

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

**APPLICATION NO: ST/COD/86746/2018
IN
APPEAL NO: ST/89394/2018**

[Arising out of Order-in-Appeal No: NSK/ EXCUS/000/APPL/223/
17-18 dated 21.02.2018 passed by the Commissioner (Appeal)
Customs, Central Excise & Service Tax, Aurangabad]

Muktabai Govind Pawar

Appellant

versus

Commissioner of Customs, Central
Excise & Service Tax, Aurangabad

Respondent

Appearance:

None for appellant

Shri Dilip Shinde, Assistant Commissioner (AR) for respondent

CORAM:

Hon'ble Shri S.K. Mohanty, Member (Judicial)

Hon'ble Shri Sanjiv Srivastava, Member (Technical)

Date of hearing: 28/12/2018

Date of decision: 28/12/2018

ORDER NO: A/88262/2018

Per: S.K. Mohanty

None appeared for the appellant, despite notice. Heard the
Learned DR for Revenue.

2. There is delay of 29 days in filing this appeal before the
Tribunal. The reason of delay as explained by the appellant in the

COD application seems reasonable. Accordingly, in the interest of justice, the delay in filing of appeal is condoned.

3. Since the issue lies in the narrow compass, the appeal is taken up for hearing and disposal today. The Learned Commissioner (Appeals) vide the impugned order dated 21.02.2018 has dismissed the appeal filed by the appellant on the ground that the appeal was presented before him after the stipulated time frame prescribed under Section 85 of the Finance act, 1994. On perusal of the findings recorded in the impugned order, we find that the adjudication order was received by the appellant on 28.03.2015 and thereafter, the appeal was preferred before the office of the Learned Commissioner (Appeals) on 22.07.2015. So far as the time limit of filing of appeal before the Commissioner (Appeals) is concerned, Section 85 of the Act provides that same should be filed within a period of 2 months from the date of receipt of the decision or order passed by the adjudicating authority. Under the proviso appended to sub-Section (3A) of Section 85 of the Act, the Commissioner (Appeals) is empowered to condone the delay or to allow filing of appeal within a further period of one month thereafter. On plain reading of the above statutory provisions, it transpires that the Commissioner (Appeals) is not empowered to condone the delay in late filling of appeal beyond the statutory limit of three months. In this case, since admittedly the appeal was filed beyond three months from the date of receipt of the

adjudication order, the Learned Commissioner (Appeals) being a creature under the statute, has rightly dismissed the appeal filed by the appellant.

4. Thereafter we do not find any justifiable reason or ground to interfere with the impugned order passed by the Commissioner (Appeals). Accordingly, the appeal filed by the appellant is dismissed.

(Order dictated in Court)

(Sanjiv Srivastava)
Member (Technical)

(S.K. Mohanty)
Member (Judicial)