IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE ALPESH Y. KOGJE,

CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE VIVEK JAIN

ON THE 28th OF OCTOBER, 2026

CENTRAL EXCISE APPEAL No. 20 of 2026

CNR No.: MPHC010703612026

ATUL SINGH GARHI

Versus

COMMISSIONER CGST

Appearance:

Shri Sapan Usrethe - Advocate for the appellant.

Shri Abhijeet Shrivastava - Advocate (through V.C.) for the respondent.

ORDER

Per. Hon'ble Shri Justice Alpesh Y. Kogje, Chief Justice

The present appeal is filed praying *inter alia* for setting aside the final order dated 02.04.2026 in Service Tax Appeal No.51357 of 2019 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (CESTAT) which has confirmed the Order-in-Appeal dated 26.02.2019 passed by the Commissioner (Appeals) of CGST, Customs and Central Excise, Bhopal in Appeal No.1036-ST/2018.

2. This appeal raises substantial questions of law enumerated in the memo of appeal, which are as under:-

"(A) Whether the dismissal of an appeal after a seven year delay by the

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learned CESTAT is sustainable in law when the impugned order of the Commissioner (Appeals) itself suffers from a fatal defect of non-compliance with the principles of natural justice owing to a lack of proper hearing ?

(B) Whether the learned CESTAT erred in law by dismissing the appeal as time-barred based on an incorrect date of service i.e. 22.09.2018, thereby ignoring the fact that the order was received on 07.10.2018, making the delay only 17 days, and further misinterpreting Section 85 of the Finance Act, 1994, to hold that the Commissioner (Appeals) lacked the power to condone such a delay?

(C) Whether the learned CESTAT erred in dismissing the appeal for delay by failing to apply the principle laid down by the Hon'ble Bombay High Court in Skoda Auto Volkswagen India Pvt. Ltd. Vs. Commissioner (Appeals) - which holds that where the original order is served on a Saturday (22.09.2018), the appeal filed on the next working day (24.12.2018) is deemed within the extended limitation period; thereby erroneously denying the Commissioner (Appeals) jurisdiction to condone the delay under Section 85 of the Finance Act, 1994?"

3. Essentially the case of the appellant is that the dismissal of his appeal is on the ground of delay where both the authorities and the Tribunal have concluded that the delay is of 17 days beyond the condonable period.

4. The facts in brief are that the appellant is in the business of construction and providing construction service which is a taxable service and is having service tax registration No.AJKPS8157RST001 and on the basis of income tax form 26AS, the service tax department noticed the appellant stating that the appellant has received a huge amount towards the service rendered by him and yet not paid any service tax and not filed ST-3 returns between the period April, 2012 to March, 2017. Accordingly, a show cause notice dated 21.11.2017 was issued proposing demand of service tax to the tune of Rs.70,01,478/- not paid by the appellant on the taxable value of Rs.5,34,15,225/- received between the period April, 2012 to March, 2017, thereby, proposing the imposition of applicable interest under section 75 of

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Chapter V of Finance Act, 1994 and penalties under sections 77(2) and 77(1)(c) of the Finance Act, 1994 and a penalty of Rs.70,01,478/- under section 78 of the Finance Act, 1994.

5. The appellant did submit his reply to the show cause notice which is dated 21.04.2018 which ultimately came to be adjudicated under Order-in-Original dated 28.08.2018 confirming the demand as per the show cause notice. This OIO was dated 28.08.2018 and according to the appellant, the said OIO was delivered on 22.09.2018. It was received by the neighbour one Mansukh Lal Namdeo and ultimately reached the residence of the appellant on 07.10.2018. The appellant had filed an appeal against the OIO before the Appellate Tribunal on 24.12.2018, which according to the appellant was not delayed. However, the appeal came to be rejected on the ground that the appeal filed on 24.12.2018 was delayed by 17 days treating the service of the order of appeal on 22.09.2018.

6. Learned counsel for the appellant has submitted that the learned Tribunal erred in passing the impugned order without appreciating that the Commissioner (Appeals) had dismissed the appellant's appeal on the ground of delay without issuing notice or affording an opportunity of hearing, thereby violating the principles of natural justice. It was further contended that both appellate authorities failed to consider the appellant's plea that the construction work contracts executed for government departments were exempt from service tax. The appellant had placed copies of sample work orders and Form 26AS at Annexure A-8 on record before the CESTAT; however, the Tribunal dismissed the appeal without examining its merits,

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after a lapse of more than seven years from the date of its filing. Learned counsel for the appellant further submitted that the Tribunal erred in upholding the order of the Commissioner (Appeals), which was allegedly passed on an incorrect factual premise and without affording the appellant an opportunity of hearing. It was also contended that the Tribunal wrongly proceeded on the basis that the order-in-original had been served on 22.09.2018, making the appeal due by 21.11.2018, whereas the appellant asserted that the order was received only on 07.10.2018 and that the appeal, filed on 24.12.2018, was delayed by only 17 days beyond the prescribed period. The appellant contended that such delay was condonable under Section 85 of the Finance Act, 1994. He further contended that the Tribunal has failed to appreciate the affidavits of the appellant and one Mansukh Lal Namdeo in support of the actual date of receipt of the order at Annexure A-9.

7. On behalf of the Department, learned counsel opposed the appellant's submissions, contending that the acknowledgment of service clearly established that the order had been delivered at the appellant's address on 22.09.2018. Accordingly, the appellant's claim of having received the order on 07.10.2018 was disputed. Learned counsel further pointed out an inconsistency in paragraphs 9.1 and 9.2 of the grounds of appeal at Annexure A/7, wherein paragraph 9.1 mentioned that the appellant was unavailable at his address from 15.09.2018 to 04.10.2018, whereas paragraph 9.2 asserted that the appellant had met with an accident on 15.09.2018 and remained hospitalized until 07.10.2018. On these grounds, learned counsel for the Department prayed for dismissal of the appeal. It is, therefore,

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submitted that according to the department, there is a delay of more than 90 days and the Commissioner (Appeals) has no statutory power to condone the delay even of one day beyond period of 30 days which is condonable above the 60 days provided for preferring the appeal under the statute.

8. The CESTAT has assigned the reasons that under Section 85 of the Finance Act, 1994, an appeal before the Commissioner (Appeals) must be filed within two months from the date of receipt of the order under challenge. The Commissioner (Appeals) is empowered to condone a further delay of upto 30 days beyond the prescribed limitation period. However, in the present case, the delay exceeded the permissible period of condonation, extending beyond 90 days from the date of receipt of the order. Accordingly, the CESTAT held that the Commissioner (Appeals) had no statutory power to condone any delay beyond the additional period of 30 days. The Tribunal further observed that the appellant had failed to furnish a sufficient explanation for the delay before the Commissioner (Appeals).

9. The substantial questions of law raised in this appeal, particularly questions No.(A) and (B) pertain to the non-compliance of principles of natural justice and non-application of section 85 of the Finance Act 1994 to hold that the Commissioner (Appeals) lacks the power to condone the delay without examining the fact that the appeal was preferred within the condonable period of limitation. The Court may therefore advert to the facts as recorded by the Tribunal which has observed after perusing the case record that the order in original is dated 28.08.2018 and was delivered at the address of the appellant on 22.09.2018, albeit the contention of the appellant

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is that the delivery of the OIO was on 07.10.2018. Even if the Court takes the date of delivery as per the department's record then according to the Tribunal the appeal should have been filed before the Commissioner (Appeals) on or before 21.11.2018 but the appeal was filed on 24.12.2018.

10. The Court has taken into consideration the submissions made by the counsel for the appellant by drawing our attention to the calendar of the year 2018 wherein it is indicated that 22.09.2018 was a Saturday and thereafter followed by 23.09.2018 to be Sunday, thereby those days would necessarily will have to be excluded and even if 22.09.2018 is the date of service, then expiry of period of limitation would be on 22.11.2018 and the condonable period of 30 days would commence on 23.11.2018 to 23.12.2018, which again was a Sunday and therefore when the appeal came to be filed on 24.12.2018, it was still within the condonable period.

11. The perusal of the order of the Commissioner (Appeals) dated 26.02.2019 would indicate that the Commissioner (Appeals) refused to exercise the powers under Section 85(3A) of the Finance Act, 1994 by concluding on fact that the delay in filing the appeal is one month and two days, thereby treating the period of two days beyond the period of 30 days of condonable period, has refused to exercise the powers under Section 85(3A) holding that the Commissioner (Appeals) has no power to do so.

12. Section 85(3A) of the Finance Act, 1994 as amended would read as under:-

> ***"Section 85**:*
> **** *** ****
> ***(3A)** An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on*

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and after the Finance Bill, 2012 receives the assent of the President, relating to service tax, interest or penalty under this Chapter:

Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.
**** *** ***"*

13. The proviso to Section 85(3A) specifically provides that the Commissioner of Central Excise Appeal if satisfied by the sufficient cause for filing the appeal after a period of two months may allow the appeal to be presented within further period of one month. It appears that an error of law is committed in applying the proper provision to the facts of the case, wherein as indicated in the preceding para, considering the dates chronology, an erroneous conclusion is arrived at that the appeal is filed with a delay of one month and two days whereas according to this Court the appeal was filed within the condonable period under section 85(3A).

14. The perusal of the facts of the case would also indicate that there was no occasion for the appellant to set up his case for explaining the delay as pursuant to the filing of the appeal, the Commissioner (Appeals) has proceeded to decide the appeal and therefore, answering the substantial question of law No.(A) in favour of the appellant, the Court holds that the Commissioner (Appeals) has failed to abide by the principles of natural justice in proceeding to decide the appeal as is evident in the concluding para No.9 holding that the appeal filed by the appellant is to be dismissed at the threshold stage and on facts that no opportunity was given to the appellant to explain the delay.

15. The question No.(B) is also answered in favour of the appellant as

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the Commissioner (Appeals) has misinterpreted Section 85(3A) of the Finance Act to hold that the Commissioner (Appeals) lacked the power to condone the delay as Section 85(3A) provides for the power to the Commissioner to condone the delay upto 30 days, if the same is explained to the satisfaction of the Commissioner (Appeals).

16. Therefore, it was incumbent upon the Commissioner (Appeals) to call upon the appellant in the facts of the present case to explain the reasons preventing the appellant from preferring the appeal within the stipulated period or within the condonable period of 30 days as on facts, this Court has proceeded to hold that the appeal filed on 24.12.2018 was preferred within the period of 30 days, that is, the condonable period as per Section 85(3A) of the Finance Act, 1994.

17. The appeal therefore stands allowed. The final order dated 02.04.2026 in Service Tax Appeal No.51357 of 2019 passed by the CESTAT, New Delhi confirming the Order-in-Appeal dated 26.02.2019 passed by the Commissioner (Appeals) of CGST, Customs and Central Excise, Bhopal in Appeal No.1036-ST/2018 is set aside.

18. As a fallout of the aforesaid, the department is to consider the appeal by affording the appellant an opportunity to explain the delay to file the appeal within the condonable period.

(ALPESH Y. KOGJE)
CHIEF JUSTICE

(VIVEK JAIN)
JUDGE

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