

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

PRINCIPAL BENCH – COURT NO. II

Service Tax Condonation of Delay Application No.

(on behalf of the appellant)

ST/COD/51300/2018 and

Service Tax Appeal No. 53900 of 2018-DB

(Arising out of Order-in-Appeal No. BPL-EXCUS-001-APP-131-17-18 dated 28.8.2017 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Bhopal (MP).

Superintendent of Police

SP Office, District-Hoshangabad
MP- 461001

Appellant

Versus

**Commissioner (Appeals), Customs
Central Excise & Service Tax, Bhopal**

178, Bhagya Bhavan, MP Nagar,
Bhopal (MP)

Respondent

AND

Service Tax Condonation of Delay Application No.

(on behalf of the appellant)

ST/COD/51301/2018

and

Service Tax Appeal No. 53901 of 2018-DB

(Arising out of Order-in-Appeal No. BPL-EXCUS-001-APP-244-15-16 dated 1.3.2016 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Bhopal (MP).

Superintendent of Police

SP Office, District-Hoshangabad
MP- 461001

Appellant

Versus

**Commissioner (Appeals), Customs
Central Excise & Service Tax, Bhopal**

178, Bhagya Bhavan, MP Nagar,
Bhopal (MP)

Respondent

Appearance

Shri Sanjay Tiwari, CA

Shri Dhruv Tiwari, Advocate

- for the appellant

Shri Sanjay Jain, DR

- for the respondent

Date of Hearing: 26.2.2019

Date of Decision: 10/07/2019

CORAM:HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)

Final Order No.50876-50877/2019

Per **Bijay Kumar :**

These two appeals have been filed by the appellants against the order-in-appeal dated 1.3.2016 and 28.8.2017 along with COD applications.

2. The appellants have filed the appeals before this Tribunal beyond the prescribed time limit of three months for filing the appeal against the impugned order. In case of order dated 28.8.2017, there is delay of 310 days while in the order dated 1.3.2016, the delay is for 890 days.

2.1 The appellants have submitted that this undue delay in filing the appeal before this Tribunal occurred on account of fact that the appellants in these cases happened to be Supdt. of Police, Hoshangabad, Madhya Pradesh, who heads of the Police administration of the district of Hoshangabad in the State of Madhya Pradesh. It is submitted that the delay in filing these appeals had not been deliberate but happened on account of various steps required for filing appeal by way of permissions required from various offices including Police Headquarters (PHQ). The appellants have relied upon the decision of **Collector, Land Acquisition Anantnag and Another Versus Mst. Katiji And others – AIR 1987-SC-1353** and the decision of Hon'ble Delhi High Court in the case of **Jyotsana Sarda Vs. Gaurav Sharda & among other – 169 (2010) Delhi Law Times, 630**. On merits

of the case, it was submitted that the learned Commissioner (Appeals) has rejected the appeals filed by the appellant on the ground of preferring appeals beyond the prescribed time limit, a period of two months under Section 85 of Finance Act, 1994. The Commissioner (Appeals), on sufficient cause being shown, may further extend the time limit by next one month. As these appeals have been filed beyond the prescribed time limit of 90 days, the Commissioner (Appeals) has rejected the appeals.

3. Learned Advocate, on behalf of the appellant, submits that there is a delay in filing these appeals due to genuine and bona fide reasons, which is required to be condoned in view of the decisions of **Land Acquisition Anantnag** and **Jyotsana Sarda**, as the appellant is a government department and for filing appeals they are required to seek permission from the various offices which has caused delay in filing these appeals. It is the submission of learned Advocate that on merits the issue is settled in their favour of appellants and hence the delay in filing appeals needs to be condoned, in the interest of justice.

3.2 He also relied upon the decision of Hon'ble Supreme court in the case of **State of M.P. and Anr. Vs. Anshuman Shukla – 2015 (8) TMI 1906 (SC)**, wherein it has been held that the provisions of Section 5 of Limitation Act, 1963 is applicable to Section 19 of Madhya Pradesh Madhyastha Adhikaran Adhiniyam, 1983. No express exclusion has been incorporated therein and there is neither any evidence to suggest that legislative intend was to bar application of Section 5 of Limitation Act. The case which were relied upon to dismiss Special Leave Petition in Nasiruddin &

Ors. is distinguishable and has no bearing on the fact of the case. It was emphasised by learned Advocate that although specific time period has been prescribed for filing the appeal under Section 85 of the Finance Act, 1994 (for short, Finance Act) but there is no exclusion of the provisions of Section 3 to 24 of Limitation Act, 1963 in Finance Act. Hon'ble Court will be entitled to apply Section 5 of Limitation Act and condone the delay in case of filing appeal beyond the statutory prescribed limit in the Finance Act.

4. Learned Authorised Representative on behalf of the Revenue submits that the appellants have filed the appeal before the Tribunal after the lapse of prescribed statutory period under Section 85 of the Finance Act, which is within three months of passing of the order appealed against. In these cases, there is an inordinate delay in filing appeals before the Tribunal and, therefore, the condonation of delay applications are required to be rejected. On merit of the cases, learned Authorised Representative submits that in the impugned orders passed by the Commissioner (Appeals), it is held that the appellants have failed to adhere to prescribed statutory period for filing appeal before the Commissioner (Appeals) under the Finance Act which is two months extendable by yet another month. Beyond this period of three months the Commissioner (Appeals) has no power to condone delay in filing the appeal before him against the order passed by the authority subordinate to Commissioner. In these cases also, the appellants have filed appeal after lapse of 90 days from passing of original order. Learned Authorised Representative submitted a written reply as directed by the bench with copy to learned

Advocate for the appellant. The learned Advocate for the appellant also submitted a rejoinder in response to written submissions made by the appellant. These submissions were considered and taken on record.

5. After hearing learned Advocate on behalf of the appellant and learned Authorised representative on behalf of the Revenue, we find that the issue involved in these appeals are two fold. The first being that there is delay of 310 days and 890 days in filing of these appeals, although there has been a substantial delay in filing the appeal beyond the prescribed period as per the Finance Act, but following the decision of **Land Acquisition Anantnag** (supra) and **Jyotsana Sarda** (supra), **and in the interest of justice, we condone the delay and take up appeals for final decision on merits.**

5.1 Learned Advocate, has submitted that under the Limitation Act, 1963 in case of special or local laws which provides limitation for filing appeal, the same is required to be treated as the period for filing appeal under Section 3 of Limitation Act. Section 3 of Limitation Act, 1973 prescribes time limit for filing appeal suit etc. However, the time period prescribed Section 3 under Limitation Act, is to be read with Section 29(2) of the Act, *ibid*, which is as under:

“29(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.”

5.2 It is submitted by learned Advocate that in case of **Anshuman Shukla** (supra), the Hon'ble Supreme Court constituted a Special Bench to decide as to how to read the exclusion of Rule 4 to 24 (both inclusive) of Limitation Act and also mandatory requirement which needs to be followed, while applying Section 29(2) of Limitation Act. It was held by the Hon'ble Supreme Court that mere providing the prescribed time limit would not be sufficient to exclude the applicability of Section 4 to 24 of Limitation Act in respect of local/or special law and in case where there is intention to exclude these sections there must be an express rider to that effect. He, therefore, submits that the aforesaid ratio laid down in case of **Anshuman Shukla** (supra) is to be applied to the provision of Finance Act, 1994, on account of the fact that Section 85 of the Finance Act does not exclude the application of Section 4 to 24 of Limitation Act. As the decision of **Anshuman Shukla** (supra) is subsequent to decision of previous judgement including **Singh Enterprises Vs. CCE, Jamshedpur – 2008 (221) ELT 163 (SC)** and **CCE Vs. Hongo India (P) Ltd. – 2009 (236) ELT 417 (SC)**, the decisions in these cases are required to be ignored, which otherwise will make the decision of Hon'ble Supreme Court otiose. He prayed for condoning delay in filing appeal before Commissioner (Appeals) in Appeal No. 53900/18 under Finance Act, 1994, as there is no special rider to exclusive Section 4 to 24 of Limitation Act. In view of above, he submits that delay in filing the appeal before Commissioner (Appeals) in the impugned orders are contrary to the provisions of

law declared by Supreme Court in terms of Article 142 of Constitution of India and thus required to be set aside.

6. Per contra, learned Authorised Representative on behalf of the Revenue submits that the learned Commissioner has rightly dismissed appeals filed by the appellants on the ground of limitation. There is a delay of 28 days in filing the appeal before Commissioner (Appeals) in case of order dated 28.8.2017 and, after the maximum period of 90 days prescribed under Section 85 of Finance Act. Therefore, the delay is not condonable as per the provisions of Section 85 of the Finance Act.

6.1 Learned Authorised Representative further submits that Hon'ble Principal Bench of this Tribunal in the case of M/s Diamond Construction (Appeal No. ST/51592/2016) on 19.2.2019 has decided the matter which was quite identical to the issues involved in current appeals. In this order the Tribunal held that Commissioner (Appeals) is not empowered to condone delay beyond 90 days for filing of appeal under Section 85 of the Act. The para 14 & 15 which is relevant is extracted as under :

"14. The Division Bench of the Mumbai Tribunal in **Muktabai Govind Pawar** held that the Tribunal would have no power to condone the delay after the expiry of the extended period of one month.

15. The Commissioner (Appeals), therefore, did not commit any illegality in dismissing the appeal. The present appeal is, therefore, dismissed."

6.2 Learned Authorised Representative also submitted that the decision of **Anshuman Shukla** (supra) has been decided while dealing with the issue as to whether Hon'ble High Court should have condoned the delay in filing revision petition under Madhya Pradesh Madhyastha Adhikaran Adhiniyam (MP Arbitration Act,

1983). In this case, the MP Government, while disagreeing with the decision of Arbitration Tribunal filed a petition for revision under Section 19 of the Act of 1983 along with the application under Section 5 of the Limitation Act, 1963 to condone the delay for filing revision petition, which was dismissed by the High Court. In view of provisions of Section 29(2) of Limitation Act supra, it was held that the Section 19 of the Act of 1983 does contain any express rider restraining power of High Court to entertain appeal for revision, after expiry of prescribed period. On the contrary, the High Court has been conferred with a suo moto power for the review of award any time under Act, 1983. Thus, Hon'ble Supreme Court was concerned with the interpretation of Section 19 of the Act of 1983, which gave them suo moto power for revision any time. Thus, it was held in that case there is no legislative intent to exclude the applicability of Section 5 of the Limitation Act to the Section 19 of the Act of 1983. In view of above, learned Authorised Representative submitted that the ratio laid down in the case of **Anshuman Shukla** (supra) is not applicable under the provisions of Finance Act, which is special Act which prescribed the specific time period for filing appeal under Section 85 thereof. Reliance was placed on the decision in the case of **Hongo India (P) Ltd.** (supra). Further, reliance was also placed on the decision of Hon'ble Supreme Court in the case of **Singh Enterprises** (supra).

7. Learned Authorised Representative of the Department also placed reliance on the following case laws, wherein it is held that the provisions of Limitation Act, are not applicable under the provisions of Section 85 of the Finance Act:

- (i) **Amchong Tea Estate Vs. Union of India – 2010 (257) ELT 3 (SC);**
- (ii) **Commr. of C. Ex. & ST, Rajkot Vs. Essar Bulk Terminal Salaya Ltd. – 2018 (363) ELT 262 (Tri.-Ahmd.);**
- (iii) **Bharat Sanchar Nigam Ltd. Vs. Union of India – 2018 (15) GSTL 331 (Guj);**
- (iv) **Todays Petrotech Limited Vs. Joint Commissioner – 2017 (7) GSTL 145 (Guj.);**
- (v) **Commr. of Cus. & C. Ex. Alld. Vs. Ashok Kumar Tiwari – 2015 (37) STR 712 (All.);**
- (vi) **Nirantar Security Pvt. Ltd. Vs. Union of India – 2017 (5) GSTL 365 (Guj.);**
- (vii) **Ramesh Vasantbhai Bhojani Vs. Union of India – 2017 (357) ELT 63 (Guj.); and**
- (viii) **Phoenix Plasts Co. Vs. Commr. of C. Ex. (Appeal-I), Bangalore – 2016 (344) ELT 148 (Kar.).**

7.1 Learned Authorised Representative also placed reliance on the decision of Hon'ble Orissa High Court in the case of **Collector of CE & Cus. Vs. Golden Hind Shipping (India) Pvt. Ltd. - 1993 (68) ELT 739**, wherein it is held as under:

“20. The Tribunal has, however, referred to its inherent power in passing the impugned orders which, according to it, has been done to do complete justice. As to this, it may be pointed out that the Tribunal being a creature of statute can exercise such powers only which have been conferred by the statute. And what is the scope and ambit of the statutory power have been dealt above.”

7.2 Learned Authorised Representative further submitted that mandatory period under Section 85 of the Finance Act is also not to be curtailed by Hon'ble High Court, while exercising writ jurisdiction, placing reliance on the case of **Director, Post Graduate Institute of Medical Education And Research – 2018 (16) GSTL 513 (P&H)**. The relevant paragraph of the said judgment, which is para 7, is as under :

7. The issue with regard to the condonation of delay beyond the period specified in the statute in filing appeal has already

been decided by a Full Bench of this Court in *State of Haryana v. Hindustan Machine Tools Ltd.* - 2014 (4) RCR (Civil) 1040 = [2015 \(328\) E.L.T. 27](#) (P & H), wherein it was held that wherever the extent of condonable period is specifically prescribed by a statute, it would not be appropriate even under Articles 226/227 of the Constitution of India to entertain the writ petition so as to breach the express provision in the statute and act contrary to the mandate of the legislature. It was further recorded that it is for the legislature to prescribe the limits or not to do so for condoning the delay and exercise of extraordinary writ jurisdiction under Articles 226/227 of the Constitution of India would amount to doing violence to the statutory provisions and rendering the same otiose. The relevant observations recorded by the Full Bench read thus :

“The power conferred under Articles 226/227 is designated to effectuate the law, to ensure that rule of law is enforced and the statutory authorities and other organs of the State act in accordance with law. It is not to be invoked whereby authorities are directed to act contrary to law. Wherever, the extent of condonable period is specifically prescribed by a statute, it would not be appropriate even under Articles 226/227 of the Constitution to entertain the writ petition so as to breach the express provision in the statute and act contrary to the mandate of the legislature. It is for the legislature to prescribe the limits or not to do so for condoning the delay. Exercise of extraordinary writ jurisdiction under Articles 226/227 of the Constitution of India would amount to doing violence to the statutory provision and rendering the same otiose. In other words, the legislative intent is clear that the Parliament never intended that delay beyond specified period in filing the appeal could be condoned. It is not for the High Court to re-write the statute in the grab of exercise of its jurisdiction under Articles 226/227 of the Constitution.”

In view of the aforesaid submission, it was humbly prayed by the learned Authorised Representative that the appeal filed by the appellant is not sustainable both on account of delay in filing appeal before Commissioner (Appeals).

8. We have considered the rival submissions and perused the case record.

9. As we have already condoned the delay in filing the appeals considering the extraordinary situation, the next question before us is to decide as to whether the Commissioner (Appeals) is empowered to condone the delay in filing appeal before him under the provisions of Section 85 of Finance Act or not. Learned

Advocate has relied on the decision of **Anshuman Shukla** (supra) which is delivered under the provisions of Madhya Pradesh Madhaystha Adhikari Adhiniyam, 1983 regarding non condonation of delay in filing of appeals before Hon'ble High Court. In the said decision, the Hon'ble Supreme Court has held that as there is no specific exclusion in the Special Act regarding application of Section 4 to 24 of Limitation Act and no time limit is prescribed for taking suo motu cognisance of the award under the Act of 1983, the Hon'ble High Court erred in rejecting the appeal being time-barred. The Act of 1983 is special law which is different from the Finance Act, which has got the applications of certain Sections of Central Excise Act, 1944, by virtue of the provisions of Section 83 thereof. Section 83 of the Finance Act is reproduced as under:

"Application of certain provisions of Act 1 of 1944.

83. The provisions of the following sections of the Central Excise Act, 1944 (1 of 1944), as in force from time to time, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise:—

⁹[¹³sub-section (2A) of section 5A, sub-section (2) of section 9A], 9AA, 9B, 9C, 9D, 9E, 11B, 11BB, 11C, 12, 12A, 12B, 12C, 12D, ¹¹[12E, 14, ¹⁴[15, 15A, 15B], 31, 32, 32A to 32P (both inclusive), 33A, 34A, 35EE, 35F],⁸[35FF] to 35-O (both inclusive), 35Q, ¹⁰[35R,] 36, 36A, 36B, 37A, 37B, 37C, 37D,⁷[38A] and 40."

10. The Hon'ble Supreme Court in the case of **Hongo India Pvt. Ltd.** (supra) has in a specific and clear term dealt with the application of Section 5 of Limitation Act under the provisions of Central Excise Act which is also applicable in case of Finance Act by virtue in Section 83 of thereof. In case of **Hongo India Pvt. Ltd.** (supra), the Supreme Court in para 2, 12, 18, 19 & 21 has held as under:

"2. In all these appeals, the question for consideration is whether the High Court has power to condone the delay in presentation of the reference application under unamended Section 35H(1) of the Central Excise Act, 1944 (hereinafter referred to as "the Act") beyond the prescribed period by applying Section 5 of the Limitation Act, 1963. When S.L.P.(C) No. 14467 of 2007 came up for hearing on 4-12-2008, a two-Judge Bench, after noticing the decision in *Commissioner of Customs, Central Excise, Noida v. Punjab Fibres Ltd., Noida* (2008) 3 SCC 73, expressed doubt about the said judgment with regard to the jurisdiction of the High Court in the matter of condoning delay beyond the prescribed period under the Act. After finding that under Section 35H of the unamended Act (before enactment of Act 49/2005), with regard to application for reference, the High Court exercises its advisory jurisdiction in a case where the substantial question of law of public importance arise, the said Bench directed the matter to be heard by Larger Bench. In this way, all the above mentioned matters arising from the judgments of the Allahabad High Court on identical issue posted before this Bench for determining the question, namely, "*whether the High Court in the reference application under Section 35H(1) of the unamended Act, has power under Section 5 of the Limitation Act, 1963 to condone the delay beyond the period prescribed under the main statute i.e., Central Excise Act.*"

12. Article 214 of the Constitution of India makes it clear that there shall be a High Court for each State and Art. 215 states that every High Court shall be a court of record and shall have all the powers including the power to punish for contempt of itself. Though we have adverted to Section 35H in the earlier part of our order, it is better to extract sub-section (1) which is relevant and we are concerned with in these appeals :

"35H. Application to High Court. - (1) The Commissioner of Central Excise or the other party may, within one hundred and eighty days of the date upon which he is served with notice of an order under section 35C passed before the 1st day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment), by application in the prescribed form, accompanied, where the application is made by the other party, by a fee of two hundred rupees, apply to the High Court to direct the Appellate Tribunal to refer to the High Court any question of law arising from such order of the Tribunal."

Except providing a period of 180 days for filing reference application to the High Court, there is no other clause for condoning the delay if reference is made beyond the said prescribed period. We have already pointed out that in the case of appeal to the Commissioner, Section 35 provides 60 days time and in addition to the same, Commissioner has power to condone the delay up to 30 days, if sufficient cause is shown. Likewise, Section 35B provides 90 days time for filing appeal to the Appellate Tribunal and sub-section (5) therein enables the Appellate Tribunal to condone the delay irrespective of the number of days, if sufficient cause is shown. Likewise, Section 35EE which provides 90 days time for filing revision by the Central Government and, proviso to the same enables the revisional authority to condone the delay for a further period of 90 days, if sufficient cause is shown, whereas in the case of appeal to the High Court under Section 35G and reference to the High Court under Section 35H of the Act, total period of 180 days has been provided for availing the remedy

of appeal and the reference. However, there is no further clause empowering the High Court to condone the delay after the period of 180 days.

18. In the earlier part of our order, we have adverted to Chapter VIA of the Act which provides appeals and revisions to various authorities. Though the Parliament has specifically provided an additional period of 30 days in the case of appeal to the Commissioner, it is silent about the number of days if there is sufficient cause in the case of an appeal to Appellate Tribunal. Also an additional period of 90 days in the case of revision by Central Government has been provided. However, in the case of an appeal to the High Court under Section 35G and reference application to the High Court under Section 35H, the Parliament has provided only 180 days and no further period for filing an appeal and making reference to the High Court is mentioned in the Act. In this regard, it is useful to refer to a recent decision of this Court in *Punjab Fibres Ltd., Noida* (supra). Commissioner of Customs, Central Excise, Noida is the appellant in this case. While considering the very same question, namely, whether the High Court has power to condone the delay in presentation of the reference under Section 35H(1) of the Act, the two-Judge Bench taking note of the said provision and the other related provisions following *Singh Enterprises v. Commissioner of Central Excise, Jamshedpur and Others*, (2008) 3 SCC 70 concluded that "the High Court was justified in holding that there was no power for condonation of delay in filing reference application."

19. As pointed out earlier, the language used in Sections 35, 35B, 35EE, 35G and 35H makes the position clear that an appeal and reference to the High Court should be made within 180 days only from the date of communication of the decision or order. In other words, the language used in other provisions makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning the delay only up to 30 days after expiry of 60 days which is the preliminary limitation period for preferring an appeal. In the absence of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. The High Court was, therefore, justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days. Even otherwise, for filing an appeal to the Commissioner, and to the Appellate Tribunal as well as revision to the Central Government, the legislature has provided 60 days and 90 days respectively, on the other hand, for filing an appeal and reference to the High Court larger period of 180 days has been provided with to enable the Commissioner and the other party to avail the same. We are of the view that the legislature provided sufficient time, namely, 180 days for filing reference to the High Court which is more than the period prescribed for an appeal and revision.

21. In the light of the above discussion, we hold that the High Court has no power to condone the delay in filing the "reference application" filed by the Commissioner under unamended Section 35H(1) of the Central Excise Act, 1944 beyond the prescribed period of 180 days and rightly dismissed the reference on the ground of limitation."

This decision of Hon'ble Supreme Court is also by three Judges Bench as in the case of **Anshuman Shukla** (supra). The decision of **Hongo India (P) Ltd.** (supra) has been specific to the Central Excise Act wherein it is held that that legislative intend by giving liberal interpretation, limitation cannot be extended by invoking the provisions of Section 5 of the Act. In yet another case of **Singh Enterprises** (supra) it has been held that under Section 35 of Excise Act the Appellate Authority has no power to allow appeals to be presented beyond the period of 30 days. The relevant portion of the order as contained in '8' is 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."

Language used in the section makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only up to 30 days after expiry of 60 days which is normal period for preferring the appeal. We also find that

in the case of **Director, PGIMER** (supra), it has been held in para 7, 8 and 9 which is as under :

"7. The issue with regard to the condonation of delay beyond the period specified in the statute in filing appeal has already been decided by a Full Bench of this Court in *State of Haryana v. Hindustan Machine Tools Ltd.* - 2014 (4) RCR (Civil) 1040 = [2015 \(328\) E.L.T. 27](#) (P & H), wherein it was held that wherever the extent of condonable period is specifically prescribed by a statute, it would not be appropriate even under Articles 226/227 of the Constitution of India to entertain the writ petition so as to breach the express provision in the statute and act contrary to the mandate of the legislature. It was further recorded that it is for the legislature to prescribe the limits or not to do so for condoning the delay and exercise of extraordinary writ jurisdiction under Articles 226/227 of the Constitution of India would amount to doing violence to the statutory provisions and rendering the same otiose. The relevant observations recorded by the Full Bench read thus :

"The power conferred under Articles 226/227 is designated to effectuate the law, to ensure that rule of law is enforced and the statutory authorities and other organs of the State act in accordance with law. It is not to be invoked whereby authorities are directed to act contrary to law. Wherever, the extent of condonable period is specifically prescribed by a statute, it would not be appropriate even under Articles 226/227 of the Constitution to entertain the writ petition so as to breach the express provision in the statute and act contrary to the mandate of the legislature. It is for the legislature to prescribe the limits or not to do so for condoning the delay. Exercise of extraordinary writ jurisdiction under Articles 226/227 of the Constitution of India would amount to doing violence to the statutory provision and rendering the same otiose. In other words, the legislative intent is clear that the Parliament never intended that delay beyond specified period in filing the appeal could be condoned. It is not for the High Court to re-write the statute in the grab of exercise of its jurisdiction under Articles 226/227 of the Constitution. The view which has been expressed by us herein above, is supported by various judicial precedents."

8. Further in *Patel Brothers v. State of Assam and Others* - (2017) 2 SCC 350 = [2017 \(345\) E.L.T. 578](#) (S.C.), it has been held by the Apex Court that condonation of delay by invoking Section 5 of the Limitation Act, 1963 when such delay is beyond the prescribed period, is not permissible.

9. In view of the above, we do not find any ground to interfere with the order dated 11-4-2017, Annexure A.7 passed by the Tribunal, upholding the order passed by the Commissioner (Appeals) whereby the appeal filed by the appellant was dismissed on the ground of delay. Consequently, finding no merits in the appeal, the same is hereby dismissed."

11. We find the Court while interpreting the period of limitation prescribed in the Special Act, as present one, held that same cannot be altered and even under the provisions of Article 226 and 227 of Constitution of India, not beyond the period prescribed/time period. Therefore for all the above reasons the prescribed time limit of three months under the provisions of Section 85 of the Finance Act cannot be extended by importing the provisions of Section 5 of Limitation Act. We respectfully hold that ratio laid down in case of **Anshuman Shukla**, cannot thus be made applicable in case of Finance Act, 1994.

12. Accordingly, we do not find any infirmity in the order dated 28.8.2017 in Appeal No. 53900 of 2018 and the same is required to be sustained in the appeal.

13. In regard to Appeal No. 53901 of 2018 (order dated 1.3.2016), it is seen that the appeal has been preferred against order-in-original dated 10.6.2014 on 7.8.2014, which is within the prescribed time limit of two months. This Tribunal vide order dated 5.12.2018 has waived the requirement of pre-deposit for filing of appeals. Therefore, we proceed to decide the appeal on merits of the case. The issue involved in this appeal stands decided by this Tribunal vide its Final Order No. 52310/2017 dated 1.3.2017. The paragraph 5 and 6 of the order which is relevant for the issue at hand is as under:

"5. After hearing both sides and on perusal of the record, it appears that an identical issue has come-up for consideration before this Tribunal in the case of **Superintendent of Police Vs Commissioner of Central Excise and Service Tax, Jaipur-I**, Final Order Nos.55321-55348/2016 dated 25.11.2016, wherein it was observed that:

"13. On the basis of the above discussion, we conclude that police department, which is an agency of the State Govt., cannot be considered to be a person engaged in the business of running security services. Consequently, the activity undertaken by the police is not covered by the definition of Security Agency under Section 64 (94) of the Act. We also find that in terms of CBEC circular on this subject, the fees collected by the police department is in the nature of fee prescribed for performing statutory function, which has been deposited into the Govt. Treasury. In the light of the CBEC Circular also, there can be no levy of service tax on such activities carried out by the police department."

6. By following the aforesaid decision (supra), we find no reason to sustain with the impugned order and is hereby set-aside."

14. In result, Appeal No. 53900/2018 is rejected along with COD No. ST/51300/2018 and Appeal No. 53901/2018 is allowed with COD No. 51301/2018.

(Pronounced in open Court on 10.07.2019)

(Anil Choudhary)
Member (Judicial)

(Bijay Kumar)
Member (Technical)

RM