



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CENTRAL EXCISE APPEAL NO.7 OF 2025**

Siddhi Developers
Flat No.1001, B-Wing
Hyde Park, Bibvewadi,
Pune – 411 037
STN:ABNFS8561QSD001

...Appellant

Versus

The Joint Commissioner,
Central GST,
Pune-II Commissionerate,
1st Floor, F Wing, GST Bhavan,
41A Sasson Road, Pune – 411 001

...Respondent

Mr. Prateek Jha for the Appellant.
Mr. Karan Adik for the Respondent.

CORAM : M. S. Sonak &
Jitendra Jain, JJ.

DATED : 2 July 2025

ORAL JUDGMENT:- (*Per M. S. Sonak, J.*)

1. Heard Mr. Jha for the Appellant and Mr. Adik for the Respondent.
2. This appeal is directed against the order dated 30 September 2020 made by the Commissioner (Appeals) holding that he has no power to condone the delay beyond one month of the initially prescribed period of two months under the proviso to sub-section (3A) of Section 85 of the Finance Act, 1994 and the Tribunal's order dated 10 May 2023 refusing to interfere with the order of Commissioner (Appeals).

3. Mr. Jha urges the formulation of the following questions, which, according to him, are substantial questions of law:-

“(a) Whether, on the facts and in the circumstances of the case and in law, the Tribunal was right in not appreciating that the Tribunal had power u/s 35C of the Central Excise Act, 1944 read along with section 86(7) of the Finance Act, 1994 to condone delay in filing of appeal before the Commissioner (Appeal) beyond the one month period provided in proviso to section 85(3A).

“(b) Whether, on the facts and in the circumstances of the case and in law, the Tribunal was justified in dismissing the appeal without considering the decisions of the Co-ordinate benches.”

4. Mr. Jha refers to Section 86(7) of the Finance Act, 1994, and based on this, relies on the provisions of sub-section (5) of Section 35B of the Central Excise Act, 1944. He submits that there are no limits imposed on the Tribunal regarding any maximum delay period it can condone, provided sufficient cause is shown. Accordingly, he submits that in this case, the Tribunal should have evaluated the sufficient cause shown by the Appellant before the Commissioner (Appeals) and condoned the delay of hardly 17 days. He submitted that there was more than sufficient cause justifying condonation.

5. Mr. Jha also referred to the provisions in sub-section (1) of Section 35C of the Central Excise Act, 1944 to submit that the Tribunal has extensive powers to interfere with orders of the Commissioner (Appeals) and this would include the power to condone the delay beyond the period prescribed under the proviso to sub-section (3A) of Section 85 of the Finance Act, 1994.

6. Mr. Jha finally submitted that there were decisions of the Co-ordinate Benches of the Tribunal directing condonation of delay by the Commissioner (Appeals), even though the delay was beyond the period prescribed in the proviso to sub-section (3A) of Section 85 of the

Finance Act, 1994. He submitted that non-consideration of the decisions of the Co-ordinate Benches is a good ground to interfere with the Tribunal's decision in this case.

7. Mr. Adik learned counsel for the Respondent submits that no substantial question of law is involved in this appeal, and in any event, such questions must be answered against the Appellant given the law laid down by the Hon'ble Supreme Court in the case of *Assistant Commissioner (CT) LTU, Kakinada & Ors. vs. M/s. Glaxo Smith Kline Consumer Health Care Limited*¹ and *Abhyudaya Co-operative Bank Ltd. vs. Union of India & Ors.*² decided by a Co-ordinate Bench of this Court.

8. The rival contentions now fall for our determination.

9. In this case, the Joint Commissioner, Central GST, Pune-II Commissionerate, issued the Order-in-Original on 15 November 2019, which the Appellant received on 30 November 2019. The Appellant filed an appeal before the Commissioner (Appeals) only on 17 March 2020, along with an application for condonation of delay. The Commissioner (Appeals), by his Order-in-Appeal dated 30 September 2020, dismissed the application for condonation of delay, noting that it exceeded the period specified in the proviso to sub-section (3A) of Section 85 of the Finance Act, 1994, and therefore, he lacked the authority to condone this delay.

10. The Appellant then appealed to the Customs, Excise and Service Tax Appellate Tribunal, Mumbai (CESTAT), on 4 January 2021, which was dismissed on 10 May 2023.

11. Section 85(3A) of the Finance Act, 1994 reads as follows:-

1 (2020) 19 SCC 681

2 WP(L) No.4053 of 2020 decided on 25 February 2021

"(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 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."

12. From the above, it is evident that an appeal relating to the Finance Act, 1994 must be presented within two months from the date of receipt of the decision or order of the adjudicating authority, if such decision or order has been made after the Finance Bill, 2012 had received the assent of the President. From the record, it is apparent that the Order-in-Original dated 15 November 2019 was passed after the receipt of assent of the President to the Finance Bill, 2012.

13. The proviso to sub-section (3A) of Section 85, however, empowers the appellate authority to condone the delay in presentation of the appeal beyond the prescribed period of limitation of two months, within a further period of one month, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal and the stipulated period of two months.

14. Therefore, on analysis of the provision above, what is discernible is that an appeal is required to be filed within two months from the date of receipt of the decision or order, which period can be extended for a further period of one month on sufficient cause being shown. Thus, in any event, an appeal before the Commissioner (Appeals) must be filed within a maximum period of three months. Any delay beyond three months is not condonable by the Commissioner (Appeals).

15. In the present case, the appeal was admittedly filed more than three months after the original order was communicated to the Appellant. Therefore, the Commissioner (Appeals) was justified in dismissing this appeal by invoking the bar of limitation and holding that he lacked the power to condone the delay beyond three months.

16. By reference to the provision of Section 35B of the Central Excise Act, 1944, which is made applicable to appeals before the Tribunal, the Appellant cannot bypass or circumvent the clear and unambiguous provisions of sub-section (3A) of Section 85 of the Finance Act, 1994. The provision under Section 35B (5) applies only to appeals presented before the Tribunal, not to appeals presented before the Commissioner (Appeals).

17. Similarly, the provisions of Section 35C (1), however widely worded, do not empower the Tribunal to direct the Commissioner (Appeals) to exercise powers that the legislature has not vested in the Commissioner (Appeals). By holding that it has no power to condone the delay beyond three months, the Commissioner (Appeals) has acted in accord with the provisions of sub-section (3A) of Section 85 of the Finance Act, 1994. Therefore, the Tribunal, by exercising the powers under Section 35C (1), could not have either itself condoned the delay in filing an appeal before the Commissioner (Appeals) or directed the Commissioner (Appeals) to condone the delay beyond the maximum prescribed period. The Tribunal was therefore justified in finding no fault with the Commissioner (Appeals)'s order dated 30 September 2020 and dismissing the appeal against the same.

18. In *M/s. Glaxo Smith Kline Consumer Health Care Limited (supra)*, the Hon'ble Supreme Court has interpreted similar provisions

contained in Section 31 of the Andhra Pradesh Value Added Tax Act, 2005 and held that the appellate authority cannot condone delay if any appeal is preferred after an aggregate period of 60 days. The Hon'ble Supreme Court has held that the appellate authority is not empowered to condone the delay in filing any appeal preferred after the aggregate time period of 60 days. In *Abhyudaya Co-operative Bank Ltd. (supra)*, the Coordinate Bench of this Court has also taken the same view.

19. The first question proposed by Mr. Jha, therefore, does not arise and in any event, would have to be answered against the Appellant.

20. Insofar as the second question proposed by Mr. Jha, we are not shown any decisions of the Co-ordinate Benches. However, even if we assume that such decisions exist, the Tribunal was justified in ignoring them, given the law laid down by this Court in *Abhyudaya Co-operative Bank Ltd. (supra)* and the Hon'ble Supreme Court in *M/S. Glaxo Smith Kline Consumer Health Care Limited (supra)*. Therefore, even the second question of law does not arise, and in any event, it will have to be decided against the Appellant.

21. For the above reasons, we find that this appeal raises no substantial questions of law and, in any event, even the proposed questions would have to be answered against the Appellant.

22. For the above reasons, we dismiss this appeal without ordering costs.

(Jitendra Jain, J.)

(M. S. Sonak, J.)