CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. III

Service Tax Appeal No. 42363 of 2015

(Arising out of Order-in-Appeal No. 232/2015(STA-II) dated 26.08.2015 passed by Commissioner of Service Tax (Appeals-II), No. 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

M/s. Broekman Logistics India Pvt. Ltd. **...Appellant**
Jamal Chambers, 3rd Floor, New No. 49 (Old No. 26),
Mount Road, Saidapet,
Chennai – 600 015.

Versus

Commissioner of GST and Central Excise **...Respondent**
Chennai Outer Commissionerate,
Newry Towers, No. 2054-I,
2nd Avenue, 12th Main Road,
Anna Nagar,
Chennai – 600 040.

APPEARANCE:

For the Appellant : Mr. S. Adithya, Chartered Accountant
For the Respondent : Mr. N. Satyanarayana, Authorised Representative

CORAM:
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No. 41127 / 2025

DATE OF HEARING : 06.08.2025
DATE OF DECISION : 08.10.2025

Per Mr. VASA SESHAGIRI RAO

This Service Tax Appeal No. ST/42363/2015 has been filed by M/s. Brokeman Logistics India Limited (hereinafter referred to as 'Appellant') against the Order-in-Appeal No. 232/2015(STA-II) dated 26.08.2015 passed by Commissioner of Service Tax (Appeals-II).

2. Brief facts of the appeal are that the appellant is engaged in freight forwarding activities and logistics solutions, predominantly handling export cargo originating from India to foreign destinations by air, while also handling import cargo arriving in India.

3. The present appeal is filed against an order issued by the Commissioner (Appeals) in Order-in-Appeal No.232/2015 dated 26.08.2015. The Commissioner (Appeals) has dismissed the appeal filed on the ground of belated filing of appeal as under:

> *"5. ....However, this appeal was filed on 28.11.2013. Hence, in this case, the delay in filing the present appeal is 13 months and 27 days. Commissioner (Appeals) has no power to condone the delay beyond the period of 1 month from the date of expiry of normal period of 2 months.*
>
> *6. I observe that the Honourable Supreme Court in Singh Enterprises v. CCE, Jamshedpur [2008 (221) ELT 163] has held that:-*
>
>> *"the proviso to sub Section (1) Section 35 ibid makes the position crystal clear that appellate authority has not power to allow the appeal to be presented beyond the period of 30 days. The language used makes this position very clear that the legislature intended the appellate authority to condone the delay only upto 30 days after expiry of 60 days which is normal period for preferring the appeal..."*
>
> *7. ....*
>
> *8. In view of the above, the Impugned Order cannot be interfered with and the appeal is liable for dismissal as time barred based on limitation.*
>
> *9. Appeal dismissed."*

4. We have heard both sides. The Ld. Counsel Mr. S. Adithya, Chartered Accountant represented the Appellant and the Ld. Authorized Representative Mr. N. Satyanarayana represented the Department.

5. In the present case, the following events have been brought to our notice: -

S.No.	Particular	Date
1.	Show Cause Notice No.120/2010	17.03.2011
2.	Reply to Show Cause Notice	09.04.2011
3.	Order-in-Original No.81/2012	28.06.2012 ***(received on 02.07.2012)***
4.	Appeal filed **wrongly** before the Assistant/Deputy Commissioner	24.08.2012 ***(i.e., within the statutory period)***
5.	Appeal filed before the Commissioner (Appeals)	28.11.2013

6. The Ld. Advocate for the appellant drew our attention to the acknowledged copy of the appeal addressed to the commissioner appeals but filed with the Deputy/Assistant Commissioner of Service Tax by mistake which was located in the same building, extracted as under: -

Order in Original No. 81/2012
dt. 28.06.12.

ANNEXURE-D

BEFORE THE COMMISSIONER (APPEALS)

26, MAHATMA GANDHI ROAD, CHENNAI 600 034

Appeal No. __________ of 2012

M/s Broekman Logistics India Limited,
JAMAL Chambers, 3rd Floor,
New No. 49 (Old no. 26), Mount Road,
Saidapet, Chennai 600 015 ...Appellant

Versus

Assistant Commissioner of Service Tax,
Chennai I Division,
26/1 Mahatma Gandhi Road,
Nungambakkam, Chennai - 34 .... Respondent

O/o the Asst./Deputy Commissioner, Service Tax-I Division, Chennai-34
24 AUG 2012

Recd.

7. On perusal of the above, it confirms the submission of the Ld. counsel for the Appellant that an appeal in fact was filed within the statutory period, albeit, the assessee appellant has mistakenly filed the appeal before the wrong authority who was also located in the very same building. It has been pleaded in their Statement of Facts as under: -

> *"8. Aggrieved by this order the appellant preferred an appeal before commissioner appeals well within the time frame provided in the act. But unfortunately filed at the office of the Deputy Commissioner of Service tax-I by the appellants clerical staff. Copy of the appeal filed addressed to the commissioner appeals but filed with the Deputy Commissioner of Service Tax which is duly acknowledged and accepted by the department is attached as Annexure D (Pg 40).*
>
> *9. This error has happened because at that point of time the Deputy Commissioner office was also located at the same building. The office of the Assistant Commissioner has accepted the appeal papers and has acknowledged the same as could be seen from the copy of the acknowledgement filed.*
>
> *….*
>
> *11. Thereafter the appellant filed once again before the commissioner appeals but this time filed correctly at his office."*

8. Furthermore, various contentions on merits have been put forth by the Appellant, however, taking note of the fact that the impugned order has been dismissed as time barred, entertaining the present appeal on merits would not be legally proper in terms of the ratio of the Hon'ble Supreme Court in the case of *Commissioner of Central Excise. v. Smithkline Beecham Co. Health C. Ltd. [2003 (157) ELT 497 (S.C.)],* wherein it was held as under:

> *"2. This appeal is filed against an order passed by the Customs, Excise and Gold (Control) Appellate Tribunal dated 19th December, 2002. The Tribunal was hearing an appeal against an order dated 23rd April, 2002 passed by the Commissioner of Central Excise (Appeals). By that order the Commissioner (Appeals) had merely dismissed the appeal because pre-deposit was not made. The Commissioner (Appeals) had not gone into the merits. Therefore, the only question before the Tribunal was whether pre-deposit was required or not. The Tribunal has*

chosen to go into the merits and decided the appeal on merits also. This should not have been done.

3. Parties are agreed that the order of the Tribunal should be set aside and the matter be referred back to the Commissioner (Appeals) with the condition that the pre-deposit is dispensed with. Accordingly, the impugned order is set aside. The Commissioner (Appeals) to see that pre-deposit is waived. The Commissioner (Appeals) not to take into consideration any of the observations made in the impugned order which stands set aside."

9. Although in Smithkline Beecham Co. Health C. Ltd. (*supra*), the Commissioner (Appeals) had dismissed the appeal due to non- payment of pre-deposit without going into the merits, the principle enunciated, in our view, would be applicable in the facts and circumstances of the present case, thereby we are not required to deal with the merits of the present appeal.

10. Furthermore, on the aspect of delay, the Appellant has submitted that this was not a case of inaction or negligence, but a case wherein the appeal was filed before the wrong forum, thereby contending that the time spent prosecuting a remedy before the wrong forum ought to have been excluded, relying upon Section 14 of the Limitation Act, 1963. In support of his contention reliance was placed on the following decisions: -

i. *M.P.Steel Corporation v. Commissioner of Central Excise [2015 (319) ELT 373 (SC)];*

ii. *Harshit Sanwal v. Commissioner of CGST & Central Excise [2025 (29) Centax 155 (Tri.-Del)]; and*

iii. *Geltec Pvt. Ltd. v. Commissioner of C. Ex, Cus.&S.T, Bangalore-I [2018 (364) ELT 671 (Tri-Bang).]*

11. The Ld. Authorised Representative has reiterated findings in the impugned order and referred to the decision of the Apex Court in *Singh Enterprises [2008 (221) E.L.T. 163 (S.C.)].*

12. The law laid down in the case of M.P. Steel Corporation vs. Commissioner of Central Excise (*supra*), supports the case of the appellant, where the Hon'ble Supreme Court had considered the issue of condonation of delay with reference to the provisions of Section 128 of the Customs Act in light of Section 14 of the Limitation Act, 1963. In the said decision, the Supreme Court had also considered the *P. Sarathy vs. State Bank of India [2000 (5) SCC 355*] holding that the Court referred to in Section 14 would include quasi-judicial Tribunal and, therefore, concluded that on the principles contained in Section 14 of the Limitation Act, the time taken in prosecuting an abortive proceedings would have to be excluded as the appellant was prosecuting *bonafide* with due diligence his appeal before CEGAT and, therefore, remanded the case back to the Tribunal.

13. In view of the above principles enunciated by the Supreme Court that Section 14 has to be interpreted liberally in as much as it is a provision which furthers the cause of justice, we find that the appellant *bonafide* prosecuted the appeal before the Assistant/Deputy Commissioner, within the period of two month by filing the appeal on 24.08.2012, however it is only after a period of over one year, that the appellant became aware that the appeal was filed before the wrong authority located in the very same building, therefore, the said period needs to be excluded. The appellant diligently prosecuted the appeal. Therefore, the test laid down under the provisions of Section 14 of the Limitation Act, is fully satisfied.

14. Without going into too many details, if the limitation is computed from the date of the receipt of the order, i.e., 02.07.2012, till the date of filing of the appeal before the Deputy/Assistant Commissioner on 24.08.2012, the total period comes to 53 days as against 60 days provided. The Appeal being filed before the Commissioner (Appeals) on 28.11.2013 (i.e., the correct forum), the period from 24.08.2012 to 28.11.2013 (during which time the appeal was pending before the wrong forum) is liable to be excluded by virtue of the provisions of Section 14 of the Limitation Act, and so the appeal filed by the appellant was

within time. Keeping in view of the above noted facts of the present case, the appellant is entitled to the benefit of the exclusion of time in pursuing the appeal before Assistant/Deputy Commissioner and, therefore, the appeal finally filed before the Commissioner (Appeals) is not barred by limitation.

15. We therefore set aside the impugned Order-in-Appeal No. 232/2015(STA-II) dated 26.08.2015 passed by Commissioner of Service Tax (Appeals-II), Chennai and remand the matter back to the Commissioner (Appeals) to decide the appeal on merits without going into the question of limitation in relation to filing of appeal.

16. Thus, the appeal is allowed by way of remand. Considering the period of dispute pertains to 2010, the Commissioner (Appeals) is directed to dispose the Appeal within a period of three (3) months from date of receipt of this order after affording an opportunity of being heard to the Appellant by strictly observing the principles of natural justice.

(Order pronounced in open court on 08.10.2025)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

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