# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
# NEW DELHI

**PRINCIPAL BENCH, COURT NO. 1**

**CUSTOMS APPEAL NO. 51134 OF 2022**

[Arising out of Order-in-Appeal No. CC(A)Customs/D-II/Export/ICD/TKD/917/2020-21 dated 23.09.2020 passed by the Commissioner of Customs (Appeals) New Delhi]

**VINOD KUMAR MULANI** **.......Appellant**
30/15, Ground Floor,
Shakti Nagar, Delhi-110007

VERSUS

**COMMISSIONER OF CUSTOMS-NEW DELHI** **......Respondent**
ICD, Tughlakabad-110020

**<u>Appearance:</u>**

Shri H. S. Bhullar and Ms. Garima Agarwal, Advocates for the appellant

Shri Rakesh Kumar, Authorised Representative for the Department

**CORAM:**
**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**
**HON'BLE MR. P. V. SUBBA RAO, MEMBER ( TECHNICAL )**

**FINAL ORDER NO. 58090 /2024**

**Date of Hearing/Decision: 12/08/2024**

**JUSTICE DILIP GUPTA:**

1. This appeal seeks the quashing of the order dated 23.09.2020 passed by the Commissioner of Customs (Appeals) by which the appeal that was filed by the appellant before the Commissioner (Appeals) has been dismissed on the ground of delay.

2. It transpires from the records that the order dated 23.02.2017 passed by the Additional Commissioner was assailed before the Commissioner (Appeals). It was stated that the said order dated 23.02.2017 was received by the appellant on 05.03.2017 and the appeal was filed on 01.06.2017. The Commissioner (Appeals) has noted that under section 128 (i) of the Customs Act, the appeal can be filed within a period of 60 days but it can be allowed to be permitted

within the next 30 days provided the appellant is able to substantiate that he was prevented by sufficient cause from filing the appeal within the stipulated time. After noting the aforesaid provision the Commissioner (Appeals) has stated that delay of 26 days after this statutory period of 60 days has not been explained. The appellant had contended that due to mis-happening in his family the appellant could not contact his counsel and take proper action to prepare the appeal. The Commissioner (Appeals) did not accept this explanation as documentary evidence was not filed by the appellant to substantiate this fact.

3. Shri H. S. Bhullar, learned counsel for the appellant assisted by Ms. Garima Agarwal, contended that the Commissioner (Appeals) committed an error in not condoning the delay of 26 days after the expiry of the normal period of limitation of 60 days. The contention is that the short delay of 26 days, which could be condoned under section 128 of the Customs Act, should have been condoned by the Commissioner (Appeals) as the appellant was prevented by sufficient cause from preferring the appeal within the stipulated time.

4. Shri Rakesh Kumar, learned authorised representative appearing for the department has, however, supported the impugned order and has submitted that it does not call for interference in this appeal.

5. The submissions advanced by the learned counsel for the appellant and the learned authorised representative appearing for the department have been considered.

6. It is not in dispute that the delay of 26 days could be condoned under section 128 of the Customs Act since it fell within the extended period of 30 days of limitation. The appellant had clearly stated that

because of mis-happening in his family, he could not contact his counsel as a result of which the appeal could not be filed within the stipulated period. If the Commissioner (Appeals) was not satisfied with this averment, he could have required the appellant to produce evidence in support of his submission but that was not done and straightway a finding was recorded that there was no evidence to substantiate the allegation. A liberal view should have been taken, more particularly when the appellant stated that because of mis-happening in his family, the appeal could not be filed.

7. In such circumstances, when the order was passed by the Commissioner (Appeals) in 2019, we consider it appropriate to condone the delay instead of remanding the matter to the Commissioner (Appeals) to again examine the issue. The delay is, accordingly, condoned. The order dated 23.09.2020 passed by the Commissioner (Appeals) is, accordingly, set aside.

8. The Commissioner (Appeals) shall now decide the appeal on merits. The appeal would be decided expeditiously and preferably within a period of 6 months from the date a copy of the order is produced by either of the party before the Commissioner. The appeal is allowed to the extent indicated above.

(Order dictated and pronounced in open court)

**(JUSTICE DILIP GUPTA)**
**PRESIDENT**

**(P. V. SUBBA RAO)**
**MEMBER ( TECHNICAL )**

Tejo