

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
MUMBAI
REGIONAL BENCH**

COURT NO.5

Customs Appeal No. 87175 of 2016

(Arising out of Order-in-Appeal No. 233(Adj Imp/2016(JNCH)-APPEALS-II dated 24.05.2016 passed by the Commissioner of Customs (Import), JNCH, Nhava Sheva)

Anjani Kedia

7/C, Ravi Tej Apartments,
Atawalines, Surat.

Appellant

Versus

Commissioner of Customs (Import), Nhava Sheva Respondent

Jawaharlal Nehru Custom House, Post Uran, Sheva,
Dist. Raigad 400 707.

Appearance:

Shri K.S. Mishra, Advocate, for the Appellant

Shri L.B. D'Coasta, Authorised Representative, for Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

Date of Hearing: 17.12.2025

Date of Decision: 17.12.2025

FINAL ORDER No. 86922/2025

PER: DR. SUVENDU KUMAR PATI

We have heard from both sides on the appeal and the same is taken up for order.

2. Learned counsel for the appellant submits that the appeal was filed within 90 days of communication of the order, but learned Commissioner (Appeals) in his order at para 10 had recorded that it is filed after 90 days but by taking the date of communication of the order to the appellant, i.e. 15.10.2014 and the date of filing appeal, i.e. 13.01.2015, as has been noted in his order, if computed, would come to 89 days. He further submits that the appellant could not file the condonation of delay application before the Commissioner (Appeals) as he was suffering from severe hepatitis (jaundice) during the relevant period since December 2015, to which effect medical certificate

annexed at page 45 of the appeal paper book and the appellant has got a good case on merit that would require indulgence of this Bench to remand the matter back to the Commissioner (Appeals) for taking into consideration the sickness of the appellant so as to condone the delay in filing the appeal and pass order in accordance with Section 128A(4) of the Customs Act, 1962 in stating the points for determination, the decision thereon and the reasons for such decision. He further submits that once the appeal is admitted for hearing and the final order is passed by the Commissioner (Appeals), an opportunity should have been provided to the appellant to explain the delay to the Commissioner (Appeals). He placed his reliance on the order dated 29.01.2008 passed by Hon'ble Madras High Court in the case of Indira Iron and Steel Works & Ors. vs. Age Impex International Inc. & Ors. in O.S.A. No.352 of 2001 and C.M.P. Nos.1632 and 2188 of 2007.

3. Learned AR objects to such submissions and supports the reasoning and rationality of the order passed by the Commissioner (Appeals). He further argues that by computation, the entire period would come to 89 days, but without a delay condonation petition, the Commissioner (Appeals) could not have condoned the delay.

4. We take note of the submissions. As we could see, the conducting counsel had participated during the hearing of the appeal, during which time such query could have been made to explain the delay to be condoned by the Commissioner (Appeals) but no such finding is recorded therein.

5. Taking note of the submissions and having regard to the fact that the appellant was sick during the relevant period, to which effect documentary proof is furnished and having regard to the settled principles of law that once the appeal is admitted for hearing, the order should be passed in accordance with Section 128A(4) of the Customs Act, 1962, we are of the considered view that the appeal is required to be remanded back to the Commissioner (Appeals), by condoning the delay of 29 days in filing appeal at this stage in exercise of the powers of appellate jurisdiction, for a decision by the Commissioner (Appeals) to hear the appeal and pass an order under Section 128A(4) of the Customs Act. Hence the order:

Order

The appeal is allowed by way of remand to the Commissioner (Appeals) by condoning the delay of 29 days in filing the appeal, for a *de novo* hearing and order passed by the Commissioner (Appeals) vide order-in-appeal No. 233(Adj Imp/2016(JNCH)-APPEALS-II on dated 24.05.2016 is hereby set aside.

(Order dictated in the open court)

(Dr. Suwendu Kumar Pati)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

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