CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70203 of 2026

(Arising out of Order-In-Appeal No.391-ST-ALLD-2021, dated 30.12.2021 passed by Commissioner (Appeals), CGST & Central Excise, Allahabad)

M/s Pal Enterprises **.....Appellant**
(282 D Shyam Nagar, Kanpur Nagar, U.P. 208013)

VERSUS

Commissioner, CGST, Allahabad **....Respondent**
(38, M.G Marg, Civil Lines, GST Bhawan,
Prayagraj, Uttar Pradesh 211001)

APPEARANCE:
Shri Anil Kumar Gupta, Consultant for the Appellant
Shri Prashant Kumar, Authorized Representative for the Respondent

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

FINAL ORDER NO.-70212/2026

DATE OF HEARING : 25.06.2026
DATE OF DECISION : 25.06.2026

P. K. CHOUDHARY:

The present appeal has been filed by the Appellant assailing the Order-In-Appeal dated 30.12.2021 passed by the learned Commissioner (Appeals) CGST & Central Excise, Allahabad. The impugned order the learned Commissioner (Appeals) has rejected the appeal before him on the ground of barred by limitation of time.

2. Briefly stated, the facts of the case are that various letters were issued to the Appellant for filing of documents to verify the information/data provided by the Income Tax Department. During the course of inquiry, it was noticed that the Appellant had received total consideration of Rs.1,16,24,288/- as per Form 26AS

statement for the Financial Year 2012-13 to 2016-17. Since the Appellant was not registered with the Service Tax Department, no compliance to the letters and summons were made. Accordingly, Show Cause Notice[1] dated 09.11.2017 was issued proposing to demand Service Tax of Rs.14,85,425/- alongwith applicable interest and for imposition of penalties.

4. No reply to the SCN was made, neither any attempt for hearing before the Adjudicating Authority for personal hearing was made. Accordingly, the learned Adjudicating Authority proceeded to pass the order *Ex-Parte* and confirmed the demand as proposed in the SCN and imposed penalty of equal amount under Section 78 and penalty of Rs.10,000/- each under Section 77(1)(a) & 77(1)(c) and penalty of Rs. 10,000/- in case of each default of non filing of eleven service tax returns totaling to Rs.1,10,000/- under Section 77(2) of the Finance Act, 1994.

5. This order was dispatched on 23.03.2018 through Registered Post and the same was not returned back undelivered. Hence, the appeal was rejected by the First Appellate Authority. Being aggrieved, the Appellant is in appeal before the Tribunal.

6. Learned Counsel for the Appellant submits that the learned 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.

[1] SCN

9. I find that the learned Commissioner (Appeals) has observed that since the Order-In-Original dated 15.03.2018/23.03.2018 was dispatched by Registered Post on 23.03.2018 and the same was not returned back undelivered and relying upon the judgement of Hon'ble Punjab & Haryana High Court in the case of CCE, Ludhiana V/s Mohan Bottling Co. (P) Ltd. 2010 (255) E.L.T. 321 (P&H), he rejected the appeal since the appeal was filed only on 16.06.2021.

10. It is the case of the Appellant that earlier he was residing and operating from the address of M/s Pal Enterprises, Mehnauna, Post-Sillo, District Basti- 272001. Thereafter, the mother of the Appellant Shri Sunil Kumar Pal who was suffering from cancer was shifted to Kanpur for better medical treatment and the Appellant was shuttling between Kanpur and Basti and he could not take note of any of the notices, summon or any other order sent to him by the jurisdictional authorities. It was only when recovery proceedings for the demand as confirmed by the Order-In-Original were initiated and the Appellant was informed over phone and also a recovery letter was issued by the jurisdictional division office for depositing the dues as per the O-I-O, he came to know about the Order-In-Original dated 15.03.2018/23.03.2018. Thereafter he was served with the certified copy of the Order-In-Original only on 15.03.2021 and the appeal was filed by him on 16.06.2021.

11. Now the question which arises for consideration is when the adjudication order was served on 15.03.2021, the appeal filed by the Appellant on 16.06.2021 is barred by limitation. Once the order was served on the Appellant on 15.03.2021, the limitation period for filing appeal commences from 16.03.2021 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."

12. 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.*
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> *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."*

13. Thus, since Section 85(3A) uses the expression 'month' in contrast to 'days', the two months period from 16.03.2021 elapsed on the corresponding date of corresponding month i.e. on 16.05.2021 and similarly the period of one month under proviso to Section 85(3A) elapsed on 16.06.2021 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 16.06.2021 was not barred by limitation but was presented within the condonable period and the Commissioner (Appeals) erred in law in rejecting the same.

14. Having reached this conclusion, since the matter pertains to the period 2012-13 to 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.

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

(Dictated and pronounced in open court)

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

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