

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 50962 of 2025

(Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-39-2024-25 dated 30.05.2024 passed by the Commissioner (Appeals), Customs, Central Excise & Central Goods & Services Tax, Indore)

B D Industries India Private Limited

...Appellant

36-B, Industrial Area,
A.B. Road,
Dewas (M.P.)- 455001

VERSUS

**Commissioner of Central Goods And Service
Tax, Customs And Excise,**

...Respondent

Dewas

APPEARANCE:

Shri Sumit K. Batra, Advocate for the Appellant

Shri Ratnesh Kumar Mishra, Authorized Representative of the Department

CORAM :

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing/Decision: 27.11.2025

FINAL ORDER NO. 51812/2025

JUSTICE DILIP GUPTA

M/s B D Industries India Private Limited¹ has filed this appeal for quashing of the order dated 30.05.2024 passed by the Commissioner (Appeals) dismissing the appeal for the reason that it was filed beyond the period stipulated in sub-section (1) of section 35 of the Central Excise, 1944².

2. Section 35 of the Central Excise Act deals with 'appeal to Commissioner (Appeals)'. Sub-section (1) provides that any person aggrieved by any decision or order passed under the Central Excise Act by an officer of Central Excise lower in rank than a Principal Commissioner of Central Excise or Commissioner of Central Excise

1 the appellant

2 the Central Excise Act

may appeal to the Commissioner (Appeals) within sixty days from the date of communication to him of such order. The proviso to this subsection further stipulates that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.

3. In the instant case, the Commissioner (Appeals) has noted that the order dated 26.11.2021 passed by the Assistant Commissioner, against which the appeal was filed, was communicated to the appellant on 04.12.2021.

4. In such circumstances, when the appeal was filed on 26.03.2024, much even beyond the extended period of thirty days after the expiry of initial period of sixty days and also beyond the period of 90 days from 28.02.2022 which was the date provided by the Supreme Court for extending the limitation because of COVID pandemic, the Commissioner (Appeals) dismissed the appeal.

5. It is this order dated 30.05.2024 of the Commissioner (Appeals) that has been assailed in this appeal.

6. Shri Sumit K. Batra, learned counsel appearing for the appellant submitted that the appellant could not file the appeal within the stipulated time as the former employee of the appellant who was responsible for managing the accounts of the appellant passed away on 15.04.2021. It has, therefore, been stated that the appellant was unaware of the proceedings and he came to know only when the letter was received from the bank attaching his bank account because of recovery proceedings.

7. Shri Ratnesh Kumar Mishra, learned authorized representative appearing for the department, however, supported the impugned

order and submitted that in view of the provisions of section 35(1) of the Central Excise Act and the decision of the Supreme Court in **M/s Singh Enterprises vs Commissioner of Central Excise, Jamshedpur**³, the Commissioner (Appeals) was justified in dismissing the appeal as having been filed beyond the time stipulated in sub-section (1) of section 35 of the Central Excise Act.

8. The submissions advanced by the learned counsel appearing for the appellant and the learned authorized representative appearing for the department have been considered.

9. It is not in dispute that the order dated 26.11.2021 passed by the Assistant Commissioner that was impugned before the Commissioner (Appeals) was served upon the appellant on 04.12.2021. In terms of sub-section (1) of section 35 of the Central Excise Act, the appeal should have been filed within sixty days from the date of communication of the order to the appellant. However, the proviso stipulates that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days. It is, therefore, clear from a bare perusal of sub-section (1) of section 35 of the Central Excise Act that the Commissioner (Appeals) does not have any power to condone any delay after the expiry of the extended period of thirty days from the expiry of the normal period of sixty days.

10. In view of the orders passed by the Supreme Court from time to time in suo motu proceedings related to COVID pandemic, the period of limitation stood extended up to 28.02.2022. Even if this date is taken as the starting point of limitation, the appeal should have been

filed before the Commissioner (Appeals) within 60 days of this date. The Commissioner (Appeals), at best, could have condoned 30 days delay beyond this date provided that the appellant was able to satisfy the Commissioner (Appeals) that he was prevented by sufficient cause from filing the appeal within the stipulated time. The appeal, however, was filed on 26.03.2024 which is beyond the period of 90 days, even if it is counted from 28.02.2022. The Commissioner (Appeals), therefore, in view of the provisions of sub-section (1) of section 35 of the Central Excise Act was justified in dismissing the appeal for the reason that it was filed beyond the period stipulated.

11. In **Singh Enterprises** the Supreme Court examined the provisions of section 35 of the Central Excise Act, and observed that delay can be condoned only in accordance with the language of the Statute which confers power on the Appellate Authority to entertain the appeal by condoning the delay up to thirty days after expiry of sixty days, which is the normal period for preferring an appeal. It is for this reason that the Supreme Court observed that the Commissioner (Appeals) and the High Court were justified in holding that there was no power to condone any delay after the expiry of thirty days period and that the provisions of section 5 of the Limitation Act, 1963 would not be applicable. Paragraphs 8, 9 and 10 of the judgment are reproduced below:

"8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of Statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the Statute. The period upto which the prayer for condonation can be accepted is statutorily provided. **It was submitted that the logic of Section 5 of the Indian Limitation Act, 1963** (in short the "Limitation Act") can be availed for condonation of delay. The first proviso to Section 35 makes the

position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days time can be granted by the appellate authority to entertain the appeal. **The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period.**

9. Learned counsel for the appellant has emphasized on certain decisions, more particularly, I.T.C.'s case (supra) to contend that the High Court and this Court in appropriate cases condoned the delay on sufficient cause being shown.

10. Sufficient cause is an expression which is found in various statutes. It essentially means as adequate or enough. There cannot be any straitjacket formula for accepting or rejecting the explanation furnished for delay caused in taking steps. In the instant case, the explanation offered for the abnormal delay of nearly 20 months is that the appellant concern was practically closed after 1998 and it was only opened for some short period. From the application for condonation of delay, it appears that the appellant has categorically accepted that on receipt of order the same was immediately handed over to the consultant for filing an appeal. If that is

so, the plea that because of lack of experience in business there was delay does not stand to be reason. I.T.C.'s case (supra) was rendered taking note of the peculiar background facts of the case. **In that case there was no law declared by this Court that even though the Statute prescribed a particular period of limitation, this Court can direct condonation. That would render a specific provision providing for limitation rather otiose.** In any event, the causes shown for condonation have no acceptable value. In that view of the matter, the appeal deserves to be dismissed which we direct. There will be no order as to costs."

(emphasis supplied)

12. The aforesaid decision of the Supreme Court in **Singh Enterprises** emphasises that the language of the proviso to section 35(1) of the Central Excise Act makes it clear that the appellate authority has no power to allow the appeal to be presented beyond the period of thirty days after the expiry of the normal period of limitation of sixty days. In such circumstances, the Supreme Court also held that there is complete exclusion of section 5 of the Limitation Act.

13. A Division Bench of the Tribunal in **Diamond Construction vs. Commissioner of Customs, Central Excise & Service Tax, Jabalpur⁴**, in which the provisions of section 85 (3A) of the Finance Act 1994 relating to appeals to the Commissioner of Central Excise (Appeals), which are pari material to section 35 of the Central Excise Act came up for consideration, observed that the discretion of the Commissioner (Appeals) to condone the delay is circumscribed by the conditions set out in the proviso and any delay beyond that period cannot be condoned in view of the decision of the Supreme Court in

4. **2020 (35) G.S.T.L. 193 (Tri.-Del.)**

Singh Enterprises. The relevant portion of the decision of the Tribunal is reproduced below:

"7. In order to appreciate the contentions advanced by the parties it would be appropriate to reproduce Section 85(3A) of the Finance Act which is as follows :

85. Appeals to the Commissioner of Central Excise (Appeals). -

(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.

8. A perusal of sub-section (3A) of Section 85 clearly indicates that an appeal shall be presented within two months from the date of receipt of the order of the adjudicating authority in relation to Service Tax, interest or penalty. It further provides 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. **The discretion of the Commissioner to condone the delay is, therefore, circumscribed by the condition set out in proviso and the delay can be condoned only if the appeal is presented within a further period of one month after the expiry of the statutory period of two months, provided of course, he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within a period of two months.**

9. In the present case, admittedly, the order of the adjudicating authority was received by the appellant on 20 September, 2013 but the appeal was presented before the Commissioner on 5 February, 2016. It was clearly not presented within the period of two months nor within the extended period of one month. The Commissioner (Appeals) dismissed the appeal after placing reliance on the decision of Supreme Court in Singh Enterprises.”

(emphasis supplied)

14. The Delhi High Court also examined a similar situation in **Uttam Sucrotech International (P) Ltd. vs. Union of India⁵** and observed:

“13. In view of the aforesaid, there can be no scintilla of doubt that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days after expiry of initial 60 days. In the case at hand, the admitted position is that the order passed by the adjudicating officer was received by the petitioner on 29th August, 2006. The appeal was preferred on 28th November, 2006. The Commissioner excluded the date of receipt of the order in-original by the petitioner in terms of provision contained in Section 35-O and took note of the fact that the appeal was presented on the 91st day of the period commencing after the said date of receipt, i.e., one day beyond the condonable period of 30 days and, hence, the same could not have been condoned. Similar view has been expressed by the revisional authority.”

(emphasis supplied)

15. The reason provided by the learned counsel for the appellant is merely a reason for explaining the long delay in filing the appeal before the Commissioner (Appeals) after the expiry of the extended period of thirty days. As is clear from the provisions of section 35(1) of the Central Excise Act and also from the decision of the Supreme

5. 2011 (264) E.L.T. 502 (Del.)

Court in **Singh Enterprises** only a delay of thirty days after the expiry of the normal period of sixty days can be condoned by the Commissioner (Appeals), provided the Commissioner (Appeals) is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the stipulated period of sixty days. If section 35(1) of the Central Excise Act did not limit the period of delay which could be condoned, the submission advanced by learned counsel for the appellant for condoning the delay could have been considered, but once there is an embargo on the period which can be condoned, it is not possible to accept this submission advanced by learned counsel for the appellant and condone any delay beyond the period of thirty days after the expiry of normal period of sixty days provided for filing the appeal.

16. The Commissioner (Appeals), therefore, committed no illegality in dismissing the appeal. Consequently, the appeal filed by the appellant before the Tribunal deserves to be dismissed and is dismissed.

(Dictated and pronounced in the open court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)