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

APPEAL NO: ST/87663/2016

[Arising out of Order-in- Original Appeal No: MUM-SVTAX-002-APP-405-16-17 dated 12th September 2016 passed by the Commissioner of Service Tax (Appeals), Mumbai – II.]

Instrumentation Limited …***Appellant***

versus

Commissioner of Service Tax - IV
Mumbai – II …***Respondent***

Appearance:

None for the appellant

Shri Vivek Dwivedi, Assistant Commissioner (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing: 13/07/2017
Date of decision: 13/07/2017

ORDER NO: A/92315 / 2017

In dispute is order-in-appeal no. MUM-SVTAX-002-APP-405-16-17 dated 12th September 2016 of Commissioner of Service Tax– II (Appeals), Mumbai by M/s Instrumentation Limited who were aggrieved by the denial of refund of ₹ 25,16,924/-. The first appellate authority, while dealing with the appeal of the assessee against the order of the original authority, has concluded the proceedings on the ground of limitation under section 85 of Finance Act, 1994. The finding in the impugned order is that there has been a delay of 23 days beyond the period of two months prescribed in section 85 of Finance Act, 1994.

2. None appeared on behalf of the appellant. Heard the Learned Authorised Representative.

3. On a perusal of the order-in-original it is seen that the second paragraph in the pre-amble to the order has intimated a time-limit of three months for filing appeal before the first appellate authority. It was pleaded before the first appellate authority that the appeal was filed beyond the period of two months on the presumption that this instruction in the pre-amble reflected the statute.

4. In view of the obvious mis-information which led to the consequences narrated above, the denial of a decision on merit on the part of the first appellate authority, who should have condoned the delay on the circumstances alone, is not in accordance with law. Consequently, the impugned order is set aside and the matter remanded back to the first appellate authority for a decision on merit.

(Pronounced in Court)

(C J Mathew)
Member (Technical)

**/as*