CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 86474 of 2014

[Arising out of Order-in-Appeal No. 464(Gr. IV)/2014(JNCH)/IMP-443 dated 12.02.2014 passed by Commissioner of Customs (Appeals) Mumbai-II, JNCH, Nhava Sheva.]

Krishna Bond .... **Appellant**
D/124 Paragraj Society, Warasiya Ring Road,
Vadodara, Gujarat – 390 006.

Versus

Commissioner of Customs, Nhava Sheva .... **Respondent**
Jawaharlal Nehru Custom House,
Post Uran, District -Raigad, Maharashtra – 400 707.

APPEARANCE:

None for the Appellant

Shri L.B. D'Costa, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85333/2026

Date of Hearing: 18.02.2026
Date of Decision: 18.02.2026

PER: S.K. MOHANTY

None appeared for the appellant, despite issuance of notice by the Registry. Heard learned Authorized Representative for the Revenue.

2. The learned Commissioner of Customs (Appeals), Mumbai-II has rejected the appeal on the ground of limitation. The relevant paragraph, recording his observation, is quoted herein below:

> *"I find that the appellants have filed the appeal on 28.05.2013. The appellant by their own submission admits that the date of communication of the Order appealed against was 05.03.2013. There is a delay of 22 days which is over and above the appeal period of 60 days. Proviso to section 128 (1) states that 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". I find that the appellant has not even filed an application for condonation of delay. Therefore, without going into the merits of the case. I decide the case on time limit."*

3. On reading of the above observations made by learned Commissioner (Appeals), we find that though he had referred to Section 128(1) of the Customs Act, 1962, but he had failed to assign any reason as to why he cannot be satisfied himself for condoning the delay occurred in filing of the appeal before him. It is an admitted fact on record that the office of the Commissioner (Appeals) had not issued any defect memo, pointing out discrepancy in non-filing of the delay condonation application. In the case in hand, since the discretion provided in the proviso clause to Section 128(1) of the Act of 1962 has not been judiciously exercised, we are of the view that the matter should be remanded back to the Commissioner (Appeals), for addressing the issue of condoning the delay in filing the appeal.

4. In view of above, by setting aside the impugned order dated 12.02.2014, the matter is remanded back to the office of the Commissioner (Appeals) for passing of the order on the delay caused in filing the appeal before him. The appellant is directed to submit the delay condonation application before the office of the Commissioner (Appeals), explaining the reason of delay in filing of the appeal, beyond the prescribed statutory time limit.

5. In the result, the appeal is allowed by way of remand.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM