CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 51065 of 2025

[Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-30-2024-25 dated 03.05.2024 passed by the Commissioner of CGST, Customs & Central Excise, Indore]

M/s. Shadow Cover Security Services **...Appellant**
UG-17 Johri Palace,
51 M.G. Road , Indore,
Madhya Pradesh - 452001

VERSUS

Commissioner of Central Excise & CGST-Indore **...Respondent**
Manik Bagh Palace,
Indore, Madhya Pradesh-452001

APPEARANCE:
None for the Appellant
Shri Rohit Issar, Authorized Representative for the Respondent

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING: 11.02.2026
DATE OF DECISION: 11.02.2026

FINAL ORDER NO. 50388/2026

DR. RACHNA GUPTA

None is present for the appellant. It is observed that the appeal was filed in the Year 2024. However, certain defects were noticed and the matter was given Defect Diary No. 54190 of 2020. Defect Memo dated 22.11.2024 was served upon the appellant. Vide letter dated 26.12.2024 received in registry on 30.12.2024 9 defects out of 11 got removed as per office report dated 13.01.2025 also. Vide order dated 21.05.2025, the appellant was directed to furnish the documents with respect to remaining 2 defects in the registry where after registry was required to proceed and to list the matter in due course. After that the defect matter was registered as the regular appeal.

2. It is further observed that the appellant throughout has remained absent. Notice of initial hearing though was returned undelivered vis-à-vis appellant. However, it was duly delivered to the authorized counsel of the appellant who only has filed the impugned appeal. Since there have already been several effective opportunities with the warning of last opportunity also vide order dated 24.03.2025 but the authorized representative has opted to not to appear on behalf of the appellant despite being duly served. Since the appeal has been filed, appellant is also having due knowledge of the present appeal but has opted to not to appear.

3. At this stage, the file is perused. It was observed, in order dated 23.09.2025 that Commissioner (Appeals), had dismissed the appeal on the grounds of limitation observing that order-in-original dated 04.11.2022 since was dispatched on the same date, the appeal filed before the Commissioner (Appeals), was beyond the statutory period.

4. It is further perused that in compliance of directions of said order dated 23.09.2025 department was required to file the proof of service. Though no proof of service except the proof of dispatch could be produced by the department, but as per appellant's own appeal (present appeal) the date of receipt of the Order-in-Original dated 04.11.2022 is 05.03.2023. In the index to the present appeal, the date of receiving the Order-in-Original dated 04.11.2022 is mentioned as 20.02.2023. Apparently, the appeal

before Commissioner (Appeals) was filed on 18.05.2023 as is coming recorded in Para 8 of the impugned order. Thus even if the later date of receipt (among two contradictory dates mentioned by appellant), i.e. 05.03.2023 is taken as the relevant date, the appeal filed on 18.05.2023 is beyond the period of limitation prescribed for filing the appeal before Commissioner (Appeals).

5. It has been the settled law that Commissioner (Appeals) has no discretionary power to condone any amount of delay. I draw my support from the decision in the case of **Singh Enterprises Vs. Commissioner of C.Ex., Jamshedpur reported as 2008 (221) E.L.T. 163 (S.C.)** vide which Hon'ble Apex Court has held as follows:

> **"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."*

6. Further appellant is observed to be highly negligent as the record of appeal has an application seeking restoration of appeal after recalling the find order dated 21.05.2025. It is perused that the order dated 21.05.2025 is the daily order requiring appellant to remove remaining two minor defects with the simultaneous directions to registry for registering the matter as appeal after the said removal of defects. The appellant is held to be indulged in time gaining strategies only false pleas. Before original adjudicating authority also except submitted a written reply dated 15.11.2021, the appellant neither appeared in person nor submitted any documents despite effective opportunities were given.

7. In view the above observations and the continued absence of the appellant, I refrain myself to adjourn the matter any further for awaiting the absence. Resultantly, in the light of entire above observations, the present appeal is hereby ordered to dismissed for want of prosecution as well as for no infirmity in the order of Commissioner (Appeals).

[Dictated and pronounced in the open Court]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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