

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

**WEST ZONAL BENCH**

**SERVICE TAX APPEAL NO: 85662 OF 2017**

[Arising out of Order-in-Appeal No: MUM-SVTAX-002-APP-671-16-17 dated 30<sup>th</sup> December 2016 passed by the Commissioner of Service Tax – II (Appeals), Mumbai.]

**R & S (India) Electronic Pvt Ltd**

Plot No.104, 2<sup>nd</sup> Floor, Kailashpati, Veers Desai Marg  
Andheri West, Mumbai – 400 053

*... Appellant*

*versus*

**Commissioner of CGST & Central Excise**

**Mumbai West**

115, New Central Excise Bldg, MK Road  
Charchgate, Mumbai – 400 020.

*...Respondent*

APPEARANCE:

Ms Supriya Singh, Advocate for the appellant

Shri Dhananjay Dahiwal, Deputy Commissioner (AR) for the respondent

**CORAM:**

**HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)**

**HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)**

**FINAL ORDER NO: 86812/2025**

DATE OF HEARING: 17/11/2025

DATE OF DECISION: 17/11/2025

PER: C J MATHEW

In this appeal of M/s R & S (India) Electronic Pvt Ltd, the sole issue for determination is the correctness of dismissal of their appeal

against order of the original authority at the threshold by order<sup>1</sup> of Commissioner of Service Tax – II (Appeals), Mumbai for not having been filed within two months, as prescribed in section 85 of Finance Act, 1994 with effect from 28<sup>th</sup> May 2012 of Finance Act, 2012, and without application for condonation of delay of upto one month within the empowerment afforded therein. By incorporation of sub section (3A) therein, section 85 of Finance Act, 1994 substituted the limit of three months for filing of first appeal with two months besides permitting condonation of delay of one month on sufficient cause being shown. From the tenor of the impugned order, it is apparent that the appeal was, indeed, filed within the condonable limit and failed solely for reason of not having been sought by proper application,

2. We note that the order of the original authority, dated 18<sup>th</sup> December 2012 and recorded as issued on 20<sup>th</sup> December 2012, was impugned in appeal dated 20<sup>th</sup> February 2013. There is no controversy over the date of service of notice and both sides appear to have settled on date of issue as date of service; accordingly, the ground on which the appeal was dismissed appears to be that the filing of 20<sup>th</sup> February 2013 instead of 19<sup>th</sup> February 2013 without application for condonation of delay precluded sufficient cause for entertaining the appeal on merits.

3. Learned Counsel for the appellant, while conceding the

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<sup>1</sup> [order-in-appeal no. MUM-SVTAX-002-APP-671-16-17 dated 30<sup>th</sup> December 2016]

prescriptions in law as amended, submitted that the first appellate authority should have placed them on notice about the deficiency and, particularly so, as the limitation had been recently substituted with the preamble to the order impugned stipulating the erstwhile prescriptions. It was submitted that the applicability of the threshold prescription was brought to their notice in the order now impugned in appeal and leaving them no alternative under law except to seek restoration through further appellate remedy. According to her, the appeal had been filed within the period stipulated in the preamble to the order of the original authority and that, even if the revised limitation was to apply, the date of receipt was to be excluded from computation of 'two months' as set out in General Clauses Act, 1897 rendering their appeal before first appellate authority to be maintainable.

4. We have heard Learned Authorized Representative.

5. It is on record that the appeal was filed a day later than two months from the date of order impugned in that proceedings. Consequent to the amendment effected in section 85(3A) of Finance Act, 1994, the period for filing of appeal was reduced from three months to two months with delay of further month condonable by first appellate authority upon sufficient cause being shown. With the appeal having been filed in conformity with communication of the order impugned, the absence of opportunity to seek condonation should have

been taken cognizance of by the first appellate authority and deficiency brought to the notice of the appellant. Even otherwise, sufficient cause was evident on record to exercise the empowerment. That, apparently, did not occur to the first appellate authority.

6. In any case, it is seen that the order impugned before the first appellate authority was issued on 20<sup>th</sup> December 2012 and, as pointed out on behalf of the appellant herein, the date of receipt was to be excluded for the purpose of computation and, thus, maintainable in law. There was also no reason for the appeal not to be heard on merits as the period of limitation, even if applicable, was expandable. Consequently, we set aside the impugned order and remand the matter back to the first appellate authority to decide the appeal on merits after giving due hearing to the appellant.

7. Appeal is allowed by way of remand.

*(Operative portion of the order pronounced in the open court on 17<sup>th</sup> November 2025)*

**(AJAY SHARMA)**  
***Member (Judicial)***

**(C J MATHEW)**  
***Member (Technical)***