

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

Service Tax Appeal No. 86643 OF 2024

(Arising out of Order-in-Appeal No. KKS/198/Appeals
Thane/BW/2023-24 dated 16.11.2023 passed by the Commissioner
of CGST & Central Excise (Appeals Thane), Mumbai)

Sayali Sunil Patil

.....Appellant

Shop no. 5, Crystal Apartment,
Wada Bhiwandi Road, Kudus, Tal. Wada,
Dist. Palghar

VERSUS

Commissioner of CGST, Bhiwandi

.....Respondent

12th Floor, Lotus Parel, Near Parel Station
Parel East, Thane

APPEARANCE:

Shri Mandar S Telang, Chartered Accountant for the appellant
Shri S B P Sinha (AR) for the respondent

CORAM:

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

FINAL ORDER No: 86848/2025

DATE OF HEARING : 14.07.2025
DATE OF DECISION : 27.11.2025

This appeal has been filed against the Order-in-Appeal dated 16.11.2023 whereby the learned Commissioner, CGST & Central Excise, Appeals Thane dismissed the Appeal filed by the appellant on the ground of limitation, without examining the matter on merits.

2. The Adjudicating Authority passed the Order-in-Original on 26.2.2021 during the period of pandemic restrictions and the appellant could not attend any hearing before the said authority due to circumstances arising of Covid-19 pandemic and stated to be not aware of the passing of the adjudication order. It is only in the month of July, 2021 upon receiving an e-mail from the department initiating recovery, she came to know about the passing of the Order-in-Original. She thereafter requested for a copy of the order, which was provided by the department.

3. On 17.11.2021, the appellant stated to have filed appeal before the learned Commissioner (Appeals) by registered post alongwith application for condonation of delay of few days which was served on the department on 18.11.2021. A copy of the postal acknowledgment evidencing the date 18.11.2021 has also been filed on record. According to learned Chartered Accountant, as the copy of the appeal received in the department on 18.11.2021 was found to be untraceable, the department required submission of another copy of the appeal, which was filed again on 18.11.2022 and the first Appellate Authority considering 18.11.2022 as the date of filing of Appeal, dismissed the same on the ground of limitation.

4. I have heard rival submissions and perused the case records. The specific ground taken in the appeal herein, which has nowhere rebutted by the department, reads as under:-

"6. The appellant presented an appeal against the said order on 17th November, 2021 by sending the memorandum of appeal by a registered post to the Commissioner (Appeals), 12th Floor, Lotus Info Centre Station Road, Parel (east), Mumbai – 400012. (The copy of ST-5, the acknowledgment of the Postal Department and the postal receipt is enclosed herewith). The said memorandum was served on 18th November, 2021. The appellant considered the date of letter dated 16th July, 2021 as the date of communication of order in Form ST-05. The Appellant also filed an application for condonation of delay stating that while the appeal is required to be filed within 2 months i.e. by 16th September, 2021, the same is being presented for appeal on 17th November, 2021 and hence there is a delay in filing the appeal. It's worthwhile to note that as per the Supreme Court's order dated 10.01.2022 in Miscellaneous Application No. 21 of 2022 and 665 of 2021 in Suo Moto Writ Petition (C) No. 3/2020, it was directed that the period from 15-03-2020 to 28-02-2022 was excluded for the purpose of limitation. Consequently, the appeal presented by the appellant was well within the extended time limits.

7. The said appeal memorandum was not traceable at the office of the Commissioner (Appeals) and hence the appellant once again submitted the appeal memorandum on 18.11.2022."

The department has not disputed the aforementioned facts anywhere. If there is no rebuttal of any plea, that plea is presumed to be true. Such facts/plea are taken at their face value. The postal acknowledgement of '18 Nov. 2021' at page 38 of the appeal herein substantiates the appellant's stand.

5. Although the Order-in-Original is dated 26.2.2021 but the appellant admittedly received the copy only in July, 2021. From July, 2021 until the dispatch of appeal on 17/18.11.2021 there

would have been some delay under normal circumstance. However during the Covid-19 pandemic, the Hon'ble Supreme Court in *Suo Moto Writ Petition (C) No. 3 of 2020* passed several orders from time to time extending limitations, and in its order dated 10.1.2022, directed that the period from 15.3.2020 to 28.2.2022 shall stand excluded for the purpose of limitation. Any order or direction of the Hon'ble Supreme Court is binding and constitutes the law of the land. Therefore, in view of the order of the Hon'ble Supreme Court, the appeal sent by registered post on 17.11.2021 was well within the extended period of limitation, and no delay existed which required condonation.

6. In the light of these facts, I am of the considered opinion that the learned Commissioner (Appeals) erred in dismissing the appeal as time-barred. There was no delay in filing the appeal before the 1st appellate authority and hence the order impugned herein is set aside. The appeal is remanded to the Commissioner (Appeals) for decision on merits after providing reasonable opportunity of hearing to the appellant and to decide the appeal after following the principles of natural justice.

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

(Pronounced in open Court on 27.11.2025)

(Ajay Sharma)
Member (Judicial)

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