

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

WEST ZONAL BENCH, MUMBAI

Service Tax Appeal No. 87189 of 2023

(Arising out of Order-in-Appeal No. SK/CGST/A-I/Mum/105/23-24 dated 04.07.2023 passed by the Commissioner of CGST & Central Excise (Appeals-I), Mumbai.)

Mr. Harish Sheena Poojary

.....Appellant

**66/70, Ground Floor, Maharaja Bldg.,
Bora Bazar Street, Fort,
Mumbai – 400 001**

VERSUS

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

.....Respondent

**Meher Building, Dadi Seth Lane,
Girgaon Chowpatti, Mumbai – 400 007**

APPEARANCE:

Shri Paras Veera, C.A. 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. 86808/2025

Date of Hearing: 13.11.2025

Date of Decision: 13.11.2025

Appeal is heard from both the sides.

2. Learned Counsel for the Appellant submits that Order-in-Original was passed on 18.08.2022 and taking the same date, that is inadvertently mentioned in Form No. ST-4 as date of receipt of the order, the Commissioner (Appeals) had passed his order rejecting the appeal on the ground of limitation since it was filed beyond the condonable period available with the Commissioner (Appeals) that is

after 90 days of receipt of the order but in fact, the order was dispatched to the Appellant on 22.08.2022, as could be noticed from the copy of the order received by the Appellant that was subsequently received by the Appellant but if the date of dispatched i.e. 22.08.2022 is taken as the date of receipt, the appeal was filed within 89 days of receipt of the order which was well within the condonable period available with the Commissioner (Appeals), to which effect Appellant had submitted a separate delay condonation application justifying the grounds of delay, as being completely illiterate and unable to find a knowledgeable person in his locality who could explain the order to him. He further submits that Appellant has a good case on merit and if delay is condoned he would get substantially justice from this forum.

2. Learned Authorised Representative objects the petition on the ground that in Form No. ST-4, Appellant himself has mentioned the date of receipt as 18.08.2022, which is noted in the order passed by the Commissioner (Appeals) at para 17 as self-admitted fact and that in view of the settled law pronounced by Hon'ble Apex Court in *M/s. Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur* case decided on 14.12.2007, [2008 (221) ELT 163 (SC)], Commissioner (Appeals) can't condone the delay and therefore, interference in the order passed by the Commissioner (Appeals) is uncalled for.

3. I have going through the appeal paper book, the order passed by the Commissioner (Appeals) and other relied upon documents available on record. As could be noticed, the served copy of Order-in-Original on the Appellant indicates that it was dispatched to the Appellant on 22.08.2022, though copy of Form No. ST-4 indicates that Appellant had received the copy on 18.08.2022, which learned Counsel for the Appellant indicates that it was a typographical error as the date of passing of Order-in-Original is inadvertently reflected in the column of receipt of order. The justification offered by Appellant appears quite reasonable since under no circumstances, the order copy served on

Appellant would bear a date of 22.08.2022, which is 4 days after the alleged date of service. I, therefore, find it to be a fit case where the appeal is required to be admitted for hearing but as because learned Commissioner (Appeals) had not passed the order in conformity to 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, in stating the point for determination, the decision thereon and the reason for such decision and dismissed the appeal only on ground of limitation, the matter is required to be remanded back to the Commissioner (Appeals) for a hearing afresh. Therefore, in exercise of Appellate power available with this Tribunal, delay of 29 days in filing of appeal before the Commissioner (Appeals) is hereby condoned at this end and the matter is remanded back to the Commissioner (Appeals) with the above observation.

THE ORDER

4. The appeal is allowed by way of remand to the Commissioner (Appeals) for re-hearing after condonation of delay of 29 days at this end and for this purpose the order passed by the Commissioner of CGST & Central Excise (Appeals-I), Mumbai *vide* Order-in-Appeal No. SK/CGST/A-I/Mum/105/23-24 dated 04.07.2023 is hereby set aside.

(Dictated & pronounced in the open Court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)