

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 2

Service Tax Appeal No. 21314 of 2018

(Arising out of Order-in-Appeal No. 682/2018 dated 28.06.2018 passed by the Commissioner of Central Tax (Appeals - I), Bangalore.)

**M/s. Simplilearn Solutions
Private Limited**

Manoj Arcade, No. 52/1C, 24th Main,
2nd Sector, HSR Layout,
Bangalore - 560 102.

Appellant(s)

VERSUS

Commissioner of Central Tax,

Bangalore South Commissionerate
Traffic Transit Management Centre,
4th Floor, Above BMTB Bus Stand,
Old Airport Road,
Bangalore - 560 071.

Respondent(s)

APPEARANCE:

Mr. Abhi, Ms. Kruthika and Mr. Ramakrishna, Chartered Accountants (CA) for the Appellant

Mr. M.A. Jithendra, Asst. Commr. (AR) for the Respondent

CORAM:

HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)

HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

INTERIM ORDER NO.1/2025 DT. 18.11.2025
INTERIM ORDER NO.5/2026 DT. 06.05.2026

Final Order No. 20699 /2026

DATE OF HEARING: 27.05.2026

DATE OF DECISION: 27.05.2026

PER : P.A. AUGUSTIAN

The issue in the present appeal is whether the Appellant had filed appeal before the Lower authority within the statutory period or not.

2. Appellant is providing various service. Since they are not in a position to utilize the CENVAT credit availed in the production of taxable services exported during the period from October, 2015 to December, 2016, refund application was filed under Rule 5 of the CENVAT Credit Rules, 2005 r/w Notification

No. 27/2012-CE (NT) dated 18.06.2012. However Adjudication authority rejected the refund claim on the ground that the refund claim was filed only on 31.03.2017 for the services expired during the quarter of October, 2015 to December, 2015 and it is barred by limitation. Aggrieved by said order, an appeal was filed before the Commissioner (Appeals). The Commissioner (Appeals) dismissed the appeal with an observation that the appeal is filed after delay of 77 days from the due date for filing the appeal. Aggrieved by the said order, present appeal is filed.

3. When the appeal came up for hearing, the Learned Chartered Accountant for the Appellant draw our attention to Section 37C of Central Excise Act which is reproduced below:-

“a) Any decision or order passed, or any summons or notices issued under this Act or the rules made thereunder, shall be served.

(i) by tendering the decision, order, summons or notice, or sending it by registered post with acknowledgment due, or by speed post with proof of delivery or by courier approved by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) to the person for whom it is intended or his authorized agent, if any;

(ii) if the decision, order, summons or notice cannot be served in the manner provided in clause (a), by affixing a copy thereof to some conspicuous part of the factory or warehouse or other place of business or usual place of residence of the person for whom such decision, order, summons or notice, as the case may be, is intended;

(iii) if the decision, order, summons or notice cannot be served in the manner provided in clauses (a) and (b), by affixing a copy thereof on the notice board of the officer or authority who or which passed such decision or order or issued such summons or notice.

b) Every decision or order passed or any summons or notice issued under this Act or the rules made thereunder, shall be deemed to have been served on the date on which the decision, order, summons or notice is tendered or delivered by post or courier referred to in sub-section (1) or a copy thereof is affixed in the manner provided in sub-Section(1)".

4. The Learned Chartered Accountant further submits that since the impugned order was not served through registered post, the date of service of the notice cannot be considered from the date of receipt of the same by their representative. The Learned Chartered Accountant further submits that the due date for filing the appeal has to be calculated from the date of service of the Order-in-Original to the Appellant and not to be calculated from the date of issuance of Order-in-Original.

5. The Learned AR strongly objected to the appeal and also produced the letter dated 16.10.2024 along with the records of the personal hearing conducted on 26.12.2017 and a copy of the Order-in-Original with an endorsement that the Authorized Representative of the Appellant Shri. K Shivaprasad received the order on 02.01.2018.

6. Heard both sides. As per the impugned order, the Appellate authority dismissed the appeal on the ground that the appeal is beyond the period of 77 days from the due date of filing the appeal with the following finding:-

"3. The personal hearing was held on 28-06-2018 wherein the authorized representative of the appellant appeared for the hearing. He was informed that the hearing was being conducted for the limited purpose to decide on the admittance of the appeal or otherwise and also to ascertain the reasons for the delay in filing the appeal beyond the condonable period of 30 days. The authorized representative while conceding the delay in filing the appeal, contended that the delay was due to the fact that the department did not serve the OIO in time and the appellant was only given a copy of the OIO based on which he could not file the appeal. This is a specious argument. Nowhere does the statute preclude the appellant from

filing the appeal on the basis of a photocopy of the OIO It is another matter that even the refund claim itself is hit by limitation of time”.

7. Further as per the evidence produced by the Learned AR, there is an endorsement by Shri. K Shivaprasad who is authorised by the Appellant to appear on behalf of the Appellant in personal hearing along with Chartered Accountant Shri. Abhi Parakh before the Adjudication authority that the order is received on 02.01.2018. Though the Commissioner (Appeals) stated that the appeal is filed beyond the period of 77 days, considering the facts and circumstances of the case, it is evident that employee of the Appellant who is authorised by the Appellant to appear before Adjudication authority along with Chartered Accountant Shri. Abhi Parakh has received copy of the order on 02.01.2018. However when the Appellant took said contention before the first Appellate authority, it is held that “This is a specious argument. Nowhere does the statute preclude the appellant from filing the appeal on the basis of a photocopy of the OIO”. But as per the Rule 4 of the Central Excise (Appeals), Rules, 2001:-

(1) An application under sub-section (4) of section 35E of the Act to the Commissioner (Appeals) shall be made in Form No. E.A.-2.

(2) The form of application in Form No. E.A.-2 shall be filed in duplicate and shall be accompanied by **a certified copy of the decision or order** passed by the adjudicating authority and a copy of the order passed by the Commissioner of Central Excise directing such authority to apply to the Commissioner (Appeals).

Facts being so, no appeal can be filed in the absence of certified copy of the order and the finding of the Commissioner (Appeals) that nowhere does the statute preclude the appellant from filing the appeal on the basis of a photocopy of the OIO is not legally sustainable. As per the evidence produced by the Learned AR, Shri K Siva Prasad is authorised by the Appellant to appear on behalf of the Appellant in personal hearing along with

Chartered Accountant Shri Abhi Parakh before the Adjudication authority and he had received order on 02.01.2018. But there is no evidence on record to prove that said Shri K Siva Prasad is Authorised by Appellant to receive order on behalf of appellant. If there is no specific authorisation to receive order by hand, statutory/valuable right of an assessee to file an appeal cannot be denied due to the lapse on the part of a disgruntled employee on the ground that he was authorised by the appellant to appear in personal hearing. Further as per the decision of the Tribunal in the matter of **M/s Neha Cosmetics vs Commissioner of Central Excise (2007 (208) E.L.T 494 (Del)**, delivery of the order is required by registered post under Section 37C of the Central Excise Act 1944. Further Hon'ble Supreme Court in the matter of **Saral Wire Crafts Pvt Ltd Vs. CCE & ST – 2015 322 ELT 192 (SC)**, had considered the issue regarding service of decision, orders and summons and following the judgment held that "It is basic principle of law now settled that if the manner of doing in a particular act is prescribed under any statute, the act must be done in that manner or not at all. In order appear to have been serve on employee of the appellant was avowedly not authorise to deal with communications to and from the appellant". Further, I find that no harm will cause to Revenue even if the delay in condoned and in the interest of justice, the appeal can be disposed on merit. Considering the same, the appeal rejected on the ground of delay in filing appeal before the Commissioner (Appeals) is unsustainable. Accordingly, the impugned order is set aside and the matter is remanded to Commissioner (Appeals) to consider the appeal on merit.

(Order pronounced in Open Court on)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

-separate order-

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

hr/Sasi

PER: R. BHAGYA DEVI

6. Heard both sides. In the impugned order the Commissioner (Appeals) observed that the appeal has been filed after delay of 77 days from the due date for filing the appeal.

"3. The personal hearing was held on 28-06-2018 wherein the authorized representative of the appellant appeared for the hearing. He was informed that the hearing was being conducted for the limited purpose to decide on the admittance of the appeal or otherwise and also to ascertain the reasons for the delay in filing the appeal beyond the condonable period of 30 days. The authorized representative while conceding the delay in filing the appeal, contended that the delay was due to the fact that the department did not serve the OIO in time and the appellant was only given a copy of the OIO based on which he could not file the appeal. This is a specious argument. Nowhere does the statute preclude the appellant from filing the appeal on the basis of a photocopy of the OIO It is another matter that even the refund claim itself is hit by limitation of time".

7. On 06.09.2024, the Learned Chartered Accountant (CA) had submitted that the order was communicated only on 15.03.2018 and since the date of receipt of the order was in dispute, the learned Authorized Representative (AR) was directed to ascertain from the field formation about the date of communication of the Order-in-Original dated 27.12.2017. The Revenue has placed on record, the record of personal hearing before the Assistant Commissioner (Original Authority) dated 26.12.2017 wherein Shri K. Siva Prasad, the authorised representative who appeared for the personal hearing on behalf of the appellant had received the copy of the Order-in-Original dated 27.12.2017 on 02.01.2018. The signature endorsed by Shri K. Siva Prasad having received the Order-in-Original is placed on record. Section 37C of Central Excise Act reads:

"a) Any decision or order passed, or any summons or notices issued under this Act or the rules made thereunder, shall be served.

(i) by tendering the decision, order, summons or notice, or sending it by registered post with acknowledgment due, or by

speed post with proof of delivery or by courier approved by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) to the person for whom it is intended or his authorized agent, if any;

8. Since, the order has been received by the authorised representative who appeared for the personal hearing before the Asst. Commissioner it is served on the appellant as per the provisions laid down under Section 37(C) of the Central Excise Act, 1944. Accordingly, there cannot be any dispute that the order was not received on 02.01.2018. As per the relevant provisions, the appeal should have been filed on 02.03.2018 before the Commissioner (Appeals) and with condonation of delay of further 30 days it should have been filed on 02.04.2018. However, we find that the appeal was filed on 09.05.2018, thus with the delay of 67 days beyond the appealable period of 60 days. Section 85 (3A) of the Finance Act, 1994 reproduced below allows the Commissioner (Appeals) to entertain the appeal within 60 days from the date of the receipt of the order and further 30 days with condonation of delay. Since, the appeal filed by the appellant is beyond the condonable period, the Commissioner (Appeals) was justified in rejecting the appeal filed by the appellant. I also note that the Hon'ble Supreme Court in the case of **Singh Enterprises Versus Commissioner of C. Ex., Jamshedpur: 2008 (221) E.L.T. 163 (S.C.)** observed as follows.

"6. At this juncture, it is relevant to take note of Section 35 of the Act which reads as follows:

"35. Appeals to Commissioner (Appeals). - (1) Any person aggrieved by any decision or order passed under this Act by a Central Excise Officer, lower in rank than a Commissioner of Central Excise, may appeal to the Commissioner of Central Excise (Appeals) [hereafter in this Chapter referred to as the Commissioner (Appeals)] within sixty days from the date of the communication to him of such decision or order:

Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.

(2) Every appeal under this section shall be in the prescribed form and shall be verified in the prescribed manner."

7. It is to be noted that the periods "sixty days" and "thirty days" have been substituted for "within three months" and "three months" by Act 14 of 2001, with effect from 11-5-2001.

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. Learned counsel for the appellant has emphasized on certain decisions, more particularly, *I.T.C.'s* case (*supra*) to contend that the High Court and this Court in appropriate cases condoned the delay on sufficient cause being shown.

10. Sufficient cause is an expression which is found in various statutes. It essentially means as adequate or enough. There cannot be any

straitjacket formula for accepting or rejecting the explanation furnished for delay caused in taking steps. In the instant case, the explanation offered for the abnormal delay of nearly 20 months is that the appellant concern was practically closed after 1998 and it was only opened for some short period. From the application for condonation of delay, it appears that the appellant has categorically accepted that on receipt of order the same was immediately handed over to the consultant for filing an appeal. If that is so, the plea that because of lack of experience in business there was delay does not stand to be reason. *I.T.C.'s* case (supra) was rendered taking note of the peculiar background facts of the case. In that case there was no law declared by this Court that even though the Statute prescribed a particular period of limitation, this Court can direct condonation. That would render a specific provision providing for limitation rather otiose. In any event, the causes shown for condonation have no acceptable value. In that view of the matter, the appeal deserves to be dismissed which we direct. There will be no order as to costs".

9. In view of the above, the Commissioner (Appeals) was right in rejecting the appeal as the appeal was filed beyond the condonable limits provided by the statute. Accordingly, impugned order is upheld and the Appeal is dismissed.

(R. BHAGYA DEVI)
MEMBER TECHNICAL

DIFFERENCE OF OPINION

On going through the order signed by the learned Member (Technical), it is seen that following differences of opinion emerge:-

- (i) The impugned order passed by the Commissioner (Appeals) rejecting the appeal of the appellant on time-bar is held to be unsustainable. Accordingly, appeal is allowed by way of setting aside the order of the Commissioner (Appeals) and the matter is remanded to Commissioner (Appeals) to consider the appeal on merit, as held by the Hon'ble Member (Judicial).
- (ii) Whether the Commissioner (Appeals) was right in rejecting the appeal as the appeal was filed beyond the condonable limits provided by the statute, which was upheld by the Hon'ble Member (Technical).

The above Differences of Opinion are referred to the Hon'ble President for referring the same to Third Member to be appointed by him.

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

rv

Date of Hearing: 05.05.2026
Date of Decision: 06.05.2026

Interim Order No. 5 /2026

PER: DR. D.M. MISRA

10. Heard both sides and perused the records. The Difference of Opinion recorded by the learned Members on being referred to the Hon'ble President, vide letter F.No. 01(06)/DOO/CESTAT/Reg./2025 dated 17.12.2025, the undersigned has been appointed as 3rd Member to resolve the Difference of Opinion. The Points of Difference referred are as follows:-

(i) The impugned order passed by the Commissioner (Appeals) rejecting the appeal of the appellant on time-bar is held to be unsustainable. Accordingly, appeal is allowed by way of setting aside the order of the Commissioner (Appeals) and the matter is remanded to Commissioner (Appeals) to consider the appeal on merit, as held by the Hon'ble Member (Judicial).

OR

(ii) Whether the Commissioner (Appeals) was right in rejecting the appeal as the appeal was filed beyond the condonable limits provided by the statute, which was upheld by the Hon'ble Member (Technical).

11. Even though the facts are narrated in the order passed by the learned Members, to appreciate the Points of Difference, it is relevant to restate the facts, in brief.

12. Briefly stated the facts of the case are that the appellant, a private limited company, has filed a refund claim under Rule 5 of the Cenvat Credit Rules, 2004 which was rejected by the


adjudicating authority by Order-in-Original No.97/2017-R dated 27.12.2017.

13. The crux of the issue is the date of communication/delivery of the said Order-in-Original dated 27.12.2017.

14. Before the adjudicating authority as mentioned at para 8 of the Order-in-Original, on 26.12.2017, personal hearing was attended by Shri Abhi Parakh, Ms. Muthyala Sreeja & Shri K. Siva Prasad, the authorised representative of the company. The order was passed on the very next day i.e. 27.12.2017 rejecting the refund claim. It is the claim of the appellant before the learned Commissioner(Appeals) that since certified copy of the Order-in-Original was received by them only on 15.03.2018, the appeal could not be filed earlier and filed only on 09.05.2018 which is within two months from the date of receipt of the certified copy of the order as prescribed under Section 85(3A) of the Finance Act, 1994. On the other hand, it is the claim of the Revenue that one of the authorised representatives who attended the personal hearing viz. Shri K. Siva Prasad, received the record of personal hearing on 26.12.2017 and copy of Order-in-Original on 02.01.2018, therefore, the copy of the order has been delivered / communicated to the appellant on 02.01.2018 in accordance with Section 37C of the Central Excise Act, 1944. Thus, the due date for filing the appeal within two months from the date of receipt of the order is 02.03.2018 and the condonable period of one month is on 02.04.2018; whereas since the appeal was filed on 09.05.2018, it is barred by limitation. It is the contention of the learned Chartered Accountant for the appellant that Shri K. Siva Prasad who attended the personal hearing along with other Chartered Accountants and order received by him, cannot be considered as person authorised to receive the order on behalf of the appellant to whom it is intended. I do not find merit in the said contention.

15. The communication of the record of personal hearing by hand to Shri K. Siva Prasad and acknowledgment endorsed in the order are reproduced below:-

25/07/17

	केन्द्रीय कर सहायक आयुक्त का कार्यालय, एम. सी. 5- मंजल 6वाँ तल, केन्द्रीय सदन, कोरमंगला, बेंगलूर- 560034 OFFICE OF THE ASSISTANT COMMISSIONER OF CENTRAL TAX: SOUTH DIVISION- 5: 6TH FLOOR: 'A' WING: KENDRIYA SADAN: KORAMANGALA: BANGALORE-560034
C. No. V/10/225/2017 ST (R) Div C, ST II	दिनांक/Date: 26.12.2017

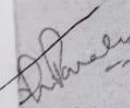
RECORD OF PERSONAL HEARING

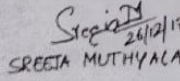
NAME OF THE UNIT: M/s Simplilearn Solutions Pvt Ltd

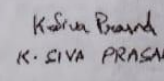
REPRESENTED BY: Shri. Abhi Parakh, Ms. Muthyala Sreeja & Shri K. Siva Prasad

SCN/OIO Details. C. No. V/10/225/2017 ST (R) Div C, ST II dated 21.06.2017

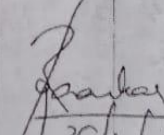
SUMMARY: The Personal Hearing in respect of the SCN C. No. V/10/225/2017 ST (R) Div C, ST II dated 21.06.2017 was already conducted on 05.09.2017. However, as the issue of Time Limit was not discussed in the SCN dated 21.06.2017, the assessee requested for the waiver of the Addendum to the Show-Cause-Notice for inclusion of the same. Hence, the Personal Hearing for conducting discussion on the validity of the refund claim considering the date of filing of the refund claim in terms of Notification No. 27/2012 - C.E. (N.T.) dated 18.06. 2012 as amended by Notification No 14/2016 - Central Excise (N.T.) dated 01.03.2016 is conducted today i.e. 26.12.2017 which is attended by Shri. Abhi Parakh, Ms. Muthyala Sreeja & Shri K. Siva Prasad, representative of the Company, before me.


ABHI PARAKH


SREEJA MUTHYALA


K. SIVA PRASAD

AUTHORIZED REPRESENTATIVE
 (For M/s Simplilearn Solutions Pvt Ltd)


ASSISTANT COMMISSIONER
 (South Division - 5)

Received original copy as on 26-12-2017
 K. Siva Prasad

provision of service had been completed prior to receipt of such payment; or (ii) issue of invoice, where payment for the service had been received in advance prior to the date of issue of the invoice "as the claimants had filed the refund claim on 31.03.2017, for the services exported during the quarter **October 2015 to December 2015**. However, as the Show-Cause-Notice C.No. V/10/225/2017 ST (R) Div C, ST II dated 21.06.2017 didn't discuss anything regarding the time-limit, the same was discussed at the time of Personal hearing on 26.12.2017, where on assessee's request the issuance of Addendum was waived.

Accordingly, I hold that these claims are not filed within the prescribed time limit as prescribed under Section 11B of the Central Excise Act, 1944 read with Notification No. 27/2012 - C.E. (N.T.) dated 18.06.2012 as amended by Notification No 14/2016 - Central Excise (N.T) dated 01.03.2016, as made applicable to Service Tax vide Section 83 of the Finance Act, 1994.

12. Since, the claimant have failed to satisfy the conditions stipulated under the Notification No. 27/2012 CE (NT) dated: 18.06.2012, the claim merits rejection, without going into other grounds of the claim.

14. In view of the above findings, I pass the following order:

ORDER

In terms of Rule 5 of the CENVAT Credit Rules, 2004 read with Notification No.27/2012 C. Ex. (NT) dated 18.06.2012, I hereby reject an amount of **Rs. 90,31,733/- (Rupees Ninety lakhs Thirty One Thousand Seven Hundred and Thirty Three only)** filed by M/s. Simplilearn Solutions Private Limited, Bengaluru for the period October'15 to December'15.

[Signature]
27/12/17
[डॉ. भागीरथि गौंकर/DR. BHAGEERATHI GAONKAR]
सहायक आयुक्त/ASSISTANT COMMISSIONER
एच. डी. 5- मंडल/ SOUTH DIVISION- 5

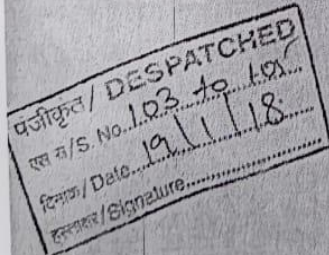
To,

M/s Simplilearn Solutions Pvt Ltd
Manoj Arcade, #53/1C,
24th Main, Harlunte,
2nd Sector, HSR Layout,
Bangalore-560102

Copy to:

- The Commissioner of South Commissionerate, Bengaluru (Review Section).
- The Superintendent, Range-CSD5, South Division-5, South Commissionerate.
- PAO Office, Bengaluru.
- Master File (Division-SD-5).

original order received as on 02-Jan-2018
K-Siva Prasad



16. The appellant is a private limited company authorised Shri Abhi Parakh, Ms. Muthyala Sreeja & Shri K. Siva Prasad. Shri K. Siva Prasad appeared for and on behalf of the appellant in pursuing the adjudication proceedings before the adjudicating

authority. Section 35Q of the Central Excise Act, 1944 prescribes for appearance by an authorised representative before and the 'authorised representative' is defined as under:

Section 35Q. Appearance by authorised representative. -

(1) Any person who is entitled or required to appear before a Central Excise Officer or the Appellate Tribunal in connection with any proceedings under this Act, otherwise than when required under this Act to appear personally for examination on oath or affirmation, may, subject to the other provisions of this section, appear by an authorised representative.

(2) For the purposes of this section, "authorised representative" means a person authorised by the person referred to in sub-section (1) to appear on his behalf, being -

- (a) his relative or regular employee; or
- (b) any legal practitioner who is entitled to practise in any civil court in India; or
- (c) any person who has acquired such qualifications as the Central Government may prescribe for this purpose.

Therefore, it is incorrect to say that a person who can appear for and on behalf of the appellant which includes his relative or regular employee and authorised to argue the matter on behalf of the appellant accepting or modifying any of the relief proposed to be allowed by the authority before whom they appear, cannot be construed that he is not authorised to receive the order after the adjudication proceedings are over; a separate authorization is required to receive the Order in compliance with the provisions of Section 37C of CEA, 1944. Such an interpretation of the Section 37C will result in absurdity. Needless to emphasize in many cases, after the proceedings are over, the orders are pronounced and delivered on the same day to the persons who appeared for the party concerned. In the present case, nowhere the appellant has disputed that Shri K. Siva Prasad who initially received the record of personal hearing on 26.12.2017, has not received the order on 02.01.2018. The only argument advanced by the appellant before the learned Commissioner(Appeals) was that a certified copy of the order was not issued to them thereby preventing them to file an appeal before the learned Commissioner(Appeals) after receiving

the order copy on 02.01.2018. The said claim of the appellant also seems to be not supported by evidence inasmuch as the acknowledgement of the order as endorsed by Shri K. Siva Prasad reproduced above reads as "Original order received as on 02-Jan-2018" indicating that original order was delivered to him. Therefore, the inconsistency in the argument advanced on behalf of the appellant itself reveals that though the original order was received by them on 02.01.2018, the appeal was not filed within two months and also during the condonable period of one month as per Section 85(3A) of the Finance Act, 1994. Therefore, in my considered opinion, the appeal filed by the appellant on 09.05.2018 before the learned Commissioner(Appeals) against the Order-in-Original dated 27.12.2017, which was delivered / communicated to them by tendering the same to authorized representative Shri K. Siva Prasad on 02.01.2018, is beyond the prescribed statutory period of two months and condonable period of one month; hence, rightly rejected by the learned Commissioner(Appeals) in view of the principle of law laid down by the Hon'ble Supreme Court in Singh Enterprises Vs. CCE, Jamshedpur [2008(221) ELT 164 (SC)] as referred by the learned Member(Technical). Therefore, I concur with the view expressed by learned Member(Technical) that the appeal filed before the learned Commissioner(Appeals) against Order-in-Original dated 27.12.2017 is barred by limitation hence rightly rejected by the Commissioner(Appeals).

14. The matter may be placed before the regular Bench for appropriate action/order.

(Pronounced on 06.05.2026)

(D.M. MISRA)
MEMBER(JUDICIAL)

Raja...

MAJORITY ORDER

16. In view of the majority decision, the impugned order passed by the learned Commissioner(Appeals) is upheld and the appeal filed by the appellant is rejected.

(order pronounced and dictated in open court)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

Raja...