

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

Service Tax Early Hearing Application No. 86416 of 2024

in

Service Tax Appeal No. 87426 of 2024

(Arising out of Order-in-Appeal No. SK/129/Appeals-II/MC/2024-25
dated 25.06.2024 passed by Commissioner of CGST & Central Excise
(Appeals-II), Mumbai)

Shefali Dilip Potdar

.....Appellant

4/407, Siddhivinayak Building,
Bhagwatrao Paralkar Marg,
Parel village, Mumbai

Vs.

**Commissioner of CGST & Central Excise,
Mumbai Central**

.....Respondent

4th Floor, Central Excise Bldg, Churchgate,
Mumbai

APPEARANCE:

Shri Keval Shah, Chartered Accountant for the appellant
Shri Adeeb Pathan, Authorised Representative for the respondent

**CORAM: Hon'ble Mr C J Mathew, Member (Technical)
Hon'ble Mr Ajay Sharma, Member (Judicial)**

FINAL ORDER No: 85178/2025

DATE OF HEARING: 11-02-2025
DATE OF DECISION : 11-02-2025

Per: Coram

This application seeks 'out of turn' disposal of appeal no. ST/87426/2024 against order¹ of Commissioner of CGST & Central Excise (Appeals-II), Mumbai.

2. Learned Counsel for applicant submitted that the first appellate authority had dismissed their appeal, and without going into the merits, on the finding that the appeal has been filed beyond the period of two months from date of receipt of order under challenge as prescribed in section 85 of Finance Act, 1994. It was contended that reason for condonation of delay, as set out in section 85 of Finance Act, 1994, including that of delay in receipt of the order had been furnished in a separate application.

3. We have heard Learned Authorised Representative.

4. Considering the limited issue involved in this appeal, we allow this application.

5. In view of narrow compass within which relief has been sought, with consent of both sides, the records were called for from Registry for disposal of the appeal itself. On perusal, it is seen that the first appellate authority had not considered the application for condonation of delay and proceeded to dispose off the appeal solely on the elapse of time between issue of order and filing of appeal without taking into

¹ order-in-appeal no. SK/129/Appeals-II/MC/2024-25 dated 25th June 2024

account

‘within two months from the date of receipt of ... the order of such adjudicating authority’

as set out in section 85 of Finance Act, 1994.

6. Considering the non-disposal of the plea in application for condonation of delay despite noting that the said application has been received, the maintainability in terms of section 85 of Finance Act, 1994 would need to be decided afresh. To enable that, we remand the matter to the first appellate authority to decide on the application and thereafter, if warranted by law, to proceed to dispose of the appeal on merits.

(Dictated and pronounced in open Court)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

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