

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

**SERVICE TAX APPEAL NO. 85778 OF 2017**

[Arising out of Order-in-Appeal No.MUM-SVTAX-002-APP-674-16-17 dated 12.01.2017 passed by the Commissioner of (Appeals), Service Tax-II, Mumbai -400012]

**ACHUTHAN THAMI**

27,Abdul Sattar Chawl, Old Nagardas Road,  
Andheri East, Mumbai-400069

**Appellant**

Vs.

**COMMISSIONER OF SERVICE TAX-II  
MUMBAI**

4<sup>th</sup> Floor, New Central Excise Building,  
Maharishi Karve Road, Churchgate,  
Mumbai-400020

**Respondent**

Appearance:

Present for the Appellant: Ms.Pooja Jain, Chartered Accountant

Present for the Respondent:Shri Dhananjay Dahiwale, Dy. Commissioner  
(AR)

**CORAM:**

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

**HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)**

**FINAL ORDER NO.85783/2026**

Date of Hearing: **30.03.2026**

Date of Decision: **24.06.2026**

PER:AJAY SHARMA

This appeal has been filed against the Order-in-Appeal dated 12.01.2017 whereby the learned Commissioner (Appeals) dismissed the Appeal filed by the appellant on the ground of limitation, holding that the appeal had been filed belatedly without any application for condonation of delay explaining the reasons for the late filing of appeal.

2. The relevant facts in-brief leading to the filing of the instant appeal are stated in brief as under-:

(i) The Adjudicating Authority passed the Order-in-Original dated 09.11.2012 (issued on 11.12.2012), a copy of which was received by the Appellant on 15.12.2012.

(ii) The Appellant filed the First Appeal before the learned Commissioner (Appeals) on 13.03.2013, i.e., after a period of almost two months from the date of receipt of the order, but within a period of three months therefrom.

(iii) No application for condonation of delay was filed by the Appellant along with the said Appeal nor did they appear for personal hearing before the learned Commissioner.

(iv) The learned Commissioner (Appeals) dismissed the First Appeal on 12.01.2017 solely on the ground that the appeal was filed beyond the prescribed period of limitation without any accompanying application for condonation of delay.

3. Learned Chartered Accountant for the Appellant submits that the non-filing of the condonation of delay application was not deliberate or contumacious, but was directly caused by a positive misstatement of law in the preamble to the Order-in-Original itself. She drew our attention to the following passage in the preamble of the Order-in-Original dated 09.11.2012:

*“2. An appeal against this order lies with Commissioner of Central Excise (Appeals), Mumbai having office at 4<sup>th</sup> Floor, Utpad Shulk Bhavan, Opp. Income Tax Bhavan, Bandra-Kurla Complex, Bandra (E), Mumbai-400051, in terms of section 85, of the Chapter V of the Finance Act, 1994. It shall be filed within three months from the date of communication of this order. [Emphasis supplied]”*

4. Learned Chartered Accountant also submits that by stating the appeal period as three months, as opposed to the statutorily prescribed period of two months, the Adjudicating Authority created the false impression that the appeal filed on 13.03.2013 (i.e., within three months) was within time. Consequently, there was no reason for the Appellant to file a condonation of delay application, as the Appellant was made to believe, by the order itself that no delay had occurred. She further submits that a party cannot be made to suffer for the mistake or mis-statement of the authority, and that such a mis-statement creates a legitimate expectation upon which the Appellant had every right to rely.

5. Section 85 of the Finance Act, 1994 prescribes the limitation period for filing a First Appeal before the Commissioner (Appeals). The relevant provision unequivocally stipulates a period of two months from the date of receipt of the order sought to be appealed, with a further condonable period of one month within which the appellate authority may, on sufficient cause being shown, condone the delay.

6. Thus, the outer limit within which an appeal under Section 85 may be filed, subject to condonation, is three months from the date of communication of the Order-in-Original. An appeal filed beyond two months but within three months, is not automatically barred, it requires a condonation of delay application accompanied by sufficient cause.

7. It is well-settled that a preamble or administrative note in an adjudication order cannot override or modify the statutory limitation prescribed by the parent Act. Nevertheless, where such a

misstatement induces a party to act or refrain from acting in a particular manner, the question of legitimate expectation and estoppel against the Revenue assumes significance.

8. Having heard rival submissions and perused the case records, we find that the core issue in the present appeal is a narrow but important one:

*Whether the dismissal of the First Appeal by the Commissioner (Appeals), solely on account of non-filing of a condonation of delay application, is sustainable in law, given the unambiguous misstatement of the limitation period in the preamble to the Order-in-Original?*

9. The preamble to the Order-in-Original did not merely omit any reference to the two months statutory period it made a positive and affirmative misstatement by categorically prescribing three months as the period within which the appeal could be filed. This is not a case of ambiguity or silence it is a case of an incorrect and misleading statement of a mandatory statutory provision, made by the very authority whose order was sought to be challenged in appeal.

10. The doctrine of legitimate expectation is well recognised in administrative law. Where a public authority makes a representation, whether by conduct, communication, or as in the present case, by a statement in an official order, a party acting in reliance on such representation is entitled to protection. It would be unconscionable to visit upon the Appellant the penal consequence of dismissal of an appeal for failure to file a condonation of delay application, when that very failure was the direct and proximate result of the misleading statement made by the authority in its own order.

11. It is a well-established principle of law that a party should not be made to suffer for the mistake of the authority. This principle applies with particular force where the mistake relates to the exercise of a statutory remedy because such a mistake has the effect of misleading the party into believing that a step which was legally necessary (viz., filing a condonation application) was in fact unnecessary.

12. The learned Commissioner (Appeals) dismissed the First Appeal without adverting to or enquiring into the specific circumstances that had led to the non-filing of the condonation of delay application. A mechanical application of the principle that limitation cannot be waived, without any examination of the reasons underlying the procedural omission, is not a proper exercise of the quasi-judicial discretion vested in the appellate authority.

13. Where the delay itself is traceable to a positive misstatement of law in the order under challenge, the appellate authority is duty-bound to take cognizance of this fact and to afford the appellant an opportunity to regularise the procedural defect. Summary dismissal of the appeal, in such circumstances, results in grave injustice and amounts to denial of the right of appeal, a valuable statutory remedy.

14. In view of the foregoing, the impugned Order-in-Appeal dated 12.01.2017 cannot be sustained and is liable to be set aside. The Appellant is entitled to an opportunity to file an application for condonation of delay before the first appellate authority and the Commissioner (Appeals) is expected to consider the said

application in light of the fact that the delay was directly induced by an incorrect statement of law in the Order-in-Original.

15. The Commissioner (Appeals) shall exercise the condonation discretion under Section 85 of the Finance Act, 1994 in consonance with the settled legal position, keeping in mind that the delay was not wilful or contumacious but was occasioned by reliance on an erroneous statement in the Order-in-Original itself. Also keeping in mind that the right of appeal is a substantive statutory right and its exercise should not be defeated by procedural technicalities arising from the authority's own error.

16. For the foregoing reasons, the impugned Order-in-Appeal passed by the learned Commissioner (Appeals) is hereby set aside and the first Appeal is restored before the Commissioner (Appeals). The Appellant is directed to file an application for condonation of delay before the Commissioner (Appeals) forthwith and also directed to appear for personal hearing before learned Commissioner as and when the date is fixed by the said authority. They are also directed to produce all relevant documents/evidence they wish rely upon in support of their appeal. The Commissioner (Appeals) shall consider the condonation application in the light of the observations made in this order and shall thereafter proceed to decide the Appeal on merits, in accordance with law.

17. In view of the fact that the appeal before the Commissioner (Appeals) being more than a decade old, the learned Commissioner is expected to decide the Appeal as early as possible preferably

within a period of three months from the date of receipt of this order, to prevent further prejudice to the Appellant.

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

(Pronounced in the open court on 24.06.2026)

**(AJAY SHARMA)**  
**MEMBER (JUDICIAL)**

**(RAJEEV TANDON)**  
**MEMBER (TECHNICAL)**

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