

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
WEST ZONAL BENCH

Service Tax Appeal No. 87622 of 2023

(Arising out of Order-in-Appeal No. CSM-79-RGD-APP-2023-24 dated 27.06.2023 passed by the Commissioner of CGST & C.EX (Appeals), Raigad)

Shankar Laxman Jadhav

.....Appellant

Amanchi Legal & Co Advocates
113 Swastik Plaza 1st Floor
Pokharan Road no. 2, Thane West

VERSUS

Commissioner of CGST & Central Excise,Respondent

10th Floor, Satra Plaza, Palm Beach Road,
Sector 19-D Vashi, Navi Mumbai

APPEARANCE:

Shri Vinay Kadam, Advocate for the appellant
Shri Dhananjay Dahiwale (AR) for the respondent

CORAM:

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

FINAL ORDER No: 86849/2025

DATE OF HEARING : 09.07.2025
DATE OF DECISION : 27.11.2025

Per: AJAY SHARMA

This appeal has been filed against the Order-in-Appeal dated 27.6.2023 whereby the learned Commissioner (Appeals) dismissed the Appeal filed by the appellant on the ground of limitation, holding that the appeal had been filed belatedly

without any application for condonation of delay explaining the reasons for the late filing of appeal.

2. Heard rival submissions and perused the case records. The Adjudicating Authority passed the Order-in-Original on 27.6.2022, the copy of which was communicated to the appellant on 4.7.2022. The 1st appeal against the said order came to be filed by the appellant on 3.10.2022. Learned counsel submits that the appeal without any application for condonation of delay was filed before the learned Commissioner solely due to an erroneous statement in the preamble to the Order-in-Original which categorically stated that an appeal against the said order can be filed within a period of *ninety days* from the date of communication of the order. In order to appreciate the submission, it is necessary to reproduce the relevant portion of the preamble to the said Order-in-Original dated 27.6.2022 as under:-

*"2. Any person deeming himself aggrieved by this order may appeal to the Additional Commissioner of Central Tax (Appeals), Raigad Appeals, having his office at 5th floor, CGO Complex, CBD Belapur, Navi Mumbai-400614. The appeal to the Commissioner of Central Tax (CGST & Central Excise): Raigad Appeals must be filed within a period of **Ninety days** from the date on which this order is communicated to him...[Emphasis supplied]"*

A perusal of the aforesaid preamble justifies the non-filing of any condonation of delay application by the appellant before the Commissioner (Appeals). There is no quarrel on the settled legal

position that preamble cannot override a statutory provision. Section 85 of the Finance Act unequivocally prescribes a limitation period of sixty days, from the communication of the order, for filing an appeal before the Commissioner (Appeals) with a further condonable period of thirty days.

3. Admittedly due to the preamble to the Order-in-Original (*sought to be appealed before Commissioner [Appeals]*) the appellant was prevented from filing any application for condonation of delay as ninety days period has been mentioned therein, which means that upto ninety days there will be no delay in filing the appeal. The preamble to the Order-in-Original does not merely contain an omission or ambiguity, but also contains a positive misstatement of legal provision. Such a misstatement is sufficient to create a legitimate expectation that an appeal within ninety days would be treated as filed within time. Where the authority itself furnishes an erroneous statutory prescription, the appellant cannot be faulted for acting upon. It is well recognized that a party should not suffer for the mistake of the authority, particularly when such mistake relates to the exercise of statutory remedy.

4. In this background, I am of the view that the dismissal of appeal by the Commissioner (Appeals) solely for non-filing of the application for condonation of delay cannot be sustained. The appellant deserves an opportunity to seek condonation of delay for filing the appeal beyond the prescribed period of *sixty days*.

Therefore the impugned order is set aside and the appeal is restored before the Commissioner (Appeals). The appellant is directed to file application for condonation of delay in filing the appeal before the first appellate authority i.e. Commissioner (Appeals). The learned Commissioner (Appeals) is expected to exercise the discretion keeping in mind that the delay was induced by an incorrect statement in the preamble to the Order-in-Original preventing the filing of appeal without any application for condonation of delay and to exercise the discretion judiciously and thereafter decide the appeal in accordance with law.

5. The appeal is accordingly allowed by way of remand.

(Pronounced in open Court on 27.11.2025)

(Ajay Sharma)
Member (Judicial)

//SR