CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi

E-hearing

PRINCIPAL BENCH – COURT NO. 4

Service Tax Appeal No. 51357 Of 2019

[Arising out of Order-in-Appeal No. BHO-EXCUS-001-APP-360-18-19 dated 26.02.2019 passed by the Commissioner (Appeals) of CGST, Customs and Central Excise, Bhopal]

Atul Singh Garhi : **Appellant**
Satna Rewa Road, Ward No. 14
Kripalpur, Satna (M.P.)-485001

Vs

Commissioner of Central Goods Service Tax, and Central Excise, : **Respondent**
Office of the Commissioner of CGST,
Customs & Central Excise, C.R. Building
Mission Chowk, Napier Town, Jabalpur

APPEARANCE:
Ms. Asmita Nayak, Advocate for the Appellant
Shri Aejaz Ahmad, Authorised Representatives for the Respondent

CORAM :

HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER No. 50644/2026

Date of Hearing:12.03.2026

Date of Decision:02.04.2026

DR. RACHNA GUPTA

M/s Atul Singh Garhi, the appellant herein is registered under the Service Tax Department. On the basis of information received from the Income Tax Department, the Revenue came to know that the appellant had received huge amount on account of providing declared services, but has not paid service tax to the Revenue. The activity of the appellant is not covered in the negative list of Section 66D of the

Finance Act, 1994. The appellant was called upon to explain and to submit documents, however, the appellant did not appear. Department found that the service tax amounting of Rs. 70,01,478/- has not been paid by the appellant against amount of Rs. 5,34,15,225/- received for rendering taxable services. The said amount was proposed to be recovered along with the proportionate interest and the appropriate penalties. Vide show cause notice No. 15-18/2017-18 dated 21.11.2017. The proposal has been confirmed vide Order-in-Original No. 31/2018-19 dated 28.08.2018. Appeal against the said order has been dismissed vide order-in-appeal No. 001-360-18-19 dated 26.02.2019 at the threshold stage on the ground of limitation, without going into the merits of the case. Being aggrieved to the said order, the present appeal has been filed by the appellant.

2. Learned counsel for the appellant has mentioned that the appeal has been wrongly held to be barred by time as the order-in-original dated 28.08.2018 was actually received by the appellant only on 07.10.2018. It is submitted that the appellant was living away from his house only due to the work commitments during the period 15.09.2018 to 04.10.2018. Accordingly, the order delivered on 22.09.2018 was not actually received on the said date but on 07.10.2018. The appeal is prayed to be considered as well within time relying upon the decision of the Tribunal in the case of **Sunrise Industrial Corporation versus Commissioner of Customs Amritsar reported as 2013 (29) STR 447 (Tri.-Del.)** and **T. Prabhakara Rao** versus **Commissioner of Central Excise, Hyderabad-III,** reported as **2009 (238) ELT 791 (Tri.-Bang.).**

3. Learned DR, on the other hand, has objected the submissions mentioning that there is a clear acknowledgement of delivery of order at the appellant's address on 22.09.2018 itself. The plea of the appellant to receive the same on 07.10.2018 is not at all acceptable. Learned DR further pointed out the contradiction in the submission of the appellant in Para No. 9.1 and 9.2 of the grounds of appeal before this Tribunal. In Para 9.1, there is a table recording the fact that the appellant was not available at his address for the period from 15.09.2018 to **04.10.2018.** Whereas in Para 9.2, it is mentioned that the appellant had met with an accident on 15.09.2018 and was hospitalized till 07.10.2018. The application is prayed to be dismissed in view of the said contradiction.

4. Having heard both the parties and perusing the entire case records, it is observed that the order-in-original dated 28.08.2018 was admittedly delivered at the appellant's address on 22.09.2018. Accordingly, the appeal before Commissioner (Appeals) should have been filed on or before 21.11.2018. But, apparently, the appeal was filed on 24.12.2018 i.e. after the delay of more than 30 days from the date of receipt/delivery of the Order-in-Original. Hence, the Commissioner (Appeals) dismissed the appeals being barred by time.

5. While challenging the said order before this Tribunal. The grounds of appeal taken was observed to have contradiction. It is otherwise apparent from the tracking report received from the postal department.

6. Para 9.1 and 9.2 of the grounds of appeal are perused to have noticed contradiction as pointed by the learned DR. The said contradiction is held to be a sufficient reason to hold that there is no

reasonable explanation for the impugned delay of more than 30 days that occurred while filing appeal before the Commissioner (Appeals.

7. In terms of Section 85 of the Finance Act, 1994, the appeal before the Commissioner (Appeals) has to be filed within 2 months from the date of the receipt of the order to be challenged. A period of 30 days over and above the said 2 months, no doubt, is under the discretion of the Commissioner (Appeals), to be condoned. However, in the present case, it is observed that the delay is over and above said 30 days i.e. there is a delay of more than 90 days, Commissioner (Appeals) has no statutory power to condone the delay even of 1 day over said 30 days above 60 days of receipt of the order to be challenged. Otherwise also no sufficient explanation was given by the appellant before the Commissioner (Appeals). The appellant was statutorily required to file an application seeking condonation of delay even before the Commissioner (Appeals). In the absence of such an application and the delay being beyond the condoning power of the Commissioner, we draw our support from the decision of the Hon'ble Supreme Court in the case of **Singh Enterprises** versus **Commissioner of Central Excise, Jamshedpur**[1] wherein the court held as follows:-

> "8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of statute are not vested with jurisdiction to condone the delay beyond the permissible period provided under the statute. The period up to which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the 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

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1 2008 (221) ELT 163 (S.C.)

> 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 up to 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."

5. In view thereof, we do not find any infirmity in the impugned order where the appeal before him is held to be barred by time. Consequently, we uphold the impugned order and the appeal stands dismissed.

(Order pronounced in the open Court on 02.04.2026)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

G.Y.