CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.II

Customs Appeal No.70787 of 2025

(Arising out of Order-In-Appeal No.NOI-CUSTM-000-APP-01-25-26, dated - 16.04.2025 passed by Commissioner (Appeals) CGST & Central Excise, Noida)

M/s Purple Products Pvt. Ltd. .....Appellant
(502, 5th Floor, Powai Plaza (Commercial Bldg),
Central Avenue Road, Opp- Nirvana Park, Hiranandanni Garden,
Powai, Mumbai, Maharashtra 400076)

VERSUS

Commissioner, Customs, Noida ....Respondent
(Concor Complex, P.O. Container Depot,
Gautam Budh Nagar, Uttar Pradesh 201311)

APPEARANCE:
Absent for the Appellant
Shri Santosh Kumar, Authorized Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.-70892/2025

DATE OF HEARING : 23.12.2025
DATE OF DECISION : 23.12.2025

SANJIV SRIVASTAVA:

The present appeal is arising out of Order-In-Appeal No.NOI-CUSTM-000-APP-01-25-26, dated-16.04.2025 passed by Commissioner (Appeals) CGST & Central Excise, Noida. By the impugned order following has been held:-

ORDER

"In view of the above discussion & findings, without going into merits of the case, I hereby dismiss the present appeal No. 224/CUS/NOIDA/APPL/NCUS/2024-25 dated 30.09.2024 filed by M/s. Purple Products Pvt. Ltd., 502, 5th Floor, Powai Plaza

(Commercial Bldg.), Central Avenue Road, Opp. Nirvana Park, Hiranandani Garden, Powai, Mumbai-400076 against the Order-in-Original No. 05/DC-Gr.IV/Noida Customs/2020-21 dated 06.07.2020, passed by the Deputy Commissioner of Customs, CONCOR Complex, ICD Dadri, Customs Commissionerate, Noida due to the failure of the appellant to comply with the provision of Section 128(1) of the Customs Act, 1962. The appeal is disposed of accordingly."

2. None appeared despite notice nor has any request for adjournment been received. As the issue involved in the present appeal is in a very narrow compass the matter is taken into consideration on the basis of records and after hearing the learned Authorised Representative for the Respondent-Revenue.

3. I have considered the impugned order and the submissions made in the appeal and during the course of argument.

4. From the records and perusal of the impugned order it is evident that the appeal of the Appellant has been dismissed by observing as follows:-

"6. I have gone through the contents of appeal, oral as well as written submission of the appellant. Without discussing the merit of the present case, ab-initio, I would like to discuss whether the instant appeal has been filed by the appellant within the prescribed time period. I observe that the present appeal, filed by the appellant, was received in this office on 30.09.2024 whereas the appellant has declared at Sl. No. 4 of the Appeal Memo the date of communication of the Order to the appellant is 29.07.2024.

7. Before proceed further, it would be appropriated to examine the relevant legal provisions:

"Section 128. Appeals to [Commissioner (Appeals)]. -

(1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a 2 [Principal Commissioner of Customs or Commissioner of Customs] may appeal to 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 [(1A) The Commissioner (Appeals) may, if sufficient cause is shown at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.]

(2) Every appeal under this section, shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf."

7.1 The above provision of law is absolute and there is no ambiguity to the fact that no appeal can be entertained if the provisions of sub-Section (1) of Section 128 of the Customs Act, 1962 has not been complied-with by the appellant at the time of filing of the appeal. I find that sub-section (1) to Section 128 of the Customs Act, 1962 inter-alia, prescribes a period of 'sixty days' to file appeal before the Commissioner (Appeal) which may be extended further by a period of 'thirty days' by the Commissioner (Appeal) if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the prescribed period of sixty days. Thus, I find that any person aggrieved by any decision or order passed by an adjudicating authority subordinate to the Principal Commissioner or Commissioner has maximum period of ninety days, including thirty days' period condonable by the Commissioner (appeal), from the date of communication of impugned order to file appeal before the Commissioner (Appeals).

8. I observe that as per Para 8.13 of the "Statement of Facts" submitted by the appellant, along with appeal papers, it was submitted that:

"The appellant subsequently received a recovery notice bearing number C. No. VIII(30) Noida Cus/Rec/Purple/30/2020/2257 dated 09.08.2021, issued by the Deputy Commissioner (REC), Noida Customs Commissionerate. A copy of recovery notice issued by Deputy Commissioner (REC), Noida Customs Commissionerate is enclosed in Annexure 3"

8.1 Further, Para 8.14 of the "Statement of Facts" submitted by the appellant read as under:

"Upon receiving the recovery notice, the appellant become aware that a demand of INR 455343.73 along with interest and penalty has been confirmed by adjudicating authority"

8.2 Furthermore, the appellant vide their letter dated: 08.04.2025, submitted to this office as additional submissions vide their email dated 08.04.2025, informed this office that the appellant first became aware of the existence of the impugned OIO upon receipt of a notice dated 02.07.2021 (having C. No. VIII(30) Noida Cus/Rec/Purple/30/2020/2257 dated 09.08.2021 as already mentioned in para 7.1 supra) from the Recovery Officer, which was delivered to the Appellant on 16.08.2021.

8.3 From the foregoing, I find that the appellant has itself admitted that the department has communicated to the appellant of impugned OIO vide their letter dated 02.07.2021 which was despatched on 09.08.2021 and the same was received by the appellant 16.08.2021. Hence, it is established that, the appellant was duly communicated by the department regarding the issuance of impugned OIO and the said communication was received by the appellant on 6.08.2021.

8.4 As per Oxford Dictionary, the word "Communicate" has the meaning as under:

"to share or exchange information, news, ideas, feelings, etc."

As per Cambridge Dictionary, the meaning of "Communicate" has been described as under:

"to share information with others by speaking, writing, moving your body, or using other signals"

As per Longman Dictionary, the meaning of "Communicate" is given as as under:

"to exchange information or conversation with other people, using words, signs, writing etc"

8.5 From the above, it is clear that the meaning of the word 'Communicate' is to share or exchange information. The word communication cannot be substituted with any other word such as 'to deliver' or 'serve upon' or any other word. It merely describes that when any information was shared or exchanged, the communication was done. It is beyond any dispute that every word, which is used in framing the law, has its specific and unique meaning which cannot be replaced with any other word. The legislature has used the word "Communication" in framing of Section 128 of the Customs Act, 1962, with the sole intention that the appellant is bound to file the appeal within the prescribed time period from the date of communication (not delivered or served upon) of the decision or order. In other words, the appellant is bound to follow the legal provisions hence the appellant is legally required to collect and procure all the necessary information as well as documents and file the appeal within the prescribed time period from the date of communication of the said order.

8.6 In the present case, it is a matter of fact that the department has communicated the appellant regarding the impugned demand/impugned OIO and the said communication was duly received by the appellant on 16.08.2021. Thus, I observe that as per Sl. No. 4 of the Appeal Memo the declaration of the appellant that the date of communication of the decision or order is 29.07.2024 is not correct as the appellant has been communicated by the

department regarding issuance of impugned order on 16.08.2021 and it was the legal responsibility on the part of the appellant after receiving communication from the department regarding the impugned order to collect the necessary documents and information and to file the appeal before the appellate authority within the prescribed time period. However, the appellant failed to do so.

9. Thus, in view of foregoing, I find that as per Sl. No. 4 of the Appeal Memo the declaration of the appellant that the date of communication of the decision or order is 29.07.2024 is not correct as the appellant has been communicated by the department regarding issuance of impugned order on 16.08.2021 whereas the appellant has filed the present appeal on 30.09.2024. In the present case, the appeal has been filed not only beyond the normal time limit of 60 days but also beyond the power of delay condonation of further 30 days (total 90 days) vested with the undersigned. Accordingly, I hold that the present appeal is filed delayed beyond the condonation limit before the undersigned in contravention to the provisions of Section 128 of the Customs Act, 1962 hence the instant appeal is liable to be dismissed ab-initio without going into merit of the case."

5. From the facts as highlighted in the above order it is quite evident that appellant had become aware of the Order-In-Original on 16.08.2021. Even if the date when Appellant became aware of the Order-In-Original as per the admission of the Appellant himself then also the appeal has been filed much beyond the prescribed period of limitation. I find that Appellant had filed the appeal before the Commissioner (Appeals) beyond the period which could have been condoned by the Commissioner (Appeals) as per Section 35 of the Central Excise Act, 1944.

6. Hon'ble Supreme Court in case of Singh Enterprises [2008(221) ELT 163 (SC)] observed as follows:

"8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of Statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the Statute. The period upto which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Indian Limitation Act, 1963 (in short the Limitation Act) can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days time can be granted by the appellate authority to entertain the appeal.

The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act.

The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period.

9. Learned counsel for the appellant has emphasized on certain decisions, more particularly, I.T.C.s case (supra) to contend that the High Court and this Court in appropriate cases condoned the delay on sufficient cause being shown.

10. Sufficient cause is an expression which is found in various statutes. It essentially means as adequate or enough. There cannot be any straitjacket formula for accepting or rejecting the explanation furnished for delay caused in taking steps. In the instant case, the explanation offered for the abnormal delay of nearly 20 months is that the appellant concern was practically closed after 1998 and it was only opened for some short period. From the application for condonation of delay, it appears that the appellant has categorically accepted that on receipt of order the same was immediately handed over to the consultant for filing an appeal. If that is so, the plea that because of lack of experience in business there was delay does not stand to be reason. I.T.C.s case (supra) was rendered taking note of the peculiar background facts of the case. In that case there was no law declared by this Court that even though the Statute prescribed a particular period of limitation, this Court can direct condonation. That would render a specific provision providing for limitation rather otiose. In any event, the causes shown for condonation have no acceptable value. In that view of the matter, the appeal deserves to be dismissed which we direct."

7. In case of Pathapati Subba Reddy (Died) By L.Rs. & Ors. [Order dated 08.04.2024 in Special Leave Petition (Civil) No. 31248 Of 2018] after considering the past precedence Hon'ble Supreme Court has held as follows:

"26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.

8. In case of Glaxo Smith Kline Consumer Health Care Ltd. [2020 (36) G.S.T.L. 305 (S.C.)] Hon'ble Supreme Court observed as follows:

> ***"19**. Arguendo, reverting to the factual matrix of the present case, it is noticed that the respondent had asserted that it was not aware about the passing of assessment order dated 21-6-2017 although it is admitted that the same was served on the authorised representative of the respondent on 22-6-2017. The date on which the*

respondent became aware about the order is not expressly stated either in the application for condonation of delay filed before the appellate authority, the affidavit filed in support of the said application or for that matter, in the memo of writ petition. On the other hand, it is seen that the amount equivalent to 12.5% of the tax amount came to be deposited on 12-9-2017 for and on behalf of respondent, without filing an appeal and without any demur - after the expiry of statutory period of maximum 60 days, prescribed under Section 31 of the 2005 Act. Not only that, the respondent filed a formal application under Rule 60 of the 2005 Rules on 8-5-2018 and pursued the same in appeal, which was rejected on 17-8-2018. Furthermore, the appeal in question against the assessment order came to be filed only on 24-9-2018 without disclosing the date on which the respondent in fact became aware about the existence of the assessment order dated 21-6-2017. On the other hand, in the affidavit of Mr. Sreedhar Routh, Site Director of the respondent-company (filed in support of the application for condonation of delay before the appellate authority), it is stated that the company became aware about the irregularities committed by its erring official (Mr. P. Sriram Murthy) in the month of July, 2018, which pre-supposes that the respondent must have become aware about the assessment order, at least in July, 2018. In the same affidavit, it is asserted that the respondent-company was not aware about the assessment order, as it was not brought to its notice by the employee concerned due to his negligence. The respondent in the writ petition has averred that the appeal was rejected by the appellate authority on the ground that it had no power to condone the delay beyond 30 days, when in fact, the order examines the cause set out by the respondent and concludes that the same was unsubstantiated by the respondent. That finding has not been examined by the High Court in the impugned judgment and order at all, but the High Court was more

impressed by the fact that the respondent was in a position to offer some explanation about the discrepancies in respect of the volume of turnover and that the respondent had already deposited 12.5% of the additional amount in terms of the previous order passed by it. That reason can have no bearing on the justification for non-filing of the appeal within the statutory period. Notably, the respondent had relied on the affidavit of the Site Director and no affidavit of the concerned employee (P. Sriram Murthy, Deputy Manager-Finance) or at least the other employee [Siddhant Belgaonker, Senior Manager (Finance)], who was associated with the erring employee during the relevant period, has been filed in support of the stand taken in the application for condonation of delay. Pertinently, no finding has been recorded by the High Court that it was a case of violation of principles of natural justice or non-compliance of statutory requirements in any manner. Be that as it may, since the statutory period specified for filing of appeal had expired long back in August, 2017 itself and the appeal came to be filed by the respondent only on 24-9-2018, without substantiating the plea about inability to file appeal within the prescribed time, no indulgence could be shown to the respondent at all.

9. In view of discussions as above, I do not find any merits in the appeal.

10. Appeal is dismissed.

(Dictated & pronounced in open court)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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11. After completion of the hearing and pronouncement of the decision a request for adjournment has been placed before me. However as the order has already been pronounced in the open court this request proposed after rising of the court do not needs any consideration. I also observe that this request was sent by e-mail to the Assistant Registrar, today when the matter was listed for hearing at 09:03 Hrs and not even a day in advance, stating as follows:

> *"Due to demise of a close relative in the family, it will not be possible to attend the hearing as scheduled. Owing to the bereavement and the related obligations, appearance on the said date is not feasible.*
> *In view of the above genuine difficulty, it is humbly prayed that matter may kindly be adjourned to a later date convenient to the Hon'ble Bench."*

On perusal of the above application, I do not find any justifiable ground to entertain the same. The application do not disclose any thing even the relationship with the close relative who had demised. In absence of any such details I do not find any reason to consider the same even on merits of the application.

12. In the case of INDO WOOSUNG VACUUM CO. LTD. [2011 (21) S.T.R. 274 (Tri. - Bang.)] Bangalore bench observed as follows:

> *"8. The order dated 25th May, 2010, undoubtedly, discloses that, the said letter was not placed before the Bench while deciding the matter. The Tribunal's records, as they stand today, therefore, in relation to the hearing on 25th May, 2010 are concerned, disclose that the respondents and their advocate were absent when the matter was called out and in those circumstances the matter proceeded ex parte. At the same time, it is the contention of the respondents that the letter was sent on 24th May, 2010 seeking adjournment of the hearing fixed*

on 25th May, 2010. Undoubtedly, assuming that the said letter was presented to the registry on 24th May, 2010, it discloses the ground that the advocate for the respondents was not well and unable to attend the personal hearing fixed on 25th May, 2010. At the same time, it is undisputed fact that it was to the knowledge of the respondents, though it might have been subsequently acquired, that when the matter came up for hearing on 25th May, 2010, the Tribunal was not apprised of any such letter having been sent by the respondents. In those circumstances, it was obviously expected from the respondents to enclose the copy of such letter along with the application disclosing necessary details about the presentation of such application in the registry on 24th May, 2010. It is not known as to why the same was not disclosed in the application and why the respondents had to wait till the date of today's hearing to contend that the proof thereof could be verified from the inward register by verifying whether the same was entered at Serial No. 186 on 24th May, 2010 or not. Be that as it may, the ground disclosed in the letter is that, the advocate for the respondents was unwell and, therefore, could not attend the hearing on 25th May, 2010. It is to be noted that the letter was not under the signature of the advocate. It was sent by the party. In those circumstances, in the absence of any proof about the sickness of the advocate merely on statement of the party, even if the application was presented before the Tribunal on the very day, it could have been rejected for want of proof relating to the contents of the said application. There is yet another reason, as rightly pointed out by the Departmental Representative, that though in some matters the Tribunal might have acted upon the letters sent on behalf of the advocate for the assessee for adjournment, the requirement of law is that, such an application should be presented in the open Court by somebody on behalf of the assessee. Letter, if any, should be sent well in advance to

the Registry so that necessary intimation in that regard can be made to the other side as also the same can be placed before the Bench in time. The learned advocate in this regard has submitted that, even on earlier occasion, in the very case, the Tribunal had accepted such letters. In that regard, attention was also been drawn to the decision of the Delhi High Court. Assuming that the Tribunal had acted upon any such letter and assuming that it was the practice followed, merely because a wrong practice is followed, it cannot acquire any right in favour of the party to insist that the Tribunal should continue to follow the wrong practice. The decision of the Delhi High Court in S.K. Gupta's case (surpa) was in a totally different fact situation. Therein, the letter for adjournment was sent in relation to the matter before the Sales Tax Officer. That apart, the clear observation by the Hon'ble High Court in relation to the said letter is that "It stands proved on the record that the said communication dated May 2, 1980 stood delivered to the addressee, namely, the Sales Tax Officer, on May 3, 1980". In other words, the letter, which was sent for adjournment, was, in fact, placed before the authority who was to hear the matter. Obviously, therefore, the authority was made aware of such application before the matter was disposed of by the authority, yet no order was passed in relation to the said letter prior to disposal of the case. It was in those circumstances the Delhi High Court observed that "There is a clear non-application of mind and casual approach to the assessment". That is not the case in the matter in hand. Besides, the matter before the Tribunal was not at the original stage of assessment, whereas in S.K. Gupta's case (surpa) the matter was at the original stage of assessment before the Sales Tax Officer. Taking into consideration all those facts, the Delhi High Court has observed that, there was clear non-application of mind by the authority. It is settled law that a decision delivered in the peculiar set of facts cannot be applied to a situation which arises in a

totally different set of facts. It is not mere absence of application before the Tribunal on 25th May, 2010 that led to the passing of the order. …"

13. In the case of Shri Ram Steel Industries [2010 (258) E.L.T. 154 (Tri. - Del.)] Delhi Bench observed as follows:

"17. After matters were heard and judgment was delivered in the open Court and while Excise appeal No. 2546 of 2009 was being heard, a letter was received in the open Court stated to have been sent by Shri O.P. Agarwal, Chartered Accountant for the respondents, which reads thus :

> *"The personal hearings in the above-referred appeals filed by the department have been fixed for 8-7-2010 before your Lordship. I have to appear for hearing on behalf of the all the respondents. Accordingly I got my ticket reserved from Jodhpur to Delhi and back vide PNR No. 2636850865 and 2408456173 on 30-6-2010 itself. But suddenly engagement of my niece has been fixed for 8-7-2010 and therefore, I had to be here in Jodhpur to attend ring ceremony. In view of this, I would not be able to appear before your good offices for hearings on 8-7-2010. In view of this, I would request your good offices to kindly adjourn the hearing fixed for 8-7-2010 and oblige. The inconvenience caused to you is highly regretted".*

18. The above letter was received in the open Court at 1.15 p.m. by the Court Master. Thereafter, it was brought to the notice of the Bench. Since matters were already heard and order was already delivered in the open Court nothing could be done in relation to the application comprised under the said letter.

***19.** Even otherwise there is no substance in the application. The date of hearing was fixed with the consent*

of the learned Advocate and the learned DR. The matters were adjourned on so many occasions. It was specifically made known to the representatives of the parties that matters would not be adjourned any further.

20. *Besides the ground disclosed in the application can never be a ground for adjournment.*

21. *Besides, neither the learned Advocate nor the representative of the party is entitled to presume that the Tribunal would be obliged to adjourn the matter moment a request for the same is sent. Besides the practice of seeking adjournment by sending an application either by post or by courier or by fax is highly objectionable. Adjournment is not a matter of right. Nobody can take the Tribunal for granted and presume and assume that matter would be adjourned moment there is a request for the same. There has to be a genuine ground for adjournment of a matter. Besides, it should not be forgotten that the order in that regard is always in the discretion of the Tribunal which is to be exercised judiciously. Nobody can insist for adjournment of hearing."*

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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