax amount came to be deposited on 12-9-2017 for and on behalf of respondent, without filing an appeal and without any*

demur - after the expiry of statutory period of maximum 60 days, prescribed under Section 31 of the 2005 Act. Not only that, the respondent filed a formal application under Rule 60 of the 2005 Rules on 8-5-2018 and pursued the same in appeal, which was rejected on 17-8-2018. Furthermore, the appeal in question against the assessment order came to be filed only on 24-9-2018 without disclosing the date on which the respondent in fact became aware about the existence of the assessment order dated 21-6-2017. On the other hand, in the affidavit of Mr. Sreedhar Routh, Site Director of the respondent-company (filed in support of the application for condonation of delay before the appellate authority), it is stated that the company became aware about the irregularities committed by its erring official (Mr. P. Sriram Murthy) in the month of July, 2018, which pre-supposes that the respondent must have become aware about the assessment order, at least in July, 2018. In the same affidavit, it is asserted that the respondent-company was not aware about the assessment order, as it was not brought to its notice by the employee concerned due to his negligence. The respondent in the writ petition has averred that the appeal was rejected by the appellate authority on the ground that it had no power to condone the delay beyond 30 days, when in fact, the order examines the cause set out by the respondent and concludes that the same was unsubstantiated by the respondent. That finding has not been examined by the High Court in the impugned judgment and order at all, but the High Court was more impressed by the fact that the respondent was in a position to offer some explanation about the discrepancies in respect of the volume of turnover and that the respondent had already deposited 12.5% of the additional amount in terms of the previous order passed by it. That reason can have no bearing on the justification for non-filing of the appeal within the statutory period. Notably,

> *the respondent had relied on the affidavit of the Site Director and no affidavit of the concerned employee (P. Sriram Murthy, Deputy Manager-Finance) or at least the other employee [Siddhant Belgaonker, Senior Manager (Finance)], who was associated with the erring employee during the relevant period, has been filed in support of the stand taken in the application for condonation of delay. Pertinently, no finding has been recorded by the High Court that it was a case of violation of principles of natural justice or non-compliance of statutory requirements in any manner. Be that as it may, since the statutory period specified for filing of appeal had expired long back in August, 2017 itself and the appeal came to be filed by the respondent only on 24-9-2018, without substantiating the plea about inability to file appeal within the prescribed time, no indulgence could be shown to the respondent at all.*

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

5.1 Appeal is dismissed.

(Dictated and pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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