

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

SERVICE TAX APPEAL No.85835 OF 2024

[Arising out of Order-in-Appeal No.SK-559-APPEALS-II-MC-2023-24 17.1.2024 passed by the Commissioner of CGST & Central Excise (Appeals-II), Mumbai, 3rd Floor, GST Bhavan, Plot No.C-24, BKC, Bandra East, Mumbai-400051]

JETHA BUSINESS SERVICES PVT LTD

Sewree West, Mumbai-400015

Appellant

Vs.

**COMMISSIONER OF CGST AND CENTRAL
EXCISE, MUMBAI CENTRAL**

4th Floor, Central Excise Building,
Churchgate, Mumbai-400020

Respondent

Appearance:

Present for the Appellant: Shri Neerav Manikar, Advocate
Present for the Respondent: Shri Dhananjay Dahiwalé (AR)

CORAM:

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

FINAL ORDER NO.86891/2025

Date of Hearing: 15.07.2025

Date of Decision: 04.12.2025

PER: AJAY SHARMA

This appeal has been filed assailing the Order-in-Appeal dated 17.1.2024 whereby the Commissioner (Appeals-II), CGST & Central Excise, Mumbai rejected the appeal filed by the appellant on the grounds of limitation as well as non filing of board resolution authorizing the signatory at the time of filing of appeal.

2. According to learned Commissioner, the Board Resolution dated 25.10.2023 authorised the signatory to sign the vakalatnama/authorization, whereas the appeal has already been filed earlier on 19.12.2022. Thus at the time of filing of appeal, the authorization was not there which, according to learned

Commissioner, is a serious defect that rendered the appeal incomplete as prescribed under Central Excise Rules, 2001. Regarding limitation, it has been recorded in the impugned order that the Order-in-Original was issued on 14.10.2022 and as per form ST-4 the same was communicated/received on the same day i.e. 14.10.2022 whereas the appeal was filed on 19.12.2022 which was 6 days beyond the normal period of limitation period of two months. But no application for condonation of delay was filed alongwith the appeal before the Commissioner.

3. According to learned counsel for the appellant there was no delay in filing the appeal before the learned Commissioner and that the appeal was filed within the prescribed limitation period. The Order-in-Original dated 14.10.2022 was actually served on the appellant on 20.10.2022. The Adjudicating Authority itself sent the order for dispatch to the postal department on 18.10.2022 which is evident from the last page of the adjudication order. But inadvertently the appellant mentioned the date of receipt as 14.10.2022 in Form ST-4 while filing the appeal, which led to the erroneous conclusion regarding delay. Substantiating the submission, learned counsel placed on record the India Post tracking report confirming delivery on 20.10.2022.

4. So far as non-furnishing the authorization of Board Resolution at the time of filing of appeal is concerned, learned counsel submits that this was only a procedural lapse and was subsequently rectified during the pendency of the appeal. The same was noted by the said authority as well. According to learned Counsel, no such deficiency issue had been raised by the learned Commissioner at any stage of

the hearing and once the defect stood cured, there was no justification to dismiss the appeal on this ground.

5. Heard the rival submissions and perused case records. The India post tracking report clearly demonstrate that the Order-in-Original dated 14.10.2022 was received by the appellant on 20.10.2022. An inadvertent mention of incorrect date in Form ST-4 cannot override documentary evidence. Counting limitation from 20.10.2022, the filing of appeal before the 1st appellate authority on 19.12.2022 is well within the prescribed period of limitation without any requirement of application for condonation of delay. Coming to the issue of non-filing of authorization, it is not the case herein that authorization has not been filed at all. The issue is only about delayed filing of the Board's resolution in the appeal that has already been filed. Non-filing of the authorization at the time of filing of appeal is a procedural lapse which was cured during the pendency of the appeal. Such a procedural lapse, once cured, cannot be made a ground for dismissal of appeal. For any procedural lapse, a statutory right of appeal cannot be denied. The learned Commissioner ought to have decided the appeal on merits instead of rejecting it on curable technicality.

6. In view of the discussions made hereinabove, without going into the merits of the appeal, the impugned order is set aside. The appeal is restored to the file of the Commissioner (Appeals) for deciding the same on merits after granting a reasonable opportunity of hearing to the appellant and following the principles of natural justice.

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

(Pronounced in open Court on 04.12.2025)

(Ajay Sharma)
Member (Judicial)

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