

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

REGIONAL BENCH - COURT NO. 2

**Service Tax Early Hearing Application No.20526 of 2025
in
Service Tax Appeal No. 20582 of 2025**

(Arising out of Order-in-Appeal No.MLR-EXCUS-000-APP-AS-124-2024-25 dated 29.01.2025 passed by the Commissioner of Central Tax and Central Excise (Appeals), Belagavi.)

Shri Panambur Jagadish Hebbar

No.66, 12th Cross,
Duo Marvel Layout,
Ananthpur, Yelahanka,
Bengaluru – 560 064.

Appellant(s)

VERSUS

**The Commissioner of Central
Taxes**

7th Floor, Trade Centre,
Bunts Hostel Road,
Mangalore – 575 003.

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. 21849 / 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. The issue in the present appeal is whether there was a delay in filing the appeal by the appellant before lower appellate authority. Appellant was rendering services classifiable under "services" and "declared services". Alleging that appellant had received taxable receipt from 1.4.2013 and not paid service tax for the period from April 2015 to March 2016 and from April 2016 to June 2017, demand was confirmed by the adjudicating authority as per the order dated 28.12.2021. Aggrieved by said order, the appeal was filed before the Commissioner (A) and Commissioner (A) as per the impugned order dated 29.1.2025 dismissed the appeal as time barred. Aggrieved by said order, present appeal is filed.

3. When the appeal came up for hearing, the learned Chartered Accountant (CA) drew our attention to the discussion and findings in the impugned order and the time lines recorded by the Commissioner (A), which is reproduced below:

- The Order-in-Original was served on the appellant on 26.08.2024.
- The two-month limitation period expired on 26.10.2024.
- The condonable period of one month expired on 26.11.2024.
- The appeal was received in this office on 28.10.2024, after the two-month limitation period but within the condonable period.

3.1 In this regard, learned CA submits that appeal was despatched by speed post on 24.10.2024 and it was received by the office of the Commissioner (A) only on 28.10.2024. As per the finding in the impugned order, appeal was received after two months limitation period. Learned CA submits that the said

finding is unsustainable. It is an admitted fact that the impugned order was served on the appellant on 26.08.2024 and two months limitation period expired on 26.10.2024 (Saturday). Since 26.10.2024 and 27.10.2024 are holidays, the appeal received by the office of the Commissioner on 28.10.2024 has to be considered as received on due date as per Section 10 of the General Clause Act, 1897, thus there is no delay.

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 no delay in filing the appeal and even if there was a delay in submitting the appeal, a defect notice should have been issued for filing petition for condonation of delay before extending final hearing of the appeal. 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)**