

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 2484/2025

M/s. Prime Logistics thr. Proprietor Yasir Amin Kharwa Nagpur .VS. Assistant
Commissioner of CGST & C. Ex., Div-Kalmeshwar, Nagpur – II, Nagpur and Ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A. K. Naik with Ms K. Deshpande, Advocates for petitioner.
Ms S.Kapoor with Mr.A.Kapoor, Advocates for respondent Nos.1 to 3.

CORAM : ANIL L. PANSARE AND NIVEDITA P. MEHTA, JJ.

DATE : JANUARY 9, 2026.

The question is, whether the authorities below have committed error in not condoning the delay in filing appeal against the adjudication made by respondent No.1. Respondent No.2 refused to condone delay on the count that it has no powers to condone delay beyond 30 days under Section 85 (3A) of the Finance Act, 1994.

2. We have gone through the provision. It provides that a person, who is aggrieved by any decision or order passed by the adjudicating authority subordinate to the Commissioner of Central Excise, may present appeal within two months from the date of receipt of decision or order. Proviso to sub section (3A) provides 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 period of two months, allow it to be presented within further period of one month.

3. The petitioner herein has filed appeal after 50 days of initial two months. Accordingly, respondent No.2 refused to condone the delay saying that he has no powers to do so in terms of Sub Section (3A) of Section 85. While doing so, respondent No.2 has referred to two judgments, one is of Madras High Court in **Maruthi Industrial Carbohydrates Ltd. Vs. Commissioner of Customs, Chennai**

[2001(136) E.L.T. 1331 (Tri.-Chennai)] and another is of Delhi High Court in Delta Impex Vs. Commissioner of Customs (ACU), New Delhi [2004 (173) E.L.T. 449 (Del)], wherein both the High Courts held that the provision of Section 5 of the Limitation Act is excluded by enactment of Section (3A) of Section 85 of the Finance Act, 1994. Therefore, the appellate authority cannot condone the delay beyond the period of 30 days as contemplated. In *Delta Impex (supra)* Delhi High Court further held that the Legislature was aware of the provisions contained in Section 5 of the Limitation Act, yet with an intention to curb the delay in taxation matters, it has specifically provided that after statutory period, if there is delay of 30 days, on showing sufficient grounds for delay of 30 days, that can be condoned and no further. Thus, the applicability of Section 5 of Limitation Act is specifically excluded.

4. Counsel for petitioner submits that despite such stringent provision, the High Courts across India have taken lenient view so that the persons like the petitioner will not be rendered remediless. Counsel for the respondents submits, various High Courts across India have taken a view that the powers to extend time beyond statutory limit, are not available even under Article 226 of the Constitution of India. Accordingly, seeks time to place on record relevant judgments.

5. Stand over to 16.01.2026.

(JUDGE)

(JUDGE)