CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 60485 of 2023

[Arising out of Order-in-Appeal No. CHD-EXCUS-001-APP-10-23-24 dated 09.05.2023 passed by the Commissioner (Appeals), CGST, Chandigarh]

Car Clinic **......Appellant**
Plot No. 128, Industrial Area Phase II,
Chandigarh 160002

VERSUS

Commissioner of Central Excise, Goods & Service Tax, Chandigarh **......Respondent**
Plot No. 19, Central Revenue Building, Sector 17-C,
Chandigarh 160017

APPEARANCE:

Mr. Anshul Bhardwaj, C.A. for the Appellant

Ms. Amita Gupta, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)

FINAL ORDER NO. 60993/2025

DATE OF HEARING: 11.08.2025
DATE OF DECISION: 11.08.2025

The present appeal is directed against the impugned order dated 09.05.2023 passed by the Commissioner (Appeals), CGST, Chandigarh, whereby the learned Commissioner (Appeals), without going into the merits of the case, has rejected the appeal of the appellant as time barred under Section 35 of the Central Excise Act, 1944 as made applicable to service tax by Section 85 of the Finance Act, 1994.

2. Briefly stated facts of case are that the appellant is registered with the service tax department for providing 'repair, conditioning, restoration, decoration or any other services of any motor vehicle'. On the basis of the third party data received from Income Tax Department for the year 2015-16 to 2017-18, it was observed that there was difference between the gross receipts as per Income Tax data as compared to service tax returns filed by the appellant. Accordingly, a show cause notice dated 24.12.2020 was issued to the appellant for recovery of short paid service tax of Rs.4,39,226/- along with demand of interest and penalty. After following the due process, the adjudicating authority, vide Order-in-Original dated 18.10.2022, confirmed the demand of service tax of Rs.4,39,226/- under Section 73(1) of the Finance Act, 1994 and ordered recovery thereof with interest under Section 75 of the Act and also imposed a penalty of Rs.10,000/- under Section 77 and an equal penalty under Section 78 of the Act. The appellant received the said Order-in-Original on 22.10.2022 and being aggrieved by the same, they filed the appeal before the Commissioner (Appeals) on 17.02.2023, who has rejected their appeal as time barred holding that the same is filed beyond the time limit prescribed under Section 85 of the Finance Act, 1994. Hence, the present appeal.

3. Heard both sides and perused the records of the case.

4. The learned Consultant for the appellant submits that the impugned order, rejecting their appeal as time barred, is not sustainable in law as the same has been passed without properly appreciating the facts and the law.

4.1 He further submits that the appellant received the Order-in-Original on 22.10.2022 and as per Section 85 of the Finance Act, 1994, the last date for filing the appeal before the Commissioner (Appeals) was 22.12.2022 i.e. within two months from the receipt of the order. He further submits that the Commissioner (Appeals) has the power to condone the delay of one more month by virtue of proviso to Section 85 of the Act if reasonable ground to the satisfaction of the Commissioner (Appeals) is given and if the Commissioner (Appeals) had condoned one month’s delay, the last date would have been 22.01.2023.

4.2 He also submits that the appellant filed a letter on 28.12.2022 to the Deputy Commissioner, but the Tax Officer was unable to reset/reissue the login id and password, due to which the appellant could not file the appeal before the last date i.e. 22.01.2023. He further submits that there was no delay on their part, but on account of the technical glitches, the appellant could not file the appeal within the time as prescribed under Section 85 of the Finance Act, 1994 and was able to file the appeal only on 17.02.2023.

4.3 The learned Counsel further prays that the Commissioner (Appeals) has not decided the case on merits, therefore, the case needs to be remanded back to the Commissioner (Appeals) with a direction to decide the same on merits.

5. On the other hand, the learned Authorized Representative for the department reiterates the findings of the impugned order.

6. After considering the submissions made by both the parties and perusal of the material on record, I find that the adjudicating authority passed the Order-in-Original on 18.10.2022 which was received by the appellant on 22.10.2022 and as per Section 85 of the Finance Act, 1994, the last date for filing the appeal before the Commissioner (Appeals) was 22.12.2022 or with an extension of one month, the last date would have been 22.01.2023; whereas the appeal was filed on 17.02.2023. Further, I find that the said delay was caused on account of the fact that there were technical glitches as the concerned Tax Officer was unable to reset/reissue the login id and password, due to which the appellant was unable to file the appeal before the last date i.e. 22.01.2023.

7. In view of the above facts and circumstances, I am of the considered opinion that the dismissal of the appeal as time barred, is not justified, accordingly, the impugned order is liable to be set aside and I do so by remanding the matter back to the Commissioner (Appeals) with a direction to decide the case on merits after affording an opportunity of hearing to the appellant and thereafter, pass a reasoned order in accordance with law within the period of two months from the date of receipt of the certified copy of this order.

8. The appeal is, accordingly, allowed by way of remand.

(Operative part of the order pronounced in the open court)

(S. S. GARG)
MEMBER (JUDICIAL)

RA_Saifi