Amol

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8229 OF 2025

MAP OVERSEAS
through proprietor Smt. Shivani Sharma
age 25, having office at Ground Floor,
D-8, Gorai 1, Raj Sagar C.H.S. Ltd, Plot
no 112, RSC-16, Gorai-1, Near
Suvidya School, Borivali (west),
Mumbai- 400 091. …Petitioner

Versus

1. Union of India
through the Secretary, Ministry
of Finance (Dept of Revenue), No. 137
North Block, New Delhi – 110001.

2. State Government of Maharashtra,
through the secretary Ministry of
Finance, Finance Department,
Government of Maharashtra
Mantralaya, Mumbai-400 032

3. Assistant Commissioner,
Division-IV, CGST & CX.,
Thane Commissionerate
3rd floor, GST Bhavan, Ro
No.22, Wagle Industrial Estate
Thane(west), 400 604.

4. The Commissioner of CGST (Appeals)
8th Floor, 2 Cabins, 12th Floor,
B wing Half Portion, Lotus
Info Centre, Parel, Mumbai – 400012. …Respondents

Mr Shreyas Shrivastava, *with Mr Saurabh R Mashalkar, for the Petitioner.*

CORAM M.S. Sonak &
Jitendra Jain, JJ.
DATED: 25 August 2025

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

1. Heard Mr Shrivastava, who appears with Mr Saurabh Mashalkar for the Petitioner.

2. The Petitioner challenges the order in the original dated 23 May 2023, and the appellate authority's order dated 19 December 2024 by instituting this Petition.

3. As against the Order-in-Original dated 23 May 2023, the Petitioner instituted an appeal before the appellate authority (4th Respondent) on 17 October 2023.

4. Section 107(1) of the Central Goods and Services Act, 2017 (CGST Act) provides that any person aggrieved by an Order-in-Original can prefer an appeal to the appellate authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person. Section 107(4) provides that the appellate authority may, if he is satisfied that the Appellant was prevented by sufficient cause from presenting the appeal within the prescribed period of three months, allow it to be presented within a further period of one month.

5. In the present case, the Appeal was presented beyond the maximum prescribed condonable period of one month, i.e,

the appeal was presented beyond the period of 120 days, i.e, four months. Therefore, by the order dated 19 December 2023, the appeal was dismissed by invoking the bar of limitation.

6. Mr Shrivastava now seeks to argue the challenge to the Order-in-Original dated 23 May 2023 on merits, as if this Petition under Article 226 of the Constitution was a regular appeal against the same. He also tried to urge that the Order-in-Original dated 23 May 2023 was never communicated to the Petitioner, and from the date of its communication, the appeal was within the prescribed period of limitation or, in any event, within the maximum condonable period.

7. On perusing the appeal memo and the application for condonation of delay, or rather, the reasons for delay, it is evident that no case of non-communication of the order dated 23 May 2023 was made out. Certain difficulties have no doubt been cited, but they do not relate to non-communication of the Order-in-Original or that the period of limitation should commence from the date of communication. In short, it is evident from the record that the appeal was sought to be instituted even beyond the maximum condonable period as prescribed, i.e., beyond four months from the date of the communication of the order. As such, we can detect no fault in the order of 19 December 2023 by which the Petitioner's appeal was not entertained.

8. It is well settled that this Court's extraordinary jurisdiction under Article 226 of the Constitution should not be exercised by ignoring the legislative intent behind the provisions like Section 107(1) and 107(4) of the CGST Act. In

the case of **Assistant Commissioner (CT) LTU, Kakinada & Ors Vs Glaxo Smith Kline Consumer Health Care Limited**[1], the Hon'ble Supreme Court has explained that the power of the High Court under Article 226 of the Constitution is wide, but certainly not wider than the plenary powers bestowed on the Hon'ble Supreme Court under Article 142 of the Constitution. The Hon'ble Supreme Court noted that even while exercising power under Article 142, the Court is required to bear in mind the legislative intent and not render any statutory provision otiose. The Court held that the circumstance that the petitioner might have a good case on merits is not a relevant circumstance where no appeal is lodged within the maximum condonable period.

9. The Hon'ble Supreme Court referred to its decision in **ONGC vs Gujarat Energy Transmission Corporation Limited**[2], where the statutory appeal was barred by 71 days, and the maximum time limit for condoning delay was prescribed as only 60 days. At the stage of admission, the Hon'ble Supreme Court had, in fact, condoned this delay. However, at the final hearing of the appeal, an objection about the appeal being barred on account of delay was allowed to be raised as a jurisdictional issue, and the appeal, instituted beyond the maximum condonable period prescribed under Section 125 of the Electricity Act, 2003, was held as not maintainable.

10. The Hon'ble Supreme Court held that powers under Article 226 cannot be exercised in such a situation where the aggrieved party fails to file an appeal within the prescribed

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1 (2020) 19 SCC 681

2 (2017) 5 SCC 42

period of limitation or within the maximum condonable period as may be prescribed.

11. To the same effect is the decision of the Division Bench of this Court in the case of **Abhyudaya Co-operative Bank Ltd Vs Union of India through Joint Secretary & Ors**[3], where the Coordinate Bench observed that it is trite that when the statute prescribes a period of limitation along with the period for extending the period of limitation, the provisions of Section 5 of the Indian Limitation Act, 1963 would not apply. The Court noted that it has been settled by decisions of this Court as well as of the Hon'ble Supreme Court that when the law prescribes a period of limitation as well as an extended period of limitation, there is no provision for condonation of delay beyond the extended period of limitation. In such a situation, even a Petition under Article 226 of the Constitution of India, either for challenging the appeal Court's order declining to entertain the appeal or the original order was entertained.

12. Therefore, applying the aforesaid principles to the facts of the present case, we dismiss this Petition without any costs order.

(Jitendra Jain, J) **(M.S. Sonak, J)**

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[3] 2021 SCC OnLine Bom 6126