CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 86654 of 2025

(Arising out of Order-in-Appeal No.502(Gr.IV/IVA)/2025(JNCH)/Appeals dated 23.04.2025 passed by Commissioner of Customs (Appeals) Mumbai-II)

MKM Impex **....Appellant**
2nd Floor, Office No.3, Nebula, Sindhi Lane,
Mumbai 400 004.

Versus

Commissioner of Customs, Nhava Sheva-III **.... Respondent**
JNPT, Custom House, Nhava Sheva, Raigad – 400 707.

APPEARANCE:

Shri Lilesh Sawant, Advocate for the Appellant

Shri Krishna Azad, 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/85427/2026

Date of Hearing: 17.03.2026

Date of Decision: 17.03.2026

PER: S.K. MOHANTY

This appeal is directed against the impugned order dated 23.04.2025 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 15.07.2024 and the appeal was preferred before him on 13.02.2025, resulting in a delay of 152 days. 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, we are 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. The relevant paragraph recorded in the said judgment is quoted hereinbelow:

> ***"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."*

5. In view of the foregoing discussions, we 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)

(M.M. Parthiban)
Member (Technical)

SM