

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

WEST ZONAL BENCH, MUMBAI

**Service Tax Appeal No. 85342 of 2024**

(Arising out of Order-in-Appeal No. PUN-CT-APP II-(DB)-086-2023-24 dated 31.10.2023 passed by the Commissioner of Central Tax (Appeals-II), Pune.)

**M/s Janseva Enterprising Corporation** .....Appellant  
**759/55B, Janseva Bhojanalay,**  
**Deccan Gymkhana Club,**  
**Pune – 411 004**

*VERSUS*

**Commissioner of Central Excise &** .....Respondent  
**Service Tax, Pune-II**  
**ICE House, 41-A, Sasoon Road,**  
**Central Excise Colony, Sangmvadi,**  
**Pune – 411 001**

**APPEARANCE:**

Shri M.P. Joshi, Advocate for the Appellant  
Shri Dhananjay Dahiwal, Deputy Commissioner, Authorised Representative  
for the Respondent

CORAM:

**HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)**

**FINAL ORDER NO. 86809/2025**

Date of Hearing: 17.11.2025

Date of Decision: 17.11.2025

Appeal is heard from both the sides.

2. Learned Counsel for the Appellant submits that they had received the Order-in-Original on 06.05.2023, which remain undisputed but due to technical difficulty online payment could not be made as Department was in the process of migration to a new website from its old website, for which they have been approached the Nodal Officer and generated a ticket bearing No. 202307064621860 and

ultimately got the password on 17.08.2023 after which they had taken certain time to arrange pre-deposit money on 11.09.2023 and ultimately filed the appeal on 04.10.2023 and if the period from which Department's website was down was to be taken into consideration for computation, there was absolutely no delay in filing of the appeal but learned Commissioner (Appeals) had mentioned in his order that ground of condonation of delay was solely none availability of Managing Director at the relevant time and dismissed the appeal without even noticing the Appellant, which is not in compliance to the provision contained in Section 35A(4) of the Central Excise Act, which is equally applicable to Service Tax matters in view of operation of Section 85(5) of the Finance Act, 1994.

3. Learned Authorised Representative objects the submission on the ground that Commissioner (Appeals) had no power to condone the delay beyond 30 days after expiry of statutory period of 60 days meant for filing of the appeal and he has clearly noted the same in para 5.1 of his order as well as referred to relevant provision namely Section 85(3A) of the Finance Act 1994, for which he sought for no interference in the order passed by the Commissioner (Appeals).

3. I have going through the appeal paper book as well as taken note of the submissions made by the parties. It is an undisputed fact that regarding none acceptance of the system due to upgradation made by the Department, no user ID and password could be generated by the Appellant, for which a defect removal ticket was generated in the system by the Appellant and by the time the defect was removed, condonation period available with the Commissioner (Appeals) was already over but in such a circumstances, Commissioner (Appeals) should have applied the *ratio* contained in the judgment passed by Hon'ble Supreme Court in *M.P. Steel Corporation Vs. Commissioner of Central Excise* reported in 2017 (50) STR 205 (S.C.) and taking inspirit of the provision contained in the Indian Limitation Act, should have computed the period (not condoned) by excluding the period up to 17.08.2023 or else he could have rejected the appeal without admitting the same, since it is a settled principle of law that once

appeal is admitted for hearing, it can't be disposed of solely on the ground of limitation and without hearing the parties.

4. Having regard to the legal and factual position, I am of the view that learned Commissioner (Appeals) should have gone into the grounds of delay mentioned in the condonation petition, copy of which is also available at his end and find out a distinction between 'computation of period of limitation' and 'condonation of the period of limitation' so as to exclude the period for which appeal could not be filed because the technical glitch in the system. I, therefore, find it to be a fit case which is required to be remanded back to the Commissioner (Appeals) for hearing afresh on both the limitation ground as well as other legal and factual points. Hence the order.

#### THE ORDER

5. The appeal is allowed by way of remand to the Commissioner (Appeals) in terms of the above observation and for that purpose the order passed by the Commissioner of Central Tax (Appeals-II), Pune *vide* Order-in-Appeal No. PUN-CT-APP II-(DB)-086-2023-24 dated 31.10.2023 is hereby set aside.

(Dictated & pronounced in the open Court)

**(Dr. Suvendu Kumar Pati)**  
**Member (Judicial)**