CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.II

Service Tax Appeal No.70105 of 2026

(Arising out of Order-in-Appeal No.782/ST/Alld/2023 dated 15/03/2023 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Allahabad)

M/s Zia Ullah Khan, **.....Appellant**
(19, Beli Road, Jagdish Vihar Colony,
Allahabad-211002)

VERSUS

Commissioner of Central Excise &
CGST, Allahabad **....Respondent**
(38, MG Marg, Civil Lines, Allahabad-211001)

APPEARANCE:

Shri Ashish Kumar Singh, Advocate for the Appellant
Shri Santosh Kumar, Authorised Representative for the Respondent

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

FINAL ORDER NO.70181/2026

DATE OF HEARING : 25 May, 2026
DATE OF DECISION : 25 May, 2026

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.782/ST/Alld/2023 dated 15/03/2023 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Allahabad. By the impugned order following has been held:-

> *"4. Discussion and Findings: The prescribed time limit to file the appeal is specified as two months under Section 85(3A) of the Act, and therefore, the present appeal filed by the appellant is not within the time limit specified under Section 85(3A) of the Act, inasmuch as they have received the impugned Order on. 15.09.2022 and have filed the present appeal on 14.12.2022.*

4.1. The appellant have filed the present case after the specified period of two months and did not file any condonation for delay showing any sufficient cause. Section 85(3A) of the Act, provides as under:

> *Section 85(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.*

4.1.1 The above statutory provisions restrict any appeal to be filed within a period of two months from the date of receipt of the decision or order of the Adjudicating Authority and the proviso to Section 85(3A) of the Act above empowers the Commissioner of Central Excise (Appeals), to allow the appeal to be filed within a further period of one month, if he is satisfied that the appellant was prevented by sufficient cause for presenting the appeal within the aforesaid period of two month.

4.2-Since, the Commissioner (Appeals) can condone the delay of one month only.. and he 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. I find that the appeal filed by the appellant beyond the prescribed time limit of two months, is time barred and as such, is liable for dismissal.

5. In view of the above, I reject the appeal filed by the appellant, on the ground of time limitation."

2.1 From the above impugned order, it is evident that Commissioner (Appeals) has dismissed the appeal of the appellant only on the ground of limitation.

3.1 I have heard Shri Ashish Kumar Singh Learned Counsel for the appellant and Shri Santosh Kumar learned Authorized Representative appearing for the revenue.

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

4.2 I find from para 4 of the impugned order that the appellant have received Order-in-Original on 15.09.2022 and have filed the appeal before Commissioner (Appeals) on 14.12.2022 i.e. within the condonable period of 90 days as provided in law.

4.3 As I find that appellant has filed the appeal within the condonable period of delay. I find it reasonable that the application for condonation should have been considered by the First Appellate Authority and rendered a decision on that. To consider the Condonation of Delay Application if filed by the appellant filed before Commissioner (Appeals) within 15 days from receipt of this order, the matter needs to be remanded back.

5.1 Appeal is allowed. Matter is remanded back to Commissioner (Appeals) for consideration of Condonation of Delay Application if filed by the appellant.

5.2 While remanding the matter for consideration of application for condonation of delay, I am not expressing any view on the merits of this application. If Commissioner (Appeals) is satisfied with application he may condone the delay and proceed to hear the appeal on merits.

5.3 Commissioner (Appeals) is directed to decide the matter in remand proceedings within a period of three months from the date of receipt of this order.

(Dictated and pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

akp