



# Lawgics

By Nidhi, Advocate



**Judgment No.: 126**  
**Dt.: 10-05-2024**



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## Judgment Deals With

<b>Section/Rule</b>	Section 107
<b>Authority</b>	Delhi High Court
<b>Case Name</b>	Pramod Kumar Tomar (Prop. M/s. Paramount Steel) VS Assistant Commissioner Mundka Division Delhi West, CGST
<b>Dated</b>	26 <sup>th</sup> April, 2024

### Brief Facts of the Case:

The Petitioner impugns order dated 18.10.2023, whereby appeal filed by the petitioner impugning the Order-in-Original dated 12.08.2022 rejecting the refund claim of the petitioner, has been dismissed solely on the ground of limitation.

### Contention of the Petitioner:

The Order-in-Original was uploaded on the common portal along with the appeal on 12.11.2022 and as such in terms of Rule 108(3) of the Rules, the date of filing of the appeal shall be deemed to be 12.11.2022 and not 29.08.2023 as held by the Appellate Authority.

### Contention of the Authorities:

The Appellate Authority has held that there was a delay in filing the appeal for the reason that Order-in-Original was not uploaded with the appeal at the time of online filing and copy of the same was physically filed after a gap of nearly 10 months and as such the appeal was barred by time.

### Findings & Decision of the Court:

Subject Order-in-Original was signed on 12.08.2022 by the Adjudicating Authority. Even if it is assumed that the order was communicated on 12.08.2022 the date on which it is signed, the appeal was to be filed within 3 months from the date of the said order. In the impugned order, the Appellate Authority has held that the appeal was liable to be filed before 11.11.2022. Said finding is erroneous as the Appellate Authority has not noticed the provisions of Section 12(1) of the Limitation Act, 1963, which says that in computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded. In terms of Section 12(1) of the Limitation Act, in computing the period of limitation for an appeal, the day from which such period is to be reckoned, is to be excluded. Accordingly, even if it is assumed that the order was communicated on the day it was signed i.e. 12.08.2022, said date of 12.08.2022 is to be excluded while computing the period of limitation. Accordingly, the period of 3 months is to commence from 13.08.2022. Thus petitioner was liable to file the appeal by 12.11.2022. It is an admitted position that the appeal was filed alongwith a copy of the order, through the on-line mode on 12.11.2022, i.e. within 3 months. Consequently, it is held that the appeal was within time and the impugned order erroneously rejects the appeal on the ground of limitation. Consequently, the impugned order dated 18.10.2023 was set aside. The appeal was restored on the records of the Appellate Authority with direction to decide the appeal on merits in accordance with law.

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