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## **PRESCRIBED LIMITATION OF THREE MONTHS IS DIFFERENT FROM A PERIOD OF 90 DAYS: HIGH COURT OF BOMBAY**

The Hon'ble High Court of Bombay in the case of *Skoda Auto Volkswagen India Pvt. Ltd. vs. Commissioner (Appeals) & Anr.*<sup>1</sup> quashed the order passed by Commissioner of (Appeals) dismissing the application for condonation of delay. The Hon'ble High Court held that the period of limitation of three months to prefer an appeal against an Order-in-original, as prescribed under section 85(3A) of the Finance Act, 1994 is different from a period of limitation of 90 days as prescribed under section 35 of the Central Excise Act, 1944.

### **Background:-**

- Under section 85(3A) of the Finance Act, 1994, if you are aggrieved by an order passed by an adjudicating authority which is subordinate to the Principal Commissioner or Commissioner of Central Excise, you can prefer an appeal to the Commissioner of Central Excise (Appeals) within two months from the date when you receive the order. Furthermore, an additional time of one month can be granted if it is believed that there is sufficient cause by way of which you were constrained to present the appeal within the time frame of two months.
- According to clause 10 of the General Clauses Act, 1897, if the period of limitation to present an appeal lapses on a day which is a public holiday, the appeal can be presented on the next working day and the same shall be deemed to be presented within the period of limitation.

### **Brief facts:-**

- Skoda Auto Volkswagen India Pvt. Ltd. ("Petitioner") is a private limited company engaged in the business of import, manufacturing, assembling and sale of motor vehicles and motor parts.
- On 8<sup>th</sup> April, 2019, the Assistant Commissioner of Goods and Services Tax issued a Show Cause Notice ("SCN") to the Petitioner alleging a short payment of service tax. A reply to the SCN was filed by the Petitioner on 14<sup>th</sup> May, 2019 and a personal hearing was conducted on 11<sup>th</sup> June, 2019 pursuant to which, an order-in-original (OIO) was issued confirming the demand in the SCN which was received by the Petitioner on 30<sup>th</sup> August 2019. The Petitioner filed an appeal on 2<sup>nd</sup> December, 2019 before the Commissioner of Appeals ("Respondent") challenging the OIO, which was received by the Respondent on 4<sup>th</sup> December, 2019.
- An application for condonation of delay was filed on 5<sup>th</sup> December, 2019, which was rejected by the Respondent in an order dated 27<sup>th</sup> February, 2020 wherein it was stated that the limitation period of three months as prescribed under section 85(3A) of the Finance Act, 1994 is *pari-materia* to the limitation period of 90 days to file an appeal under section 35 of the Central Excise Act, 1944. Moreover, according to section 85(3) the period of limitation is for presentation of appeal and not for filing of appeal. Since the appeal was received by the Respondent on 4<sup>th</sup> December, 2019, it would be barred by limitation.
- Therefore, the Writ Petition was filed by the Petitioner before the Hon'ble High Court of Bombay.

### **Court observations:-**

- As per sub-section (35) of section 3 of the General Clauses Act, the word 'month' has been defined to mean a month reckoned according to the British calendar. A month does not refer

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<sup>1</sup> 2021-TIOL-616-HC-MUM-ST

to a period of 30 days but refers to the actual period of a calendar month. When the period prescribed is three months (as contrasted from 90 days) from a specific date, the said period would expire in the third month on the date corresponding to the date upon which the period starts.

- According to section 9 of General Clauses Act, 1897, while computing the time period, the first date is to be excluded when the word 'from' is used and to include the last date when the word 'to' is used. Since under section 85(3A) of the Finance Act, 1994 the time period for presenting the appeal begins from the date of receipt of the order, the said date has to be excluded.
- If the appeal was sent by registered post to the Respondent at the correct address within the period of limitation but was received by him beyond the period of limitation, the appeal would be well within the limitation period.
- Petitioner received the OIO on 30<sup>th</sup> August, 2019. After excluding the first day, the limitation period of two months would commence from 31<sup>st</sup> August, 2019. Therefore, the two months' limitation period was available to the petitioner upto 31<sup>st</sup> October, 2019. Adding the extended period of limitation of further one month would mean that delay could be condoned till 31<sup>st</sup> November, 2019 but because there is no 31 days in November, the extended period of limitation would spill over to 1<sup>st</sup> December, 2019, which was a Sunday. Therefore, the appeal was required to have been dispatched by the next working day, i.e., 2<sup>nd</sup> December, 2019. Since the appeal was dispatched on the said date, it would be well within the limitation period.
- Therefore, the court quashed the order of Commissioner (Appeals) dated 27<sup>th</sup> February, 2020

**VA Comments:-**

- The approach taken by the Hon'ble High Court of Bombay is favorable to the taxpayers, and is in line with the practice of strict construction of timelines prescribed in a tax statute.

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