CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. I

CUSTOMS APPEAL No. 85341 of 2025

(Arising out of Order-in-Appeal No. 1468 to 1619 (Gr.IV)2020(JNCH)/Appeals dated 22.12.2020 passed by the Commissioner of Customs (Appeals), Mumbai-II)

M/s Metalloys Recycling Limited **......Appellant**
12, Niraj Industrial Estate
Off Mahakali Caves Road, Andheri (E),
Mumbai – 400 093

Versus

Commissioner of Customs, Nhava Sheva-II **......Respondent**
JNPT Custom House, Nhava Sheva,
Tal. Uran, Dist. Raigad, Maharashtra – 400 707

WITH

C/85292/2025	**C/85293/2025**	**C/85294/2025**	**C/85295/2025**
C/85296/2025	**C/85297/2025**	**C/85298/2025**	**C/85299/2025**
C/85300/2025	**C/85301/2025**	**C/85302/2025**	**C/85303/2025**
C/85304/2025	**C/85305/2025**	**C/85306/2025**	**C/85307/2025**
C/85308/2025	**C/85309/2025**	**C/85310/2025**	**C/85311/2025**
C/85312/2025	**C/85313/2025**	**C/85314/2025**	**C/85315/2025**
C/85316/2025	**C/85317/2025**	**C/85318/2025**	**C/85319/2025**
C/85320/2025	**C/85321/2025**	**C/85322/2025**	**C/85323/2025**
C/85324/2025	**C/85325/2025**	**C/85326/2025**	**C/85327/2025**
C/85328/2025	**C/85329/2025**	**C/85330/2025**	**C/85331/2025**
C/85332/2025	**C/85333/2025**	**C/85334/2025**	**C/85335/2025**
C/85336/2025	**C/85337/2025**	**C/85338/2025**	**C/85339/2025**
C/85340/2025	**C/85342/2025**	**C/85343/2025**	**C/85344/2025**
C/85345/2025	**C/85346/2025**	**C/85347/2025**	**C/85348/2025**
C/85349/2025	**C/85350/2025**	**C/85351/2025**	**C/85352/2025**
C/85353/2025	**C/85354/2025**	**C/85355/2025**	**C/85356/2025**
C/85357/2025	**C/85358/2025**	**C/85359/2025**	**C/85360/2025**
C/85361/2025	**C/85362/2025**	**C/85363/2025**	**C/85364/2025**
C/85365/2025	**C/85366/2025**	**C/85367/2025**	**C/85368/2025**
C/85369/2025	**C/85370/2025**	**C/85371/2025**	**C/85372/2025**
C/85373/2025	**C/85374/2025**	**C/85375/2025**	**C/85376/2025**
C/85377/2025	**C/85378/2025**	**C/85379/2025**	**C/85380/2025**
C/85381/2025	**C/85382/2025**	**C/85383/2025**	**C/85384/2025**
C/85385/2025	**C/85386/2025**	**C/85387/2025**	**C/85388/2025**
C/85389/2025	**C/85390/2025**	**C/85391/2025**	**C/85392/2025**
C/85393/2025	**C/85394/2025**	**C/85395/2025**	**C/85396/2025**
C/85397/2025	**C/85398/2025**	**C/85399/2025**	**C/85400/2025**
C/85401/2025	**C/85402/2025**	**C/85403/2025**	**C/85404/2025**
C/85405/2025	**C/85406/2025**	**C/85407/2025**	**C/85408/2025**
C/85409/2025	**C/85410/2025**	**C/85411/2025**	**C/85412/2025**
C/85413/2025	**C/85414/2025**	**C/85415/2025**	**C/85416/2025**
C/85417/2025	**C/85418/2025**	**C/85419/2025**	**C/85420/2025**
C/85421/2025	**C/85422/2025**	**C/85423/2025**	**C/85424/2025**
C/85425/2025	**C/85426/2025**	**C/85427/2025**	**C/85428/2025**
C/85429/2025	**C/85430/2025**	**C/85431/2025**	**C/85432/2025**
C/85433/2025	**C/85434/2025**	**C/85435/2025**	**C/85436/2025**
C/85437/2025	**C/85438/2025**	**C/85439/2025**	**C/85440/2025**
C/85441/2025	**C/85442/2025**		

APPEARANCE:

Shri Mahesh Raichandani, Advocate for the Appellants

Shri Jitesh Kumar Jain, Authorized Representative for the Respondents

CORAM: HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. C.J. MATHEW, MEMBER (TECHNICAL)

Date of Hearing/Decision: 04.04.2025

FINAL ORDER NO's. 85534-85684/2025

JUSTICE DILIP GUPTA:

All these 151 appeals have been filed to assail a common order dated 22.12.2020 passed by the Commissioner of Customs (Appeals), JNCH, Nhava Sheva, Mumbai-III[1], by which all the appeals have been dismissed for the reason that they were filed beyond the period specified in section 128(1) of the Customs Act, 1962[2].

2. It transpires that the appellant had filed 151 Bills of Entry for clearance of the imported goods. They were reassessed by the proper officer and the declared value was enhanced. It is the case of the appellant that it had made requests for passing speaking orders in terms of section 17(5) of the Customs Act, but speaking orders were not passed. The appellant, therefore, filed 151 appeals before the Commissioner (Appeals) for setting aside the enhancement of the declared value. These appeals have been dismissed as they were not filed within the time stipulated in section 128(1) of the Customs Act.

3. It would, therefore, be appropriate to reproduce section 128(1) of the Customs Act. It deals with appeal to the Commissioner (Appeals) and is as follows:

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1. **the Commissioner (Appeals)**
2. **the Customs Act**

"**128. Appeal 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 Principal Commissioner 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 the 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."

4. It would seen from the aforesaid provision that an appeal can be filed before the Commissioner (Appeals) within sixty days from the date of communication of the decision or order. However, 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. Thus, at best a delay of thirty days beyond the stipulated limit of sixty days in filing the appeal by can be condoned by the Commissioner (Appeals), provided of course the Commissioner (Appeals) is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of sixty days.

5. Shri Mahesh Raichandani, learned counsel for the appellant submitted that the assessing officer enhanced the value of each consignment without even issuing a speaking order as was required to be passed under section 17(5) of the Customs Act though the appellant had submitted letters dated 13.02.2019, 14.02.2019, 25.02.2019, 31.02.2019, 15.04.2019, 16.05.2019 and 01.08.2020 to the assessing

officer for issuing a speaking order. Learned counsel submitted that the appellant was, therefore, left with no option but to file appeals before the Commissioner (Appeals).

6. Shri Jitesh Kumar Jain, learned authorized representative appearing for the Department submitted that there is no error in the order passed by the Commissioner (Appeals) as the appeals had to be filed within a period of sixty days from the date of communication of the order and a further period of thirty days after the expiry of normal period of sixty days could only be condoned by the Commissioner (Appeals). The Commissioner (Appeals), learned authorized representative submitted had, therefore, no power to condone any delay beyond thirty days after the expiry of the normal period of the sixty days.

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

8. In **Singh Enterprises** vs. **CCE, Jamshedpur**[3], the Supreme Court examined the provisions of section 35 of the Central Excise Act, 1944, which are para materia to the provisions of section 128 of the Customs Act and observed that delay can be condoned only in accordance with the language of the Statute which confers power on the Appellate Authority to entertain the appeal by condoning the delay up to 30 days after expiry of 60 days, which is the normal period for preferring an appeal. It is for this reason that the Supreme Court observed that the Commissioner (Appeals) and the High Court were justified in holding that there was no power to condone any delay after the expiry of 30 days period and that the

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3. 2008 (221) E.L.T. 163 (S.C.)

provisions of section 5 of the Limitation Act, 1963 would not be applicable. Paragraphs 8, 9 and 10 of the judgment are reproduced below:

> "**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.**
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> **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. There will be no order as to costs."
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> **(emphasis supplied)**

9. The aforesaid decision of the Supreme Court in **Singh Enterprises** emphasises that the language of the proviso to section 35(1) of the Central Excise Act makes it clear that the appellate authority has no power to allow the appeal to be presented beyond the period of thirty days after the expiry of the normal period of limitation of sixty days. In such circumstances, the Supreme Court also held that there is complete exclusion of section 5 of the Limitation Act.

10. A Division Bench of the Tribunal in **Diamond Construction** vs. **Commr. of Cus., C. Ex. & S.T., Jabalpur**[4]**,** in which the provisions of section 85 (3A) of the Finance Act 1994 relating to appeals to the Commissioner of Central Excise (Appeals) came up for consideration, observed that the discretion of the Commissioner (Appeals) to condone the delay is circumscribed by the conditions set out in the proviso and any delay beyond that period cannot be condoned in view of the decision of the Supreme Court in **Singh Enterprises**. The relevant portion of the decision of the Tribunal is reproduced below:

> "**7.** In order to appreciate the contentions advanced by the parties it would be appropriate to reproduce Section 85(3A) of the Finance Act which is as follows :
>
> **85. Appeals to the Commissioner of Central Excise (Appeals). -**
>
>> (3A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 receives the assent of the President, relating to Service Tax, interest or penalty under this Chapter:
>>
>> PROVIDED that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.
>
> **8.** A perusal of sub-section (3A) of Section 85 clearly indicates that an appeal shall be presented within two months from the date of receipt of the order of the adjudicating authority in relation to Service Tax, interest or penalty. It further provides that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the

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4. 2020 (35) G.S.T.L. 193 (Tri.-Del.)

> appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month. **The discretion of the Commissioner to condone the delay is, therefore, circumscribed by the condition set out in proviso and the delay can be condoned only if the appeal is presented within a further period of one month after the expiry of the statutory period of two months, provided of course, he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within a period of two months.**
>
> **9.** In the present case, admittedly, the order of the adjudicating authority was received by the appellant on 20 September, 2013 but the appeal was presented before the Commissioner on 5 February, 2016. It was clearly not presented within the period of two months nor within the extended period of one month. The Commissioner (Appeals) dismissed the appeal after placing reliance on the decision of Supreme Court in Singh Enterprises."
>
> **(emphasis supplied)**

11. The Delhi High Court also examined a similar situation in **Uttam Sucrotech International (P) Ltd.** vs. **Union of India**[5] and observed:

> "**13. In view of the aforesaid, there can be no scintilla of doubt that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days after expiry of initial 60 days.** In the case at hand, the admitted position is that the order passed by the adjudicating officer was received by the petitioner on 29th August, 2006. The appeal was preferred on 28th November, 2006. The Commissioner excluded the date of receipt of the order in-original by the petitioner in terms of provision contained in Section 35-O and took note of the fact that the appeal was presented on the 91st day of the period commencing after the said date of receipt, i.e., one day beyond the condonable period of 30 days and, hence, the same could not have been

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5. 2011 (264) E.L.T. 502 (Del.)

> condoned. Similar view has been expressed by the revisional authority."
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> **(emphasis supplied)**

12. The contention that has been advanced by the learned counsel for the appellant will have to be considered in the light of the law laid down in the aforesaid decisions.

13. The reason that has been given by the appellant for not filing the appeal within the period stipulated in section 128(1) of the Customs Act is that the appellant was constrained to wait for speaking orders to be passed by the proper officer and it is only when speaking orders were not passed even after the expiry of a sufficient period of time, the appellant was left with no option but to file appeals before the Commissioner (Appeals). Nothing preventing the appellant from filing the appeals within the stipulated time, and indeed the appellant subsequently did file the appeals even though speaking orders were not passed by the proper officer. The reason provided by the learned counsel for the appellant is merely a reason for explaining the long delay in filing the appeals. As is clear from the provisions of section 128(1) of the Customs Act and also from the decision of the Supreme Court in **Singh Enterprises** only a delay of thirty days after the expiry of the normal period of sixty days can be condoned by the Commissioner (Appeals), provided the Commissioner (Appeals) is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the stipulated period of sixty days. The records indicate that the appellant had sent letters from 13.02.2019 to 01.08.2020 to the assessing officer for passing speaking orders. If section 128(1) of the Customs Act did not limit the period of delay which could be condoned, the submission advanced by learned counsel for the appellant

for condoning the delay could have been considered, but once there is an embargo on the period which can be condoned, it is not possible to accept this submission advanced by learned counsel for the appellant and condone any delay beyond the period of thirty days after the expiry of normal period of sixty days provided for filing the appeal.

14. The Commissioner (Appeals), therefore, committed no illegality in dismissing all the 151 appeals. Consequently, all the 151 appeals filed by the appellant before the Tribunal deserve to be dismissed and are dismissed.

(Dictated and pronounced in open court)

(JUSTICE DILIP GUPTA)
PRESDIENT

(C.J. MATHEW)
MEMBER (TECHNICAL)

Sinha, Jyoti