



2026:UHC:2177-DB

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL
THE HON'BLE CHIEF JUSTICE MR. MANOJ KUMAR GUPTA
AND
THE HON'BLE JUSTICE MR. SUBHASH UPADHYAY
Central Excise Appeal No.1 of 2026
27 March, 2026

Sai Auto Industries

-----Appellant

Versus

The Commissioner, Central Goods and Services Tax and
Others

-----Respondents

Presence:-

Mr. Rohit Arora, learned counsel for the appellant.

Mr. Shobhit Saharia, learned counsel for the respondents.

JUDGMENT : (per Mr. Manoj Kumar Gupta C. J.)

1. Heard learned counsel for the parties.
2. The present appeal has been filed under Section 35-G of the Central Excise Act, 1944 challenging the order of Customs, Excise and Service Tax Appellate Tribunal (for short "CESTAT") dated 29.09.2025 in Excise Appeal No.50976 of 2025.
3. Before the Tribunal, the appellant had challenged the order dated 28.12.2022 passed by the Commissioner, Central Goods and Service Tax (Appeals), Dehradun whereby appeal against the order dated 08.02.2022 passed by the Additional Commissioner was dismissed. The appeal has been dismissed on the ground that it was filed beyond time stipulated under Section 35 of the Central Excise Act.



4. Section 35 of the Central Excise Act is as follows:

"35. Appeals to Commissioner (Appeals). -

(1) Any person aggrieved by any decision or order passed under this Act by a Central Excise Officer, lower in rank than a Principal Commissioner of Central Excise, may appeal to the Principal Commissioner of Central Excise or Commissioner of Central Excise (Appeals) hereafter in this Chapter referred to as the Commissioner (Appeals) within sixty days from the date of the communication to him of such decision or order:

Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days."

5. The admitted fact is that order dated 28.12.2022 challenged in the appeal was received by the appellant on 18.02.2022. The appeal was filed on 30.05.2022. The Tribunal has excluded the period from 15.03.2020 to 28.02.2022, in view of order of Hon'ble Supreme Court dated 10.01.2022 in *Suo Motu* Writ Petition (C) No.3 of 2020, the relevant parts of which are as follows:

"5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:



- I. *The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.*
- II.
- III. *In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022. notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply."*

6. The Tribunal has held that under Section 35 of the Act, the prescribed limitation is 60 days which expired on 29.04.2022 as the limitation started running from 01.03.2022.

7. The power to condone delay of 30 days beyond the prescribed period of 60 days could be exercised only if sufficient cause is made out. In the present case, the appellant had not filed any application for condonation of delay and, therefore, the limitation did not automatically get extended to 90 days. Accordingly, the contention of the appellant that the limitation when counted from 01.03.2022 would be 90 days and would expire on 30.05.2022 has been repelled.



8. Learned counsel for the appellant submits that the order dated 10.01.2022 was passed by the Hon'ble Supreme Court exercising power under Article 142 of the Constitution in view of the peculiar circumstances prevailing during Covid-19 pandemic.

9. He submits that vide paragraph no.5(3), the Hon'ble Supreme Court has specifically provided that the limitation would be 90 days in every case whether it is pending before a judicial authority or before a *quasi* judicial authority under any general or special laws. He submits that, therefore, in the present case also the appellant was entitled to file appeal within 90 days from 01.03.2022 and, if so counted, the appeal was within limitation.

10. On the other hand, Shri Shobhit Saharia, learned counsel appearing on behalf of the revenue contends that paragraph no.3 would not get attracted in the instant case as thereby the Hon'ble Supreme Court has provided limitation of 90 days only in case where the limitation was expiring between 15.03.2020 and 28.02.2022.

11. He submits that in the case of the appellant, the limitation of 60 days did not expire during the said period and, therefore, as per sub-paragraph no.3 of paragraph



no.5 the appellant is not entitled to benefit of paragraph no.5(3).

12. The direction given by the Hon'ble Supreme Court in the said paragraph clearly states that the limitation would be 90 days from 01.03.2022. Although it speaks of the cases where limitation had expired between 15.03.2020 and 28.02.2022 but if the submission is accepted then in such cases irrespective of the limitation prescribed under the Statute the same would get extended for 90 days from 01.03.2022 whereas in other cases where limitation did not expire during the said period, the limitation would continue to be as prescribed in the Statute and thus an artificial distinction would come into existence between two category of cases which was never intended by the Hon'ble Supreme Court.

13. Additionally, 28.05.2022 was Saturday and 29.05.2022 was Sunday and, therefore, the appeal filed on 30.05.2022 cannot be said to have been filed beyond the limitation.

14. Consequently, we are unable to accept the submission of learned counsel appearing for the revenue. The order of CESTAT dismissing the appeal as barred by limitation is, accordingly, set aside. The appeal shall stand restored to its original number and shall be decided on merits.



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15. Accordingly, the present appeal stands allowed.
16. Pending application, if any, also stands disposed of.

(MANOJ KUMAR GUPTA, C. J.)

(SUBHASH UPADHYAY, J.)

Dated: 27.03.2026
SS