

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

REGIONAL BENCH - COURT No.II  
**(E-Hearing)**

**Service Tax Appeal No.70660 of 2025**

(Arising out of Order-in-Appeal No.210/ST/Alld/2024 dated 02/04/2024 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Allahabad)

**M/s Ganga Telecom,**

**....Appellant**

(Gali No.7, Raja ka Bagh, Mainpuri)

*VERSUS*

**Commissioner of Central Excise &**

**CGST, Kanpur**

**....Respondent**

(117/7, Sarvoday Nagar, Kanpur-208005)

**APPEARANCE:**

Shri Nitin Sharma, Advocate for the Appellant

Shri Santosh Kumar, Authorised Representative for the Respondent

**CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

**FINAL ORDER NO.70880/2025**

DATE OF HEARING : 04 December, 2025  
DATE OF PRONOUNCEMENT : 17 December, 2025

**SANJIV SRIVASTAVA:**

This appeal is directed against Order-in-Appeal No.210/ST/Alld/2024 dated 02/04/2024 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Allahabad. By the impugned order appeal filed by the appellant against Order-in-Original No.46-ST/ADT-CIR-I-KNP/2023 dated 31/05/2023 has been dismissed for the reason that the appeal had been filed beyond the limitation period and the period which could have not been condoned by the Commissioner (Appeals) i.e. beyond the period of 60 days Plus 30 days. While dismissing the appeal, impugned order relied upon the provisions of Section 85 (3A) of the Finance Act, 1994 and the decision of Hon'ble

Supreme Court in the case of M/s Singh Enterprises Vs CCE, Jamshedpur 2008 (221) ELT 163 (SC).

2.1 A show cause notice dated 02.11.2020 was issued to the appellant asking them to show cause as to why:-

*"(i) An amount of Rs 86,73,819/- (Rupees Eighty Six Lakh Seventy Three Thousand Eight Hundred Nineteen Only) should not be treated as the value of taxable services provided by them during the Financial Year 2015-16, and accordingly Service Tax amounting to Rs 12.57,704/- (Rupees Twelve Lakh Fifty Seven Thousand Seven Hundred Four Only) as detailed in Table A not paid/short paid including Education Cess, Secondary & Higher Education Cess and Swachh Bharat Cess should not be demanded and recovered from them under proviso to Section 73(1) of the Finance Act, 1994 as amended read with Section 174 of the CGST Act, 2017;*

*(ii) Interest at the appropriate rate should not be charged and recovered from the 'Noticee' in respect of amount of service tax mentioned at S.No. (i) above under Section 75 of the Act readwith Section 174 of CGST Act, 2017,*

*(iii) Penalty should not be imposed upon them in respect of amount of service tax mentioned at S.No (1) above under Section 78 of the 'Act' read with Section 174 of CGST Act, 2017;*

*(iv) Penalty under Section 77(1)(c), 77(1)(d) and 77(2) of Finance Act, 1994 readwith Section 174 of CGST Act, 2017 should not be imposed upon them for their various acts of omission and commission as discussed above,*

*(v) the late fee/amount under Section 70 of Finance Act, 1994 read with Rule 7(C) of ibid and read with Section 174 of CGST Act, 2017 should not be imposed upon them for their various acts of omission and commission as discussed above,"*

2.2 The said show cause notice was adjudicated as per the Order-in-Original dated 31.05.2023 and confirmed the demand of Service Tax (including Cesses) of Rs 12,57,704/-, along with

interest and penalty respectively under Section 75 & 78 of the Act. He also imposed penalty of 10,000/ each under Sections 77(1)(c), 77(1)(d) and 77(2) of the Act along with late fee of Rs. 40,000/- under Section 70 of the Act 1994 read with Rule of the Rules.

2.3 Aggrieved appellant have filed appeal before Commissioner (Appeals) which has been dismissed as per the impugned order.

2.4 Aggrieved appellant have filed this appeal.

3.1 I have heard Shri Nitin Sharma learned Counsel appearing for the appellant and Shri Santosh Kumar learned Authorized Representative appearing for the revenue by virtual mode.

3.2 Arguing for the appellant learned Counsel submits that-

- the Ld. AC. Service Tax & C.E. Circle-1 Audit, Kanpur passed a 0-1-0 No. 46-ST/ADT/CIR-I-KNP/23 on 31/05/2023 which is communicated to the deponent on 27/06/2023.
- as per the provisions of Section 85 (3A) of the Finance Act, 1994 the appeal was due to be filed on or before 27/08/2023, and The Commissioner (Appeals) has the authority to condone a delay for a further period of one month if satisfied that there was sufficient cause for the appellant being unable to present the appeal within the initial two-month period therefore the delay in filing can be condoned if the appeal is filed before the 27/09/2023.
- in the present matter the appeal was to be filed before the Commissioner CGST, & Customs (Appeals) Allahabad, but it was filed wrongly before the Commissioner CGST, & Customs (Appeals) Lucknow on 19/09/2023.
- the registry of the Commissioner Customs, CGST & C.E Lucknow identified the jurisdictional defect on 05-10-2023 and returned to the appellant along with the letter no. F.NO.01/APPL/MISC/LKO/2017/2919 DATED 05-10-2023 vide speed post no. EU169063348IN dated 11-10-2023 but the said speed-post was not delivered to the appellant and got returned to the registry of the Commissioner (Appeals) Customs, CGST & C.E Lucknow on 18-10-2023. Copy of the Envelope and Track report is available.

- on 17/12/2023 the appellant received a phone call from the office of Commissioner of Central Excise and Service Tax (Appeals) Lucknow, and the office bearer told him that the said appeal does not falls in his jurisdiction and the right jurisdiction office to file said appeal is Commissioner of Central Excise and Service Tax (Appeals) Allahabad, he further told him that the said appeal returned to the appellant on the given address but the same is returned back with the remark of "insufficient address". However the address of the appellant is correct and sufficient to receive all mails.
- on 18-12-2023 the counsel of the appellant received the said appeal from the office of the Ld.Comm. (Appeals) Customs, Cgst &C.E. Lucknow and on refiled before the correct jurisdictional first appellant authority i.e.before the Ld.Comm.(Appeals) Customs, Cgst & C.E Allahabad through speed post.
- the first appeal was filed within the period of 3 months before the Ld.Comm.(Appeals)Customs, Cgst &C.E Lucknow, therefore the delay less then one month can be condone as per the provisions of Section 85 (3A) of the Finance Act, 1994.

3.3 Learned Authorised Representative reiterates the findings recorded in the orders of the lower authorities.

4.1 I have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 Impugned order records as follows:-

*"2.4 Aggrieved with the impugned Order the appellant have filed the appeal. mainly on the following grounds,  
(i) That, during the FY 2015-16 the appellant were engaged in the business of providing "Rent a cab services to the body incorporates only and not received any service tax from such body incorporates. The service given by the appellant does fall in the Sr. No. 7(a) of the Notification No.30/2012 dated 20.06.2012:*

*(ii) That, during the F.Y. 2015-16 CENVAT Credit on inputs, capital goods and input services, used for providing the taxable services, has not been taken under the provisions of the CENVAT Credit Rules, 2004. Therefore, the services provided by the appellant does fall within the ambit of serial no.7 of the Notification No. 30/2012-ST dated 20.06.2012;*

*(iii) That, the appellant submitted that correct taxable value of services is Rs.41.82.229/ after abatement under RCM and they already paid their service tax of Rs.3.01.312.68/ on correct taxable value i.e. Rs.41,82,229/Copies of challan and invoice wise details of taxable and exempted services are enclosed herewith for your kind perusal marked as Annexure-C, D & E;*

*(iv) That, no service tax liability arises on the appellant as the service tax on the taxable value of services has already been paid by the appellant;*

*(v) Demand of penalties and interest is not justified:*

*4. Discussion and Findings: I have carefully gone through the facts of the case, averment made at the time of personal hearing and all other materials/documents on record. It is observed that the appellant have filed the appeal. without complying with the requirement of pre-deposit laid down in Section 35F of the Central Excise Act, 1944, as made applicable to the Service Tax matters vide Section 83 of the Act.*

*4.1 It is further observed that the prescribed time limit to file the appeal is specified as two months under Section 85(3A) of the Act, and therefore, the present appeal filed by the appellant is beyond the time limit specified under Section 85(3A) of the Act in as much as they have received the impugned Order on 27.06.2023 and filed the present appeal on 08.01.2024 i.e., after a lapse of more than six months and beyond the time limit specified under Section 85(3A) of the Act, which provides 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 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.*

*4.2 The above statutory provisions restrict any appeal to be filed within a period of two months from the date of receipt of the decision or order of the Adjudicating Authority and the proviso to Section 85(34) of the Act above empowers the Commissioner of Central Excise (Appeals), to allow the appeal to be filed within a further period of one month. if he is satisfied that the appellant was prevented by sufficient cause for presenting the appeal within the aforesaid period of two month.*

*4.3 I find that in the instant case, the appellant has requested for condonation of delay, Since, the Commissioner (Appeals) can condone the delay of one month only and the delay in the instant case is much beyond this time limit, I find that the appeal filled by the appellant beyond the prescribed time limit, is time barred and as such, is liable for dismissal.*

*4.4 Even the Hon'ble Supreme Court in the case of M/s Singh Enterprises vs. Commissioner of Central Excise, Jamshedpur 2008 (221) E.LT. 163 (SC), inter alia, held, as under:*

*Appeal to Commissioner (Appeals) - Limitation  
Condonation of delay - Appeal filed after 21 months  
from date of service of order dismissed by*

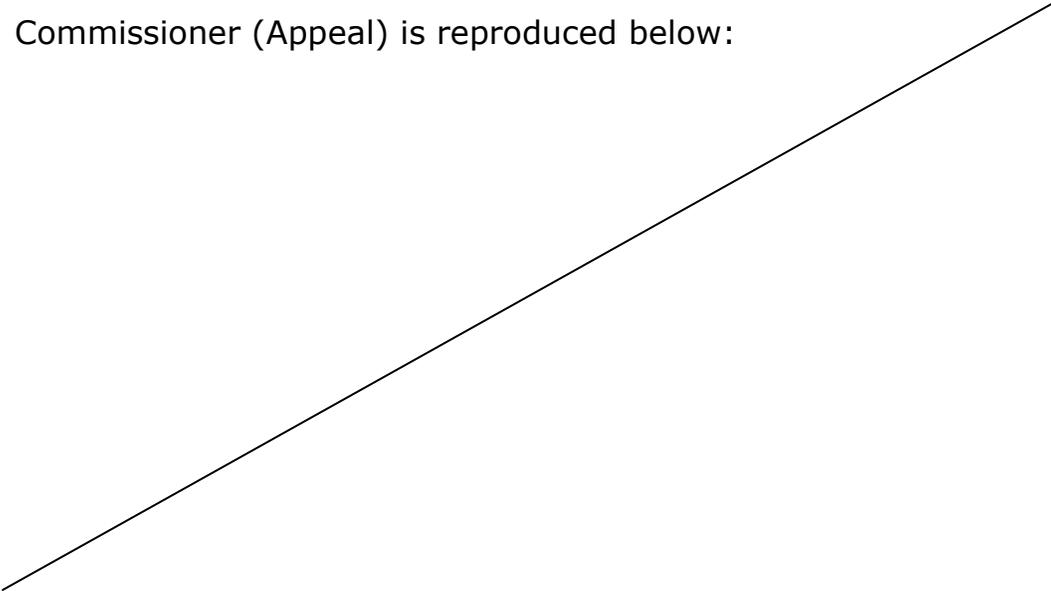
*Commissioner (Appeals) Writ petition filed against impugned order dismissed by High Court Appeal to be filed within 60 days from date of communication of order Delay condonable further period of 30 days on sufficient cause being shown-Appellate authority having no power to allow appeal presented beyond the said 30 days Impugned orders sustainable Section 35 of Central Excise Act, 1944. paras 2, 3, 8) Appeal to Commissioner (Appeals) - Limitation Appeal to be filed within 60 days from date of communication of order Commissioner (Appeals) empowered to condone delay of further period of 30 days only Section 5 of Limitation Act, 1963 not applicable Section 35 of Central Excise Act, 1944, The proviso to sub-section (1) of Section 35 ibid 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. [para 81]*

*Appeal-Limitation Power of High Court/Supreme Court to condone delay Supreme Court decision in 1998 (101) ELT 9 (S.C.) on condonation of delay in filing appeal-No law declared in the impugned decision to the effect that Supreme Court can direct condonation even when the statute prescribed particular period of limitation Such stand would render specific provision providing for limitation rather otiose Section 35 of Central Excise Act, 1944. [para 10]*

*5. In view of the above, I hold that the present appeal filed by the appellant is not maintainable and as such, the same is rejected."*

4.3 I find that the appeal has been definitely filed beyond the period of limitation prescribed by Section 85 (3A) of the Finance Act, 1994 and even beyond the period of one month which Commissioner (Appeals) could have condoned. I also find that appeal has been dismissed by following the decision of Hon'ble Supreme Court in the case of M/s Singh Enterprises (supra).

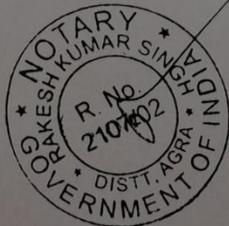
4.4 Appellant sought to justify the delay in filing the appeal by stating that they have filed the appeal with some delay (within condonable period) before the Commissioner (Appeals), Lucknow instead of Commissioner (Appeals), Allahabad having jurisdiction in the matter, when the papers were send to their address by speed-post dated 11.10.2023 but somehow the same were not delivered and returned back to the concern jurisdictional office. Subsequently, on receiving a phone-call from the office of Commissioner (Appeals), Lucknow they collected the paper from that office on 18.12.2023 and thereafter filed appeal before the concern jurisdictional Commissioner (Appeals). Due to this process, there have been delay in filing the appeal before concern jurisdictional Commissioner (Appeals) and the appeal should not be denied just for these mistakes whereby the appeal was filed before the wrong forum. Appellant have in the submissions made before me stated that they had filed the appeal before the Commissioner (Appeal) Lucknow on 19.09.2023. However I find that appellant has in his application for condonation of delay (duly notarized) himself stated that they had filed the appeal before Commissioner (Appeal) Lucknow on 01.10.2023, i.e. beyond condonable period of delay. The copy of the application for condonation of delay filed before Commissioner (Appeal) is reproduced below:



BEFORE the , Commissioner of Central Excise and Service Tax (Appeals)  
Allhabad

Affidavit of Yogendra Singh Yadav Partner . M/S. GANGA TELECOM S/o Shri. Ganga Sinfg Yadav Aged 48 years about R/o 154, Agarwal SHIV Nagar Colony Behind Pushkar Place Mainpuri.205001. The deponent does solemnly affirm as under:

1. That the deponent filed an appeal before your good self against the order in original no. OIO NO. 46-ST/ADT-CIR-I-KNP/23 dated 31/05/2023 of Ld. AC SERVICE TAX & CENTRAL EXCISE , CIRCLE-1 AUDIT, KANPUR. The said order communicated to the deponent on 27/06/2023 and as per "section 85(3A) of the Finance Act1994 that an appeal, relating to service tax shall be filed within two months from the date of receipt of the decision" The due date of filing an appeal against the said order on 26/08/2023.
2. That the deponent visited on 30/06/2023 to his counsel Pranjali Mishra and gave him the order then his counsel asked him for filing appeal against the order . That the deponent get signed all the documents regarding the appeal and paid the appeal fees etc on 12/07/2023 and the counsel assured him about the filing of appeal within time.
3. That on 16/09/2023 the petitioner came to know that the appeal was not filed by his counsel due his professional busyness.
4. That on 01/10/2023 the another counsel filed the appeal before the Commissioner of Central Excise and Service Tax (Appeals) Lucknow .



*[Handwritten signature]*  
*[Handwritten signature]*

5. That on 17/02/2023 the appellant received a phone call from the office of Commissioner of Central Excise and Service Tax (Appeals) Lucknow, and the office bearer told him that the said appeal does not falls in his jurisdiction and the right jurisdiction office to file said appeal is Commissioner of Central Excise and Service Tax (Appeals) Allahabad, he further told him that the said appeal returned to the appellant on the given address but the same is returned back with the remark of "insufficient address". However the address of the appellant is correct and sufficient to receive all mails.
6. That on 18/12/2023 received the said appeal from the office of Commissioner of Central Excise and Service Tax (Appeals) Lucknow .

VERIFICATION

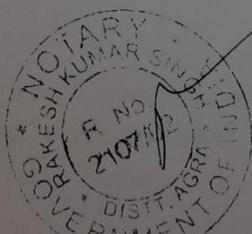
I Yogendra Singh Yadav Partner . M/S. GANGA TELECOM r the deponent does hereby verify that the contents of this Affidavit from Para 1to4 are true to the best of my knowledge and belief and that no part of the same is false.

Verified at Civil Court Agra on 23rd Day of December 2023.

*[Signature]*

DEPONENT

*[Signature]*



ATTESTED

*Rakesh Kumar Singh*  
Reg. No. 2107/02, Gazetted Officer  
Distt Notary AGRA  
*[Signature]*

4.5 I note that the appellant is making misleading statements. Even otherwise the submissions made by the Counsel lacks merit. I find that preamble of the Order-in-Original dated 31.05.2023 clearly stated as follows:-

(47)



**कार्यालय केंद्रीय वस्तु एवं सेवाकर, लेखा परीक्षा वृत्त-प्रथम**  
**117/7, सर्वोदय नगर, कानपुर - 208005**

पत्र संख्या V(15)40-Adj/Demand/Ganga/FBD./2020 दिनांक : 31.05.2023

मूल आदेश सं० : 46-ST/ADT-CIR-I-KNP/2023  
दिनांक : 31.05.2023

श्री आशीष वाजपेयी, सहायक आयुक्त, केंद्रीय वस्तु एवं सेवाकर लेखा परीक्षा वृत्त-प्रथम, कानपुर द्वारा पारित  
ISSUED BY SHRI ASHISH VAJPEYI, ASSISTANT COMMISSIONER,  
CGST AUDIT CIRCLE-I, KANPUR

प्रस्तावना / PREAMBLE

- आदेश की यह प्रति उस व्यक्ति के निजी प्रयोग के लिये निःशुल्क प्रदान की जाती है जिसे यह जारी की गयी है।  
Copy of this order is granted free of charge for private use of the person to whom it is issued.
- इस आदेश से प्रभावित व्यक्ति वित्त अधिनियम, 1944 की धारा 85 अथवा केंद्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35 ( जो भी लागू हों) के अन्तर्गत ऐसे निर्णय या आदेश की सूचना की तारीख से साठ दिनों के अंदर आयुक्त (अपील), केंद्रीय वस्तु एवं सेवाकर एवं केंद्रीय उत्पाद शुल्क आयुक्तालय (अपील), 38, एम०जी०मार्ग, सिविल लाइन्स, इलाहाबाद को अपील कर सकता है।  
Any person deeming himself aggrieved by this order may appeal under Section 85 of the Finance Act, 1944 or under Section 35 of the Central Excise Act, 1944 (as may be applicable), against the same to the Commissioner (Appeals), CGST & Central Excise (Appeal) Commissionerate, 38, M.G. Marg, Civil Lines, Allahabad. The appeal must be filed within sixty days from the date of communication of the above.
- सेवाकर का अपील फॉर्म S.T.-4 एवं उत्पाद शुल्क का अपील फॉर्म E.A.-1 में निर्दिष्ट प्रारूप में दो प्रतियों में की जानी चाहिये। इसके साथ में जिस आदेश के विरुद्ध अपील की जा रही है, उसकी एक प्रति भी होनी चाहिए।  
The Service Tax appeal is required to be filed in Form S.T.-4 & Central Excise appeal is required to be in Form E.A.-1 in specified format in duplicate. It shall be accompanied by the copy of the order appealed against.
- यहाँ सेवाकर / उत्पाद शुल्क विवादित हो अथवा सेवाकर / उत्पाद शुल्क एवं पेनाल्टी दोनों विवादित हों या पेनाल्टियाँ विवादित हों या फिर केवल पेनाल्टी ही विवादित हो तो उसकी / उनकी 7.5% धनराशि जमा करने के उपरान्त ही इस आदेश के विरुद्ध आयुक्त (अपील) के समक्ष अपील की जाएगी।  
An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the Service Tax / Excise Duty demanded where Service Tax / Excise Duty or Service Tax / Excise Duty and penalty are in dispute or penalty are in dispute or penalty alone is in dispute.

सेवा में,  
M/s Ganga Telecom  
Gali No. 7, Raja Ka Bagh  
Mainpuri

— श्रीवा — श्रीवा

4.6 On perusal of the para-2 of the above appeal preamble, it is evident that appellant has been duly informed about the jurisdiction in which the appeal was to be filed and there cannot be any error in the same. The claim of the appellant that right appeal should not be effected for his own mistakes and such arguments are not admissible for the reason that Hon'ble

Supreme Court in the case of M/s Raj Kumar Shivhare 2010 (253) ELT 3 (SC) have held as follows:-

**"24.** *The word 'any' in this context would mean 'all'. We are of this opinion in view of the fact that this Section confers a right of appeal on any person aggrieved. A right of appeal, it is well settled, is a creature of Statute. It is never an inherent right, like that of filing a suit. A right of filing a suit, unless it is barred by Statute, as it is barred here under Section 34 of FEMA, is an inherent right (See Section 9 of the Civil Procedure Code) but a right of appeal is always conferred by Statute. While conferring such right Statute may impose restrictions, like limitation or pre-deposit of penalty or it may limit the area of appeal to questions of law or sometime to substantial questions of law. Whenever such limitations are imposed, they are to be strictly followed. But in a case where there is no limitation on the nature of order or decision to be appealed against, as in this case, the right of appeal cannot be further curtailed by this Court on the basis of an interpretative exercise. Under Section 35 of FEMA, the legislature has conferred a right of appeal to a person aggrieved from 'any' 'order' or 'decision' of the Appellate Tribunal. Of course such appeal will have to be on a question of law. In this context the word 'any' would mean 'all'.*

**25.** *Justice Chitty in Beckett v. Sutton (51 Law Journal 1882 Chancery Division 432) had to interpret "any decree or order" in Section 1 of the Trustee Extension Act, 1852 and His Lordship held :-*

*"..the words of the section are as wide as possible, and appear to me to apply adopting the language the Legislature has used - to "any decree or order" by which the Court directs a sale".*

**26.** *The word 'any dispute' is somewhat akin to 'any order' or 'any decision'. Any dispute, occurring in Section 51 of Arbitration Act 1975, has been interpreted to have a wide meaning to cover all situations where one party makes a request or demand and which is refused by the other party [See Ellerin Bros. (Pty) Ltd. and Another v. Klinger, 1982 (2) AER 737] .*

**27.** *Justice Bachawat, while in Calcutta High Court, in the case of Satyanarain Biswanath v. Harakchand Rupchand, reported in AIR 1955 Calcutta 225, interpreted the word 'any' in Rule 10 of Bengal Chamber of Commerce, Rules of the Tribunal of Arbitration. Construing the said rule, the learned Judge held that the word 'any' in Rule 10 means one or more out of several and includes all and while doing so the learned Judge relied on an old decision of the Calcutta High court in the case of Jokhiram Kaya v.*

*Ganshamdas Kedarnath, AIR 1921 Cal. 244 at page 246. This Court is in respectful agreement with the aforesaid view of the learned Judge.*

**28.** *In Black's Law Dictionary the word 'any' has been explained as having a 'diversity of meaning' and may be "employed to indicate all and every as well as some or one and its meaning in a given Statute depends upon the context and subject matter of Statute". The aforesaid meaning given to the word 'any' has been accepted by this Court in Lucknow Development Authority v. M.K. Gupta [(AIR) 1994 SC 787]. While construing the expression "service of any description" under Section 2(o) of Consumer Protection Act, 1986 this Court held that the meaning of the word 'any' depends upon the context and the subject matter of the Statute and held that the word 'any' in Section 2(o) has been used in wider sense extending from one to all (para 4 at page 793 of the report) . In the instant case also when a right is conferred on a person aggrieved to file appeal from 'any' order or decision of the Tribunal, there is no reason, in the absence of a contrary statutory intent, to give it a restricted meaning.*

**29.** *Therefore, in our judgment in Section 35 of FEMA, any 'order' or 'decision' of the Appellate Tribunal would mean all decisions or orders of the Appellate Tribunal and all such decisions or orders are, subject to limitation, appealable to the High Court on a question of law.*

**30.** *In a case where right of appeal is limited only from a final order or judgment and not from interlocutory order, the Statute creating such right makes it clear [See Section 19 of the Family Courts Act, 1984] which is set out below :*

**"(19). Appeal**

*(1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law, an appeal shall lie from every judgment or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law.*

*(2) No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties [or from an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) :*

*PROVIDED that nothing in this sub-section shall apply to any appeal pending before a High Court or any order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) before the commencement of the Family Courts (Amendment) Act, 1991]*

*(3) Every appeal under this section shall be preferred within a period of thirty days from the date of judgment or order of a Family Court.]*

*(Emphasis supplied)*

**31.** *Similarly, under Section 104 of the Code of Civil Procedure read with Order XLIII Rule 1 thereof, it has been indicated from which interlocutory order an appeal will lie. But it has been made clear that no Second Appeal from such order will lie [See Section 104 Sub-section (2) of the Code].*

*But in Debt Recovery Tribunal Act, as in FEMA, an appeal lies from an interlocutory order and this has been made clear in Section 20(1) of the Act.*

**32.** *By referring to the aforesaid schemes under different Statutes, this Court wants to underline that the right of appeal, being always a creature of a Statute, its nature, ambit and width has to be determined from the Statute itself. When the language of the Statute regarding the nature of the order from which right of appeal has been conferred is clear, no statutory interpretation is warranted either to widen or restrict the same."*

4.7 Further, I find that in a similar situation where a person claimed condonation of delay for the reason that the appeal which writ petition was filed wrongly before Hon'ble Delhi High Court instead of Hon'ble Allahabad High Court, Hon'ble Allahabad High Court in the case of Mr. Neeraj Jhanji Vs CC & CCE 2013 (296) ELT 310 (All.) have held as follows:-

**"12.***It is further submitted by Shri Kesarwani that although the Delhi High Court permitted the appellant to withdraw the appeal on 5-1-2012, the appeal was filed with a further delay of about 20 days on 25-1-2012. The appeal is reported to be delayed by 1 year and 332 days for which the appellant is not entitled to take benefit of Section 14 of the Limitation Act. Shri Kesarwani submits that the appellant was not bonafidely pursuing the remedies with due diligence in the wrong Court. He and his counsels were fully aware that the Delhi High Court does not have jurisdiction in the matter. An objection was taken as early as on 22-9-2010. It was open to the appellant assisted by*

*expert counsels to withdraw the appeal for filing appeal before the competent jurisdictional High Court. The appellant delayed the matter for 1 year and 4 months, to take advantage of the interim order passed by the Delhi High Court. Further there are no bona fides pleaded by the appellant in pursuing the remedy at Delhi. All that he has stated in his application for condonation of delay that he had filed appeal bonafidely in Delhi High Court and is entitled to benefit of Section 14 of the Limitation Act.*

**13.***The Supreme Court held in Suresh Desai & Associates v. Commissioner of Income Tax - 1998 (230) ITR 912 that the appellate jurisdiction depends upon the location/place of the authority, which had passed the order. In Ambica Industries v. Commissioner of Income Tax (supra), the principles of law was upheld. The appellant has not pleaded in his application for condonation of delay that he or his counsel had no knowledge that the appeal has to be filed in Allahabad High Court. Firstly he filed writ petition in which liberty was given on oral prayer to be converted into appeal and on the same day an interim order was passed without converting the writ petition into appeal. The Delhi High Court extended the time to deposit Rs. 3 lacs and inspite of objections taken by the counsel appearing for the department and noticing the judgment in Ambica Industries case, which is well known to the counsels appearing in the relevant branch of law, allowed the counsel appearing for the appellant some time to look into the aspect of jurisdiction of the Delhi High Court. From this date i.e. on 22nd September, 2010, when the counsel appearing for the appellant had taken time to look into the aspect of jurisdiction, it was open to them to withdraw the appeal at any time. They did not object or contest to maintain the jurisdiction of the Delhi High Court and continued to take adjournments. On 5-1-2012 no objection was raised that the Delhi High Court has jurisdiction in the matter. The appellant had after the Court pointed out to*

*the order dated 22-9-2010, sought permission to withdraw the appeal with liberty to approach the jurisdictional High Court. The liberty was granted with an observation that the appellant in the present case had bonafidely filed the appeal in this Court and has been pressing the same as the Tribunal is located in Delhi.*

**14.***We do not find that the Delhi High Court after entertaining the writ petition and giving liberty to convert it into appeal and granting interim order on the same day, and thereafter noticing the preliminary objections on 22nd September, 2010, had any occasion to recommend that the appellant was bonafidely pursuing the appeal in Delhi High Court. After having held that the Delhi High Court did not have territorial jurisdiction, as in accordance with the Suresh Desai and Associates (supra) and Ambica Industries (supra), it should have refrained to make any observations in favour of the appellant.*

**15.***In Rabindra Nath Samuel Dawson v. Sivakasi & Ors. - (1973) 3 SCC 381 the Supreme Court held that where the objection to maintain the previous suit was taken at the very initial stage, benefit of Section 14 of the Limitation Act is not available to the person.*

**16.***In Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department & Ors. - (2008) 7 SCC 169 the Supreme Court considered the scope of Section 14 of the Limitation Act and held in paragraphs 21 and 22 as follows :-*

*Section 14 of "21. the Limitation Act deals with exclusion of time of proceeding bona fide in a court without jurisdiction. On analysis of the said Section, it becomes evident that the following conditions must be satisfied before Section 14 can be pressed into service :*

- (1) *Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;*
- (2) *The prior proceeding had been prosecuted with due diligence and in good faith;*
- (3) *The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;*
- (4) *The earlier proceeding and the latter proceeding must relate to the same matter in issue and;*
- (5) *Both the proceedings are in a court.*

*The policy of 22. the Section is to afford protection to a litigant against the bar of limitation when he institutes a proceeding which by reason of some technical defect cannot be decided on merits and is dismissed. While considering the provisions of Section 14 of the Limitation Act, proper approach will have to be adopted and the provisions will have to be interpreted so as to advance the cause of justice rather than abort the proceedings. It will be well to bear in mind that an element of mistake is inherent in the invocation of Section 14. In fact, the section is intended to provide relief against the bar of limitation in cases of mistaken remedy or selection of a wrong forum. On reading Section 14 of the Act it becomes clear that the legislature has enacted the said section to exempt a certain period covered by a bona fide litigious activity. Upon the words used in the section, it is not possible to sustain the interpretation that the principle underlying the said section, namely, that the bar of limitation should not affect a person honestly doing his best to get his case tried on merits but failing because the court is unable to give him such a trial, would not be*

*applicable to an application filed under Section 34 of the Act of 1996. The principle is clearly applicable not only to a case in which a litigant brings his application in the court, that is, a court having no jurisdiction to entertain it but also where he brings the suit or the application in the wrong court in consequence of bona fide mistake or law or defect of procedure. Having regard to the intention of the legislature this Court is of the firm opinion that the equity underlying Section 14 should be applied to its fullest extent and time taken diligently pursuing a remedy, in a wrong court, should be excluded.”*

*(Emphasis supplied)*

**17.***The predominant judicial opinion on the interpretation of Section 14 of the Limitation Act is that though the benefit has to be granted if all the conditions given in para 21 are satisfied, the bar of limitation should not affect a person, who was honestly doing his best to get his case tried on merits but failed because the Court was unable to give him such a trial. The Court will condone the delay, if the litigious activity was bona fide, as the equity underline Section 14 should be applied to its fullest extent. The position, however, would be otherwise, where a person is not bonafidely pursuing the remedy in the wrong Court. In this case the appellant assisted and advised by the counsels expert in the subject first filed a writ petition, which he requested to be converted into appeal. He was granted an interim order for which he sought extension of time to deposit the amount. On 22nd September, 2010 an objection was taken by the department that the appeal does not lie in the Delhi High Court in view of the Ambica Industries case (supra). It was open to the appellant to withdraw the appeal and to approach the Allahabad High Court. The counsels, however, took time to look into the aspects and thereafter took one year and three months,*

*during which they went on getting the appeal adjourned to withdraw the appeal. They did not contest the matter and meekly surrendered, after having enjoyed the benefit of stay order for more than one year, in requesting to withdraw the appeal.*

**18.***We find that the appellant's endeavour after 22nd September, 2010 in allowing the appeal to continue to be pending at Delhi High Court, was not in pursuing bona fide litigious activity. After 22-9-2010 the pursuit of appeal in Delhi High Court was not with bona fide intention.*

**19.***In Ramji Pandey & Ors. v. Swaran Kali - (2010) 14 SCC 492 the Supreme Court upheld the order of the Allahabad High Court by which the High Court dismissed a writ petition arising out of the orders of the District Court rejecting application under Section 5 read with Section 14 of the Act on the ground that the appellants were not only negligent but were acting and pursuing the entire matter without due diligence. They failed to appear and contest the suit on which ex parte decree was passed. Thereafter they failed to file appeal in the proper forum, which was brought to their notice at the initial stage by the respondents filing an objection. Despite the fact they did not take any step to withdraw the appeal and also did not appear in the High Court on dates fixed in the matter. The observations of the Supreme Court are quoted as below :-*

*Considering the "15. entire records, we find that the appellants are not only negligent but have been acting and pursuing the entire matter without due diligence as would be apparent from the fact that they initially failed to pursue the suit in right earnest, having failed to appear and contest the suit, due to which an ex parte decree had to be passed by the court. Even thereafter, they failed to file the appeal in the proper forum, which was brought to their notice right at the initial stage by the respondent's*

*filing of an objection. Despite the said fact, they did not take any step to withdraw the same and continued with the proceedings which was void ab initio and without jurisdiction and also obtained an order in their favour. Even before the High Court, where the impugned order was passed the appellants did not appear on the date of arguments or even on the previous dates. Absence of due diligence in pursuing the matter is writ large on the face of the records. Suit of 1983 was decreed ex parte in the year 1988 and thereafter the proceeding for setting aside the ex parte decree is being dragged on one way or the other by filing application/appeal and is dragging the matter till date.”*

*(emphasis supplied)*

**20.***In Ketan V. Parekh v. Special Director, Directorate of Enforcement - 2012 (275) E.L.T. 3 (S.C.) = 2012 (28) S.T.R. 195 (S.C.) the Supreme Court held in Paras 21 to 25 as follows :-*

*The aforesaid three judgments do support the argument of "21. Shri Ranjit Kumar that even though Section 5 of the Limitation Act cannot be invoked for condonation of delay in filing an appeal under the Act because that would tantamount to amendment of the legislative mandate by which special period of limitation has been prescribed, Section 14 can be invoked in an appropriate case for exclusion of the time during which the aggrieved person may have prosecuted with due diligence remedy before a wrong forum, but on a careful scrutiny of the record of these cases, we are satisfied that Section 14 of the Limitation Act cannot be relied upon for exclusion of the period during which the writ petitions filed by the appellants remained pending before the Delhi High Court. In the*

*applications filed by them before the Bombay High Court, the appellants had sought condonation of 1056 days' delay by stating that after receiving copy of the order passed by the Appellate Tribunal, they had filed writ petitions before the Delhi High Court, which were disposed of on 26-7-2010 and, thereafter, they filed appeals before the Bombay High Court under Section 35 of the Act. Paragraphs 1, 2 and 3 of the applications for condonation of delay which are identical in all the cases were as under :*

*The Appellant above named has preferred an Appeal against the 1. order dated 2nd August 2007 (hereinafter referred to as the "impugned order") passed by the Respondent No. 1 against the Appellant above named. The Appellant states that the impugned order was received by the Appellant on 5th October 2007. The Appellant states that there is a delay of 1056 days in filing the above appeal, the reasons for which are being stated in detail hereunder and, therefore, the Appellant above named prays that the delay in filing the present appeal may please be condoned.*

*RELIEFS SOUGHT : 2.*

*(a) That this Hon'ble Court be pleased to condoned the delay of 1056 days in filing the said Appeal;*

*(b) That such further and other reliefs as the facts and circumstances may require.*

*REASONS FOR THE DELAY : 3.*

*The Appellant declares that there is delay of 1056 days in 3.1 filing the appeal as prescribed in the Limitation Act, 1963.*

*The 3.2 Appellant further states that the delay occurred as the Writ Petition was filed before Delhi High Court on 5th November, 2007. The said writ was filed under the provisions of Articles 226 and 227 of the Constitution of India seeking issuance of a writ order or direction in the nature of Mandamus or any other writ for setting aside the impugned order dated 2nd August, 2007, passed by the Appellate Tribunal for Foreign Exchange under Rule 10 of the Adjudicating Proceedings and Appeal, 2000 for Dispensation. In the said Writ proceedings Hon'ble High Court of Delhi had passed an order on 26th July 2010. Vide the said order dated 26th July, 2010, while relying on the judgment of the Hon'ble Supreme Court, it was held by the Hon'ble Delhi High Court that even an order passed by the Appellate Tribunal in an application seeking dispensation of pre-deposit of the penalty would be appealable under Section 35 of the FEMA and that remedy under Article 226 is not available against such an order.*

*Further, Hon'ble Delhi High Court also held that the present petition cannot be entertained by this Court. It is, however, open to the Appellant's to avail of the appropriate remedy in terms of para 45 of the above judgment of the Supreme Court.*

*Hence, pursuant to the said 3.3 order passed by Hon'ble Delhi High Court the Appellant above named prefers an appeal before this Hon'ble Bombay High Court.*

*Under the said circumstances the Appellant most humbly prays 3.4 that this Hon'ble Court may be pleased to condone the delay.*

*It is submitted that the delay, in filing of the present 3.5 Appeal has not prejudiced the Respondent in any*

*manner, whatsoever, and, therefore, this Hon'ble Court be pleased to condone the said delay.*

*It is, further submitted that the delay of 1056 days in 3.6 filing the present Appeal was bona fide, unintentional and inadvertent.*

*A careful reading of the above reproduced averments shows 22. that there was not even a whisper in the applications filed by the appellants that they had been prosecuting remedy before a wrong forum, i.e. the Delhi High Court with due diligence and in good faith. Not only this, the prayer made in the applications was for condonation of 1056 days' delay and not for exclusion of the time spent in prosecuting the writ petitions before the Delhi High Court. This shows that the appellants were seeking to invoke Section 5 of the Limitation Act, which, as mentioned above, cannot be pressed into service in view of the language of Section 35 of the Act and interpretation of similar provisions by this Court.*

*There is another reason why the benefit of Section 14 of the 23. Limitation Act cannot be extended to the appellants. All of them are well conversant with various statutory provisions including FEMA. One of them was declared a notified person under Section 3(2) of the Special Court (Trial of Offences relating to Transactions in Securities) Act, 1992 and several civil and criminal cases are pending against him. The very fact that they had engaged a group of eminent Advocates to present their cause before the Delhi and the Bombay High Courts shows that they have the assistance of legal experts and this seems to be the reason why they invoked the jurisdiction of the Delhi High Court and not of the Bombay High Court despite the fact that they are residents of Bombay and have been contesting other matters including*

*the proceedings pending before the Special Court at Bombay. It also appears that the appellants were sure that keeping in view their past conduct, the Bombay High Court may not interfere with the order of the Appellate Tribunal. Therefore, they took a chance before the Delhi High Court and succeeded in persuading learned Single Judge of the Court to entertain their prayer for stay of further proceedings before the Appellate Tribunal. The promptness with which the learned senior counsel appearing for appellant - Kartik K. Parekh made a statement before the Delhi High Court on 7-11-2007 that the writ petition may be converted into an appeal and considered on merits is a clear indication of the appellant's unwillingness to avail remedy before the High Court, i.e. the Bombay High Court which had the exclusive jurisdiction to entertain an appeal under Section 35 of the Act. It is not possible to believe that as on 7-11-2007, the appellants and their Advocates were not aware of the judgment of this Court in *Ambica Industries v. Commissioner of Central Excise - 2007 (6) SCC 769* whereby dismissal of the writ petition by the Delhi High Court on the ground of lack of territorial jurisdiction was confirmed and it was observed that the parties cannot be allowed to indulge in forum shopping. It has not at all surprised us that after having made a prayer that the writ petitions filed by them be treated as appeals under Section 35, two of the appellants filed applications for recall of that order. No doubt, the learned Single Judge accepted their prayer and the Division Bench confirmed the order of the learned Single Judge but the manner in which the appellants prosecuted the writ petitions before the Delhi High Court leaves no room for doubt that they had done so with the sole object of delaying*

*compliance of the direction given by the Appellate Tribunal and, by no stretch of imagination, it can be said that they were bona fide prosecuting remedy before a wrong forum. Rather, there was total absence of good faith, which is sine qua non for invoking Section 14 of the Limitation Act.*

*The issue deserves to be considered from another angle. By 24. taking advantage of the liberty given by the learned Single Judge of the Delhi High Court, the appellants invoked the jurisdiction of the Bombay High Court under Section 35 of the Act. However, while doing so, they violated the time limit specified in order dated 26-7-2010 which, in turn, is based on paragraph 45 of the judgment of this Court in Raj Kumar Shivhare v. Assistant Director, Directorate of Enforcement (supra). Indeed, it is not even the case of the appellants that they had filed appeals under Section 35 of the Act within 30 days computed from 26-7-2010. Therefore, the Division Bench of the Bombay High Court rightly observed that even though the issue relating to jurisdiction of the Delhi High Court to grant time to the appellants to file appeals is highly debatable, the time specified in the order passed by the Delhi High Court cannot be extended.*

*In view of the above discussion, we hold that the impugned 25. order does not suffer from any legal infirmity.”*

**21.***In the present case also as in the case of Ketan V. Parekh (supra), the appellant was assisted and had the services of the counsel's, who are expert in the central excise and customs cases. They first filed a writ petition, and then without converting it into appeal obtained an interim order. They kept on getting the matter adjourned and thereafter in spite of specific objection taken, citing the*

*relevant case law, which is well known, took time to study the matter. Thereafter, they took more than one year and three months, to study the matter to withdraw the appeal. They took a chance, which apparently looking to the facts in Ketan V. Parekh's case and this case appear to be the practice of the counsels appearing in such matters at Delhi High Court and succeeded in getting interim orders. The Supreme Court has strongly deprecated such practice of forum shopping. In this case also there is no pleading that the writ petition and thereafter appeal was filed in Delhi High Court, under bona fide belief that it had jurisdiction to hear the appeal and that the appellant was pursuing the remedies in wrong court with due diligence. The appellant, thereafter, caused a further delay of 20 days in filing this appeal, which he has not explained.*

**22.***For the aforesaid reasons, we are of the opinion that the appellant is not entitled to the benefit of Section 14 of the Limitation Act. This appeal is barred by limitation by 697 days, which has not been sufficiently explained by the appellant."*

While upholding this order of Hon'ble Allahabad High Court, Hon'ble Supreme Court reported as 2014 (308) ELT 3 (SC) has recorded as follows:-

**5.***The very filing of writ petition by the petitioner in Delhi High Court against the order-in-original passed by the Commissioner of Customs, Kanpur indicates that the petitioner took chance in approaching the High Court at Delhi which had no territorial jurisdiction in the matter. We are satisfied that filing of the writ petition or for that appeal before Delhi High Court was not at all bona fide. We are in agreement with the observations made by the Allahabad High Court in the impugned order. The Allahabad High Court has rightly dismissed the petitioner's application of condonation of delay and consequently the appeal as time-barred."*

4.8 Further, Hon'ble Supreme Court in the case of M/s Glaxo Smith Kline Consumer Health Care Ltd. 2020 (36) GSTL 305 (SC) have held as follows:-

**"15.** *We may now revert to the Full Bench decision of the Andhra Pradesh High Court in Electronics Corporation of India Ltd. (supra), which had adopted the view taken by the Full Bench of the Gujarat High Court in Panoli Intermediate (India) Pvt. Ltd. v. Union of India & Ors. [AIR 2015 Guj 97 = 2015 (326) E.L.T. 532 (Guj.)] and also of the Karnataka High Court in Phoenix Plasts Company v. Commissioner of Central Excise (Appeal-I), Bangalore [2013 (298) E.L.T. 481 (Kar.)]. The logic applied in these decisions proceeds on fallacious premise. For, these decisions are premised on the logic that provision such as Section 31 of the 1995 Act, cannot curtail the jurisdiction of the High Court under Articles 226 and 227 of the Constitution. This approach is faulty. It is not a matter of taking away the jurisdiction of the High Court. In a given case, the assessee may approach the High Court before the statutory period of appeal expires to challenge the assessment order by way of writ petition on the ground that the same is without jurisdiction or passed in excess of jurisdiction - by overstepping or crossing the limits of jurisdiction including in flagrant disregard of law and rules of procedure or in violation of principles of natural justice, where no procedure is specified. The High Court may accede to such a challenge and can also non-suit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. However, if the writ petitioner choses to approach the High Court after expiry of the maximum limitation period of 60 days prescribed under Section 31 of the 2005 Act, the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a matter of course. Doing so would be in the teeth of the principle*

*underlying the dictum of a three-Judge Bench of this Court in Oil and Natural Gas Corporation Limited (supra). In other words, the fact that the High Court has wide powers, does not mean that it would issue a writ which may be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under Section 31 of the 2005 Act. That would render the legislative scheme and intention behind the stated provision otiose.*

**16.** *The respondent had relied on the decision of this Court in K.S. Rashid & Son v. The Income Tax Investigation Commission [AIR 1954 SC 207]. This decision of the Constitution Bench, no doubt, deals with the extent of power of the High Court under Article 226 of the Constitution and the situation when the High Court can refuse to exercise its discretion, such as when alternative efficacious remedy is available to the aggrieved party. In paragraph 4 (last paragraph) of this decision, however, the Court plainly noted that it was not necessary to express any final opinion on the question as to whether Section 8(5) of the Taxation on Income (Investigation Commission) Act, 1947 (Act XXX of 1947) is to be regarded as providing the only remedy available to the aggrieved party and that it excludes altogether the remedy provided for under Article 226 of the Constitution.*

**17.** *Reliance was then placed on a three-Judge Bench decision of this Court in ITC Ltd. & Anr. v. Union of India [(1998) 8 SCC 610 = 1998 (101) E.L.T. 9 (S.C.)]. In that case, the High Court had dismissed the writ petition on the ground that the petitioner therein had an adequate alternative remedy by way of an appeal under Section 35 of the Central Excise Act. Concededly, this Court was pleased to uphold that opinion of the High Court. However, whilst considering the difficulty expressed by the petitioner therein that the statutory remedy of appeal had now become time barred during the pendency of the*

*proceedings before the High Court and before this Court, the Court permitted the petitioner therein to resort to remedy of statutory appeal and directed the appellate authority to decide the appeal on merits. This obviously was done on the basis of concession given by the Counsel appearing for the Revenue as noted in paragraph 2(1) of the order, which reads thus :-*

*"2. The High Court has dismissed the writ petition filed by the petitioner on the ground that there is an adequate alternative remedy by way of an appeal under Section 35 of the Central Excise Act. Learned Counsel for the petitioner submits that the petitioner will face certain difficulties in pursuing this remedy :*

*(1) This remedy may not be any longer available to it because the appeal has to be filed within a period of three months from the date of the assessment order and delay can be condoned only to the extent of three more months by the Collector under Section 35 of the Act. It is pointed out that the petitioner did not file an appeal because the Collector (Appeals) at Madras had taken a view in a similar matter that an appeal was not maintainable. That apart, the petitioner in view of the huge demand involved filed a writ petition and so did not file an appeal. In the circumstances of the case, we are of the opinion that the ends of justice will be met if we permit the petitioner to file a belated appeal within one month from today with an application for condonation of delay, whereon the appeal may be entertained. Learned Counsel for the Revenue has stated before us that the Revenue will not object to the entertainment of the appeal on the ground that it is barred by time. In view of this direction and concession, the petitioner will have an effective alternative remedy by way of an appeal.*

*(emphasis supplied)*

*In that case, it appears that the writ petition was filed within statutory period and legal remedy was being pursued in good faith by the assessee (appellant).*

**18.** *Suffice it to observe that this decision is on the facts of that case and cannot be cited as a precedent in support of an argument that the High Court is free to entertain the writ petition assailing the assessment order even if filed beyond the statutory period of maximum 60 days in filing appeal. The remedy of appeal is creature of statute. If the appeal is presented by the assessee beyond the extended statutory limitation period of 60 days in terms of Section 31 of the 2005 Act and is, therefore, not entertained, it is incomprehensible as to how it would become a case of violation of fundamental right, much less statutory or legal right as such.*

**19.** *Arguendo, reverting to the factual matrix of the present case, it is noticed that the respondent had asserted that it was not aware about the passing of assessment order dated 21-6-2017 although it is admitted that the same was served on the authorised representative of the respondent on 22-6-2017. The date on which the respondent became aware about the order is not expressly stated either in the application for condonation of delay filed before the appellate authority, the affidavit filed in support of the said application or for that matter, in the memo of writ petition. On the other hand, it is seen that the amount equivalent to 12.5% of the tax amount came to be deposited on 12-9-2017 for and on behalf of respondent, without filing an appeal and without any demur - after the expiry of statutory period of maximum 60 days, prescribed under Section 31 of the 2005 Act. Not only that, the respondent filed a formal application under Rule 60 of the 2005 Rules on 8-5-2018 and pursued the same in appeal, which was rejected on 17-8-2018. Furthermore, the appeal in question against the*

*assessment order came to be filed only on 24-9-2018 without disclosing the date on which the respondent in fact became aware about the existence of the assessment order dated 21-6-2017. On the other hand, in the affidavit of Mr. Sreedhar Routh, Site Director of the respondent-company (filed in support of the application for condonation of delay before the appellate authority), it is stated that the company became aware about the irregularities committed by its erring official (Mr. P. Sriram Murthy) in the month of July, 2018, which pre-supposes that the respondent must have become aware about the assessment order, at least in July, 2018. In the same affidavit, it is asserted that the respondent-company was not aware about the assessment order, as it was not brought to its notice by the employee concerned due to his negligence. The respondent in the writ petition has averred that the appeal was rejected by the appellate authority on the ground that it had no power to condone the delay beyond 30 days, when in fact, the order examines the cause set out by the respondent and concludes that the same was unsubstantiated by the respondent. That finding has not been examined by the High Court in the impugned judgment and order at all, but the High Court was more impressed by the fact that the respondent was in a position to offer some explanation about the discrepancies in respect of the volume of turnover and that the respondent had already deposited 12.5% of the additional amount in terms of the previous order passed by it. That reason can have no bearing on the justification for non-filing of the appeal within the statutory period. Notably, the respondent had relied on the affidavit of the Site Director and no affidavit of the concerned employee (P. Sriram Murthy, Deputy Manager-Finance) or at least the other employee [Siddhant Belgaonker, Senior Manager (Finance)], who was associated with the erring employee during the relevant period, has been filed in support of the*

*stand taken in the application for condonation of delay. Pertinently, no finding has been recorded by the High Court that it was a case of violation of principles of natural justice or non-compliance of statutory requirements in any manner. Be that as it may, since the statutory period specified for filing of appeal had expired long back in August, 2017 itself and the appeal came to be filed by the respondent only on 24-9-2018, without substantiating the plea about inability to file appeal within the prescribed time, no indulgence could be shown to the respondent at all.”*

4.9 In view of the above discussions, I do not find any merits in this appeal.

5.1 Appeal is dismissed.

(Order pronounced in open court on-17 December, 2025)

**(SANJIV SRIVASTAVA)**  
**MEMBER (TECHNICAL)**