IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: ST/86751/2017

Arising out of:	Order-in-Appeal No. MUM-SVTAX-002-APP-818-16-17 dated 24/02/2017
Passed by:	Commissioner of Service Tax (Appeals), Mumbai.

	Appellant – Represented by:
Reach Networks India Pvt Ltd	Ms. Disha Gursahaney, Advocate
versus	
Commissioner of Service Tax Mumbai – II	***Respondent – Represented by:*** Mr. Atul Sharma, Asstt. Commissioner (A.R.)

Date of hearing /pronounced 19/02/2018

CORAM

Hon'ble Shri Ramesh Nair, Member (Judicial)

ORDER NO:

Learned Commissioner (Appeals) dismissed the appeal being time-barred on the ground that the appeal before him was filed with a delay of 1 day.

2. Ms Disha Gursahaney, Learned Counsel appearing on behalf of the appellant submits that the period in filing the appeal is two months from the date of receipt of the order. The date of receipt is 13/03/2015

and the appeal was filed on 13/05/2013. Therefore the appeal was filed within two months time. The Learned Commissioner (Appeals) has computed two months wrongly up to 12/05/2014. In this regard she places reliance on the Supreme Court judgment in the case of *State of Himachal Pradesh and Another v. Himachal Techno Engineers and Another* 2010 (12) SCC 210 in Civil Appeal No. 5998 of 2010 decided on 26/07/2010.

3. Shri Atul Sharma, Learned Assistant Commissioner (AR) reiterates the findings in the impugned order.

4. On a careful consideration of the submission by both the sides, I find that the order-in-original was received by the appellant on 13/03/2014 and appeal filed on 13/05/2014. In view of the Supreme Court judgment the two months ended on the corresponding date i.e. the two months ended on 13/05/2014 when the appeal was filed. Therefore, there is no delay in filing the appeal. Moreover, even if there is any delay which is within the condonable period the Commissioner (Appeals) should have condoned such delay and passed the order on merit. It is also observed that it was *bona fide* belief of the appellant that the appeal was filed well within time but if the Commissioner (Appeals) has a different view he should have given a notice to the appellant to explain the delay, if any, which the Commissioner (Appeals) failed to do so. Therefore, he violated the

principles of natural justice. With this observation I set aside the impugned order and remand the matter to the Commissioner (Appeals) for passing a fresh order on merits without going into the limitation.

5. The appeal is allowed by way of remand to the Commissioner (Appeals)

(Dictated and Pronounced in Court)

(Ramesh Nair)
Member (Judicial)

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