CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH - COURT NO. III

Service Tax Appeal No.51589 of 2017
with Service Tax Cross No.50942 of 2018

[Arising out of Order-in-Appeal No.BHO-EXCUS-001-APP-796-16-17 dated 22.03.2017 passed by the Commissioner (Appeals-I), Customs, Central Excise & Service Tax, Bhopal (M.P.)]

Divisional Railway Manager (Works),
Western Railway,
DO-Batti, Ratlam (M.P.). **....APPELLANT**

Versus

Commissioner of Customs, Central Excise
& Service Tax, Bhagya Bhawan,
M.P. Nagar Zone-II,
Bhopal (M.P.). **.....RESPONDENT**

Appearance:
Present for the Appellant : Shri S.C. Rajpal, Advocate
Present for the Respondent: Shri Rajeev Kapoor, Authorised Representative.

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

Final Order No. 50848 /2026

Date of Hearing/Decision:05.05.2026

BINU TAMTA:

The appellant has challenged the impugned order[1] rejecting the appeal on the ground of limitation. From the impugned order, we find that the order-in-original dated March 30, 2015 was received by the appellant on April 6, 2015 and the appeal was filed on July 14, 2015 with a delay of 1 month and 8 days.

2. The submission of the learned counsel for the appellant is that the preamble of the order-in-original says that the appeal against the

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[1] Order-in-Appeal No. BHO-EXCUS-001-APP-796-16-17 dated 22.03.2017

said order shall be filed within 90 days from the receipt of the order. In that event, the appellant had bonafide belief that they were entitled to seek condonation of delay under Section 85(3A) of the Finance Act, 1994.

3. On the contrary, learned Authorised Representative for the Department has opposed the appeal and the submission was made on the ground that the preamble to the order-in-originals cannot extend the period of limitation provided under the Act. Even if the period provided therein is taken, the appeal is still barred being beyond the period of 90 days.

4. Section 85(3A) of the Act was inserted by the Finance Act, 2012 w.e.f. May 28, 2012, which reads as under:-

> **"(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 or 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 (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."

5. From the statute, it is evident that the appeal has to be filed within 2 months from the date of receipt of the order and the delay, if any, can be condoned by a period of one month on the satisfaction of the Commissioner (Appeals). In view thereof, the extension granted towards limitation period cannot be extended further, as held by the Apex Court in the case of **Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur[2].** Following the said decision and the

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[2] 2007 (12) TMI 11-SC=2008 (221) ELT 163 (SC)

statutory provisions, the appeal filed by the appellant before the Commissioner (Appeals) was barred by limitation and the same has been rightly rejected. We find no reason to interfere with the impugned order. The appeal is, accordingly dismissed.

[Order dictated & pronounced in open court]

(Binu Tamta)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

Ckp.