CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

Date of Hearing/Decision:06.12.2018

ST/53432/2015-Customs

[Arising out of Order-in-Appeal No.BHO-EXCUS-001-APP-015-15-16 dated 12.06.2015 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Bhopal (M.P.)]

M/s. Sabdhani Coaching Institute …Appellant
Rep. by Ms. Rinky Arora, Advocate for the appellant.

Vs.

CCE & ST, Bhopal ….Respondent
Rep. by Shri R.K.Manjhi, DR for the respondent.

CORAM **: HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)**
HON'BLE MR.C.L. MAHAR, MEMBER (TECHNICAL)

Final Order No.53382/2018

Per Anil Choudhary:-

The issue in this appeal is whether the ld. Commissioner (Appeals) has rightly dismissed the appeal by holding that the appeal has been filed on delay of 5 days (beyond 60 days).

2. The brief facts are as follows:-

Date	**Event**
11/02/2014	Order-in-Original passed.
17/02/2014	Order-in-Original served on the appellant.
21/04/2014	Appeal filed before the Commissioner (Appeals)

2. The calculation of 60 days allowable for filing the appeal before the Commissioner (Appeals) is to be calculated as follows:-

Period of 60 days as mentioned in the preamble attached to the impugned order-in-original dated 11/02/2014(Exhibit-4)	Period of two months as provided under proviso to sub-section (3A) of Section 85 of the Finance Act, 1994.
18.02.2014 to 28.02.2014= 11 days	18.02.2014 to 17.03.2014 - 1st Month
01.03.2014 to 31.03.2014=31 days	18.03.2014 to **17.04.2014** – 2nd Month
01.04.2014 to **18.04.2014 = 18 days**	**Total 2 months**
Total 60 days	

3. Thus, the due date or 60th day for filing the appeal was 18.04.2014.Futher facts are as follows:-

17.04.2014-Thursday	Holiday	**Polling day of Parliament Election**
18.02.2014-Friday	Holiday	**Good Friday**
19.04.2014-Saturday	Holiday	**Saturday**
20.04.2014-Sunday	Holiday	**Sunday**

4. The ld. Counsel states that as the last date or the due date for filing the appeal was a holiday and also the next two days were holidays in the office of the Commissioner (Appeals) being Saturday & Sunday, the appeal admittedly received by the Commissioner (Appeals) on 21.04.2014 is within time and /or filed on the 60th day, as provided under Section 9 and 10 of the General Clauses Act, 1897.

5. Accordingly, I hold that the ld. Commissioner (Appeals) has erred in calculating the period of limitation and has further erred in dismissing the appeal

on the ground of limitation. I hold that the appeal is filed within time under the provisions of Section 85(3A) of Finance Act, 1994. Accordingly, the impugned order is set aside and the appeal is allowed by way of remand to the Commissioner (Appeals) to hear the appellant on merits and pass a reasoned order in accordance with law.

[Operative portion of the order already pronounced in open court]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(C.L. MAHAR)
MEMBER (TECHNICAL)

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