IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No. 75196 of 2026

(Arising out of Order-in-Appeal No.124/SLG-ST/2024-25 dated 16.07.2024 passed by Commissioner of CGST & CX, Siliguri)

Bijan Kumar Dutta
3,Netaji Subash Road, Subash Pally, Siliguri-734001.

Appellant

VERSUS

Commissioner of CGST & CX, Siliguri
GST Bhawan,H.M.Road, Hakimpara, Siliguri-734001.

Respondent

APPERANCE :
Ms. Ankita Mitar, Advocate for the Appellant
Shri S.K.Dutta, Authorized Representative for the Appellant

CORAM:
HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BEL SHRI K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO...75910.../2026..

DATE OF HEARING : 16.07.2026
DATE OF DECISION : 16.07.2026

Per R.Muralidhar :

The appellant has filed the present appeal being aggrieved by the impugned O-I-A passed on 16.07.2024. The Ld. Counsel appearing on behalf of the appellant submits that the appellant has undertaken works contract for which no Service Tax is required to be paid. She also submits that the proceedings were initiated based on Form 26 AS of Income Tax Returns. The Show Cause Notice was issued on 4.11.2020 for the alleged non payment of Service Tax amounting to 44,08,391/- for the period of 2015-16 and 2017 to 18 (upto 2017). She submits that both the merits as well as on account of time bar the confirmed demand is not legally sustainable.

2. She also submits that the appellant has several medical issues and is undergoing regular dialysis on daily basis. This situation was there even when the appeal was filed before the Commissioner

(Appeal). Considering these difficulties, she prays that the appeal may be allowed.

3. The Ld. Authorized Representative takes the stand that the Commissioner (Appeals) has not taken up the appeal for disposal on merits. It is submitted that after noting that the appellant has filed the appeal before the Commissioner (Appeals) after delay of about 60 days after the condonable period of 30 days. Therefore, relying on the case law of Singh Enterprises Vs. Commissioner of Central Excise, Jaipur-2008, ELT, 163 (SC), Commissioner (Appeals) has dismissed the appeal filed by the appellant. Therefore, the Ld. Authorized Representative prays that the present appeal may be dismissed.

4. In the rejoinder the Ld. Counsel appearing on behalf of the appellant submits that the appellant was having serious health issues and even his wife is undergoing treatment and she finally expired. Therefore, the appeal before the Commissioner (Appeal) could not be filed on time. She prays that the delay in filing the appeal before the Commissioner (Appeal) may be condoned and the present appeal may be taken up for disposal for merits.

5. Perused the appeal papers.

6. On going through the impugned OIA, we find that the Commissioner (Appeals) has recorded that the OIO was served on the appeal on 24.04.2023. Therefore, the appeal should have been filed by 25.06.2023 as per the normal period allowed for filing the appeal. Further period of 30 days towards condonation ended on 25.07.2023. However, the appeal has been filed only on 19.09.2023. Therefore, he has dismissed the appeal filed by the appellant.

7. We find that the Hon’ble Supreme Court in the case of Singh Enterprise has held as under:

"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 up-to 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 that 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.

8. Though we express our sympathy towards health issues of the appellant, we at our level can not come to the rescue of the appellant when the appeal has been filed before the Commissioner (Appeals) beyond the condonable period. The cited case law of Singh Enterprises

is squarely applicable. Accordingly we dismiss the appeal filed by the appellant.

(operative part is pronounced in open court)

(R.Muralidhar)
Member (Judicial)

(K.ANPAZHAKAN)
Member (Technical)

RG