CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20048 of 2025

(Arising out of Order-in-Appeal No. 398/2024 dated 26.09.2023 passed by the Commissioner of Customs (Appeals), Bangalore.)

M/s. United Futuristic Trade Impex Private Limited
Baithkol.
C/o Tropicana Logistics Private Limited
Karwar Port, Sea Bird Road,
Uttara Kannada – 581 302.

Unit No.214, 2nd Floor, Turf Estate,
Opp. Shakti Mill Lane Off Dr. E Moses
Road, Mahalaxmi, Mumbai – 400 011.

Appellant(s)

VERSUS

Commissioner of Customs (Appeals),
BMTC Building, above BMTC Bus Stand,
Domlur, Bangalore – 560 071.

Respondent(s)

APPEARANCE:

Mr. Manav Purohit, Chartered Accountant for the Appellant

Mr. Vinod Kumar Garhwal, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MRS R. BHAGYA DEVI, MEMBER (TECHNICAL)

FINAL ORDER NO. 20603 / 2026

DATE OF HEARING: 05.05.2026
DATE OF DECISION: 05.05.2026

PER : JUSTICE DILIP GUPTA

This appeal seeks the quashing of the order dated 26.09.2024 (wrongly mentioned as 26.09.2023) by which the appeal filed by M/s. United Futuristic Trade Impex P. Ltd.[1]

1. the appellant

against the order dated 03.11.2023 passed by the adjudicating authority has been dismissed for the reason that it was filed beyond the time stipulated in Section 128(1) of the Customs Act, 1962[2]. The Commissioner (Appeals) has, after noting that the appellant himself stated in Form CA-1 as well as in the delay condonation application that order dated 03.11.2023 passed by the adjudicating authority was served upon the appellant on 15.11.2023, dismissed the appeal for the reason that it was not only filed beyond the stipulated period of 60 days from the date of service of the order passed by the adjudicating authority but even after the expiry of the extended period of 30 days as is contemplated in the proviso to section 128(1) of the Customs Act, 1962[2].

2. The learned Chartered Accountant appearing for the appellant submitted that the appellant had good and sufficient reasons for not filing the appeal and the delay of 2 days should have been condoned by the Commissioner (Appeals).

3. The learned Authorised Representative appearing for the department, however, submitted that the Commissioner (Appeals) did not have power to condone the delay of 2 days as it was even beyond the extended period of 30 days after the expiry of the normal period of 60 days.

4. The submissions advanced by learned Chartered Accountant for the appellant and the learned Authorised Representative appearing for the department have been considered.

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2. the Customs Act.

5. Section 128(1) of the Customs Act provides that any person aggrieved by any decision or order passed by an officer of customs lower in rank than the Commissioner may appeal to the Commissioner (Appeals) within 60 days from the date of service of the order. The proviso, however, stipulates 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 60 days, allow it to be presented within a further period of 30 days.

6. In the instant case, as has been recorded by the Commissioner (Appeals), the appeal was filed even beyond the extended period of 30 days. The Commissioner (Appeals) was, therefore, justified in dismissing the appeal as it was filed beyond the period stipulated in section 128(1) of the Customs Act.

7. This view is supported by the decision of the Supreme Court in **Singh Enterprises vs. Commissioner of Central Excise**[3]. The Supreme Court clearly held 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

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3. 2008 (221) ELT 163 (SC)

> 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."

8. In view of the aforesaid decision of the Supreme Court, it is not possible to accept the contention of the learned Chartered Accountant appearing for the appellant that the Commissioner (Appeals) committed an error in passing the impugned order. Learned Commissioner (Appeals) as noted above, was justified in dismissing the appeal.

9. This appeal would, therefore, have to be dismissed and is, accordingly, dismissed.

(Order dictated and pronounced in Open Court.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

Rv