CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 85794 of 2022

(Arising out of Order-in-Appeal No. 1142(Gr.I)/2021(JNCH)/Appeals dated 15.12.2021 passed by the Commissioner of Customs (Appeals), Mumbai-II)

M/s Nikraj Commodity **.... Appellant**
D-08, Mayuriesh Narayan Row House,
Plot No. 137-140, Sector -21, Nerul (East),
Navi Mumbai – 400 706

Versus

Commissioner of Customs (NS-I), Nhava Sheva **.... Respondent**
JNCH, Nhava Sheva, Dist. Raigad,
Maharashtra – 400 707

APPEARANCE:

Shri H.K. Hirani, Consultant for the Appellant

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

CORAM:

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

FINAL ORDER NO. A/85422/2026

Date of Hearing: 16.03.2026
Date of Decision: 16.03.2026

Per: S.K. Mohanty

This appeal is directed against the impugned order dated 15.12.2021 passed by the learned Commissioner of Customs (Appeals), Mumbai-II.

2. The learned Commissioner (Appeals) has rejected the appeal on the ground of limitation, holding that the adjudication order was received by the appellant on 09.12.2019 and the appeal was preferred before him on 30.09.2020. Since the appeal was filed beyond the normal period of sixty days and thereafter beyond the condonable period of thirty days, he has held that as per the provisions of Section 128 of the Customs Act, 1962, he is not empowered to condone the delay in late filing of appeal.

3. Insofar as filing of appeal before the learned Commissioner (Appeals) is concerned, the proviso clause appended to Section 128 of the Customs Act, 1962 provides that the Commissioner (Appeals) may, if he/she 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. On reading of the said statutory provisions, it makes the statutory provision amply clear that the Commissioner (Appeals) is not competent under the statute to condone the delay, if the appeal is filed before him beyond the period of ninety days from the date of receipt of the adjudication order.

4. In the present case, since there is inordinate delay in filing the appeal before the Commissioner (Appeals) and in view of the fact that the Commissioner (Appeals) is not empowered to condone such delay, I am of the considered view that the impugned order rejecting the appeal of the appellant cannot be interfered with at this juncture. Insofar as the power to condone the delay by the Commissioner (Appeals), the Hon'ble Supreme Court in the case of *Singh Enterprises Vs. Commissioner of C. Ex., Jamshedpur – 2008 (221) E.L.T. 163 (S.C.)* have categorically held that the Commissioner (Appeals), being a creature under the statute, has to strictly adhere the provisions contained in the statute and cannot travel beyond the scope and ambit of the statute to take a contrary decision.

5. In view of the foregoing discussions, I do not find any infirmity in the impugned order passed by the learned Commissioner (Appeals) and accordingly, appeal filed by the appellant is dismissed.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

Sinha