CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Miscellaneous Application No. 85331 of 2026
In
Service Tax Appeal No. 86651 of 2019

[Arising out of Order-in-Appeal No. NGP/EXCUS/000/APPL/549-50/18-19 dated 19.03.2019 passed by Commissioner (Appeals), GST & Central Excise, Nagpur]

M/s. Shah Nanji Nagsi Exports Pvt. Ltd. **.... Appellant**
Anaj Bazar, Opposite Amardeep Talkies,
Itwari- Nagpur- 440 002.

Versus

Commissioner of Central Excise, Nagpur **.... Respondent**
GST Bhavan, 2nd Floor,
Room No. 221, Telangkhedi Road,
Civil Line, Nagpur- 440 001.

With

Service Tax Appeal No. 86513 of 2026

[Arising out of Order-in-Appeal No. NGP/EXCUS/000/APPL/549-50/18-19 dated 19.03.2019 passed by Commissioner (Appeals), GST & Central Excise, Nagpur]

M/s. Shah Nanji Nagsi Exports Pvt. Ltd. **.... Appellant**
Anaj Bazar, Opposite Amardeep Talkies,
Itwari- Nagpur- 440 002.

Versus

Commissioner of Central Excise, Nagpur **.... Respondent**
GST Bhavan, 2nd Floor,
Room No. 221, Telangkhedi Road,
Civil Line, Nagpur- 440 001.

Appearance:

Shri H.G. Dharmadhikari, Advocate for the Appellants
Shri Dhananjay Dahiwale, Authorized Representative for the Respondents

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86202-86203/2026

Date of Hearing: 23.09.2026
Date of Decision: 23.09.2026

Per: S.K. MOHANTY

Heard both sides and perused the case records.

2. Revenue has filed this miscellaneous application, praying for amendment of the cause title in the appeal filed by appellant. It has been stated that the respondent's name and address appearing in the appeal memorandum as '*Commissioner of Central Excise, Nagpur*', may be changed and to be read as "*Commissioner of CGST & CX, Nagpur-II*", P.O. Box No.81, Telangkhedi Road, Civil Lines, Nagpur – 440 001, consequent to change in the jurisdiction of such adjudicating authority. Prayer made by the Revenue is considered and accordingly, the changed name and jurisdiction of the respondent has been incorporated in the appeal records. Miscellaneous application stands disposed of.

3. Rejection of rebate claims is the subject matter of the present dispute in these appeals.

4. I find that the appeals filed against the adjudication orders dated 21.02.2018 and 17.04.2018 were dismissed by the learned Commissioner (Appeals), GST & Central Excise, Nagpur on the ground of limitation, holding that the appeals in respect of the said adjudication orders were filed on 21.02.2019, causing a delay of 10 & 12 months from the date of the receipt of the said orders. In support of dismissal of the appeals, the learned Commissioner (Appeals) vide paragraph 22 in the impugned order, has relied upon the orders passed by the Co-ordinate Bench of the Tribunal, which is to the effect that condonation of delay fixed by the statute cannot be enlarged beyond three months, in terms of Section 128 of the Customs Act, 1962 (*pari materia* with the provisions under Section 85 of the Finance Act, 1994). It was further held that the appellate authority has no jurisdiction to extend limitation, even in a 'suitable' case, for a further period of more than thirty days.

5. Learned Advocate for the appellant has placed reliance on the judgment of the Hon'ble Supreme Court, in the case of *Kailash Vs. Nankhu and Others* – (2005) 4 SCC 480, to state that the provisions contained in Section 85(3A) for filing of appeals before the Commissioner (Appeals) is directory and the statutory right of appeal conferred on the appellant cannot be whittled down on technical ground of limitation.

6. Learned Authorized Representative (AR) appearing for Revenue has also relied upon various judicial pronouncements, including judgement of Hon'ble Supreme Court, delivered in the case of *Singh Enterprises Vs.*

Commissioner of C. Ex., Jamshedpur – 2008 (221) E.L.T. 163 (S.C.), to state and submit that dismissal of appeals by the learned Commissioner (Appeals) is in conformity with the statutory provisions and the said order cannot be disturbed for a contra decision at this juncture.

7. Insofar as the time limit of filing of appeal before the Commissioner (Appeals) is concerned, sub-section (3A) of Section 85 of the Finance Act, 1994 mandates that an appeal 'shall' be presented within two months from the date of receipt of the order passed by the adjudicating authority. The proviso clause appended to sub-section (3A) *ibid*, grants the discretion to the Commissioner (Appeals) for condoning the delay of further period of one month, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the prescribed time period of two months. On reading of the said statutory provision, it would transpire that beyond period of three months from the date of receipt of the adjudication order, the Commissioner (Appeals) is not statutorily empowered to entertain the appeal, for a decision on merits. In the cases in hand, since there is delay of more than ten & twelve months from the date of receipt of adjudication orders, in my considered view, the learned Commissioner (Appeals) has correctly dismissed the appeals on the ground of time bar aspect.

8. I find that the issue with regard to condonation of delay in filing of appeal beyond the statutorily prescribed time limit, has been dealt with by the Hon'ble Supreme Court in the case of *Singh Enterprises* (supra). The relevant paragraph recorded in said judgement is extracted herein below:

> *"8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of Statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the Statute. The period upto which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Indian Limitation Act, 1963 (in short the 'Limitation Act') can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that*

> *the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period."*

9.1 I find that in the case of *Kailash* (supra), relied upon by the learned Advocate, the Hon'ble Supreme Court at paragraph 5, point no. (3) have framed the question, "*Whether the time limit of 90 days as prescribed by the Proviso appended to Rule 1 of Order VIII of the CPC is mandatory or directory in nature?".* While answering such question, the Hon'ble Court have held that though a time line has been prescribed, but the provisions in the said Rule of the CPC "*does not deal with the power of the court and also does not specifically take away the power of the court to take the written statement on record, though filed beyond the time as provided for*.".

9.2 On reading of the above quoted sentences (supra), as recorded in the judgement of the Hon'ble Supreme Court, it would transpire that Rule 1 of Order VIII of the CPC nowhere, has debarred the court's power of jurisdiction for entertaining the written statement, which is filed beyond the stipulated time frame. In other words, the said rule is silent to the issue of competence of the Court to entertain certain statement, if filed, beyond the time frame provided in the said rule. Considering such aspect, the Hon'ble Court have held that though Order VIII, Rule 1 provides for the 'normal' and 'maximum' time, within which the defendant shall be allowed to file such statement, but the said provision does not curtail down the power of the Court, either for entertaining or not entertaining such statement of the defendant, if filed subsequently. However, contrary is the case involved in the present appeals, inasmuch as the proviso appended to sub-section (3A) to Section 85 of the Finance Act, 1994 has specifically taken away the power from the appellate authority i.e., the Commissioner (Appeals) for entertaining the appeal, if filed, beyond the 'condonable period' of one month, subsequent to the 'normal period' of two months. The Commissioner (Appeals) being a creature under the statute, his role is confined only to adherence of the statutory provisions and he is not competent to apply his discretion to decide the delay condonation application differently, than that provided in the statute.

9.3 The Appellate Tribunal is vested with the power under Section 86 of the Act of 1994 to deal with the order passed by the Commissioner (Appeals) under Section 85 ibid. Sub-section (7) of Section 86 ibid has provided that in hearing the appeals and making orders under this section, the Appellate Tribunal shall exercise the same powers and follow the same procedure, as it exercises and follows in hearing the appeal and making orders under the Central Excise Act, 1944. Section 35C of the Act of 1944 has provided the manner of passing of the orders by the Appellate Tribunal. It has been mandated therein that the Appellate Tribunal may, pass such orders on the appeal, as it thinks fit, confirming, modifying or annulling the decision or order appealed against. Since, the impugned order was passed by the learned Commissioner (Appeals) in confirmation with the statutory time frame, it cannot be said that the said order is not proper and as such, it can be modified or cancelled/nullified.

10. In view of the forgoing discussions, I do not find any infirmity in the impugned order passed by the learned Commissioner (Appeals), in dismissing the appeals filed by the appellant. Therefore, these appeals filed by the appellant are dismissed.

(Operative portion of the order pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

SM