

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

REGIONAL BENCH - COURT NO. 2

**Service Tax Early Hearing Application No.20522 of 2025
in
Service Tax Appeal No. 20832 of 2025**

(Arising out of Order-in-Appeal No.MLR-EXCUS-000-APP-AS-441-2024-25 dated 20.03.2025 passed by the Commissioner of Central GST and Central Excise (Appeals), Belagavi.)

Shri Edala Seshagirirao

H. No.1-11-55/29,
Venkateshwara Colony,
Raichur - 584 101.

Appellant(s)

VERSUS

**The Commissioner of Central
Taxes**

No.71, Club Road,
Belagavi - 590 001.

Respondent(s)

APPEARANCE:

Ms. Lakshmi G.K, Chartered Accountant, for the Appellant

Shri Rajashekar B.N.N., Superintendent, (Authorised Representative)
for the Respondent

CORAM:

**HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)**

Final Order No. 21847 / 2025

DATE OF HEARING: 18.11.2025

DATE OF DECISION: 18.11.2025

PER : P.A. AUGUSTIAN

Appellant has filed a Miscellaneous Application for early hearing of the appeal on the ground that their appeal has been dismissed by the learned Commissioner (A) on time bar. In view of this, the miscellaneous application for early hearing is allowed and the appeal itself is taken up for hearing and disposal as the

issue lies in a very narrow compass, with the consent of both sides.

2. Appellant is engaged in business of 'works contract service' for the government projects and declared income by filing income tax returns. Since there is no taxable income, appellant had not registered with service tax department and not paid service tax since it is exempted from service tax. However, based on the income tax returns, notice was issued demanding service tax and adjudicating authority as per the order dated 29.8.2023 confirmed the demand and imposed penalty under various provisions of law. Aggrieved by said, an appeal was filed before the Commissioner (A) and the Commissioner (A) dismissed the appeal on the ground that there was a delay of 2 days in filing the appeal and since the appellant failed to file an application for condonation of delay. Aggrieved by said order, present appeal is filed.

3. When the appeal came up for hearing, learned counsel for the appellant submits that the order issued by the adjudicating authority was served on the appellant on 05.09.2023 and due date for filing the appeal was on 05.11.2023. As per the records of speed post, the appeal was forwarded on 03.11.2023 and forwarded by mail to the Commissioner (Appeals) on 4.11.2023. Thereafter, an opportunity of personal hearing was extended and the delay was brought to notice of the Authorised Representative. Appellant vide email communication dated 12.04.2024 forwarded COD application requesting the Commissioner (A) to condone the delay and to accept the appeal. However, the impugned order was issued on 20.03.2025. Learned counsel further submits that 05.11.2023 being Sunday, as per Section 10 of the General Clause Act, 1897, the due date for filing the appeal was next working day and even if it is held that there was delay, the delay is only of

one day which is within the condonable period and considering the request made by the appellant for condonation vide email dated 12.04.2024, the first appellate authority ought to have condoned the delay, however, issued the impugned order only on 20.03.2025 dismissing the appeal as time barred.

4. The learned Authorised Representative (AR) for the Revenue reiterated the findings of the Commissioner (A).

5. Heard both sides. We find that as per the impugned order it is held that the appeal is filed beyond the period of two months but within the condonable period. The Hon'ble Kerala High Court in the case of **Federal Bank Ltd. vs. Asst. Commissioner of Central Taxes and Central Excise, Ernakulam: 2019 (367) ELT 581 (Ker.)** observed as:

"2. It is to be noted that the appeal was not found defective as it was unaccompanied by any delay petition and the appeal was registered. If there was any delay involved, the office ought to have brought it to the notice of the petitioner with regard to the delay involved, so as to given an opportunity to the petitioner to explain the delay. Once appeal was registered, without noting any delay and without notice to the appellant, the appellate authority could not have held that the appeal was not maintainable as it was barred by limitation."

In view of the above decision, the department ought to have issued a defect memo to the appellant to file a condonation application and give an opportunity to explain the delay.

6. As per Section 10 of General Clause Act, 1897, the due date to file the appeal would be next working day after the holidays. The relevant portion of the Section 10 is extracted below:

"10. Computation of time – (1) Where, by any 1[Central Act] or Regulation made after the commencement of this Act, any act

or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, **if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the court or office is open:** Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877 (15 of 1877) applies. (2) This section applies also to all 2[Central Acts] and Regulations made on or after the fourteenth day of January, 1887."

Further, we find that since the due date is falling on holiday, it is presumed that appeal was filed within the statutory period as per Section 10 of General Clause Act, 1897, even if it is filed or received on the very next working day. Considering the same, there is only one day delay in filing the appeal. Since the appellant had filed COD application, the Commissioner (A) ought to have condoned the delay and heard the appeal on merits. Accordingly, the appeal is allowed by the remand to Commissioner (A) to consider the issue on merit and dispose accordingly.

(Operative portion of the order was pronounced in Open Court on conclusion of hearing.)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)