



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1364 OF 2025

M/s. Mangal Abhushan

...Petitioner

Versus

Union of India & Ors.

...Respondents

Mr. Saif Dingankar (through VC) a/w Mr. Omkar Wani i/by Mr. Aniket Mokashi for the Petitioner.

Mr. Jitendra B. Mishra a/w Mr. Rupesh Dubey for Respondent No.1-UOI.

Mr. S. Deshpande a/w Mr. Karan Adik for Respondent Nos.2 & 3.

CORAM : M. S. Sonak &
Jitendra Jain, JJ.

DATED : 28 July 2025

ORAL ORDER:- (Per M. S. Sonak, J.)

1. Heard learned counsel for the parties.
2. Rule. The Rule is made returnable immediately at the request of and with the consent of the learned counsel for the parties.
3. The challenge in this petition pertains to the order dated 19/20 August 2024, by which the Commissioner of Customs (Appeals) dismissed the Petitioner's appeal on the grounds that it was filed after the 60-day limitation period. The Commissioner also noted that although the appeal was lodged within the condonable period of 30 days, no explanation was provided, and no sufficient cause was demonstrated.
4. Mr. Dingankar, learned counsel for the Petitioner, explained that the Advocate who appeared for the Petitioner before the Appellate Authority was unwell and, therefore, missed filing the application for condonation of delay. However, Mr. Dingankar submitted that there was

sufficient cause for this unintentional omission on the part of the Petitioner's Advocate, and the Petitioner should not be made to suffer. He submitted that substantial justice would require the Petitioner to be afforded an additional opportunity to explain the delay, particularly because the appeal was admittedly filed within the condonable period of 30 days provided under the statute. He submitted that since the appeal was filed within 90 days, the previous Advocate was unsure whether any such application is necessary.

5. Mr. Dingankar, based on instructions from the Petitioner, submitted that the Petitioner would pay costs up to Rs. 2,00,000/-if the Petitioner was given an additional opportunity. He submitted that this would offset any prejudice to the Respondents i.e. the State authorities.

6. Mr. Adik, learned counsel for the Respondent Nos. 2 and 3, submitted that no application for condonation of delay was ever filed, and further, even in this petition, no explanation is offered for the delay. He, therefore, submitted that there was no error in the impugned order dismissing the appeal by invoking the bar of limitation. Mr. Dubey, who holds for Mr. Mishra, adopts Mr. Adik's contentions and urges that this petition may be dismissed.

7. The rival contentions now fall for our determination.

8. The Order-in-Original in this case was made on 28 December 2022 and communicated on 29 December 2022.

9. Section 128 of the Customs Act, 1962 provides that any person aggrieved by an order made under this Act by an officer of customs lower in rank than the Principal Commissioner of Customs 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. The proviso to Section 128(1), however, provides 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 subject to “sufficient cause” being shown.

10. Thus, the primary rule is the presentation of an appeal within 60 days from the date of communication of the impugned order. However, the Appellate Authority is empowered to condone a delay of up to 30 days.

11. In the present case, the Order-in-Original was communicated to the Petitioner on 29 December 2022. After excluding this date, the appeal filed on 29 March 2023 could be said to have been filed on the 90th day, i.e. within the delay condonable period of 30 days from the expiry of the first 60 days.

12. The Petitioner should have filed a formal application for condonation of delay showing sufficient cause. However, the Petitioner has explained in the petition that his Advocate was not keeping good health and, therefore, had instructed the junior advocate to file the appeal before the Appellate Authority. The junior advocate failed to file the application for condonation of delay. Paragraph 18 of the petition also states that no correspondence or notice was sent to the Petitioner about the defective filing due to the non-filing of the application for condonation of delay.

13. Thus, it is not correct to say that even in this petition, there was no explanation offered for the 30-day delay in filing the appeal. Such an explanation should have been offered before the Appellate Authority. However, the Petitioner has explained the circumstances in which no such application was filed before the Appellate Authority. There is no reason to doubt the statement about the ill-health of the

Petitioner's Advocate or that the matter was entrusted to a junior lawyer to file the appeal. The Petitioner has gained nothing by not filing the formal application after having entrusted the case papers to his advocate.

14. Therefore, considering these exceptional circumstances coupled with the fact that the Petitioner has offered to pay costs of Rs. 2,00,000/-, we propose to exercise our extraordinary jurisdiction and condone this delay for instituting the appeal before the Appellate Authority. In such cases, as was held by the Hon'ble Supreme Court in the case of *N. Balakrishnan vs. M. Krishnamurthy*¹, some lapse on the part of the litigant concerned may always be present. However, that by itself is not a sufficient ground to nonsuit the Petitioner or deprive the Petitioner of an opportunity of hearing on the merits of the matter. If, the lapse does not relate to any malafides and Petitioner has not obtained any undue advantage of the situation, the Courts and the authorities are expected to construe such matters with a degree of liberality. This is more so, when the delay was also only 30 days, which, incidentally, was the maximum condonable period under Section 128(1)-proviso.

15. Therefore, subject to the Petitioner consistent with his statement paying an amount of Rs.1,00,000/- to the Government K.E.M Hospital, Parel and further Rs.1,00,000/- to the Tata Memorial Hospital, Parel within four weeks of the date of uploading of this order and filing a compliance report along with a receipt in this Court and also before the Appellate Authority, the delay shall stand condoned and the impugned order shall stand set aside. The Appellate Authority shall then hear the Petitioner's appeal on merits and dispose of the same in accordance with law.

¹ 1998 7 SCC 123

16. The account details of the K.E.M. Hospital and Tata Memorial Hospital are as under :-

Bank Account of Hospital	:-	Poor Box Charity Fund, K.E.M. Hospital, Mumbai
Bank Account Number of Hospital	:-	99350100000877 (S.B.)
Bank and Branch	:-	Bank of Baroda, Parel Branch
Address. Tel. No. Fax. No. and e-mail of the concerned Bank	:-	Bank of Baroda, Madina Manzil, 88, Dr. Ambedkar Road, Mumbai – 400 012, Maharashtra, 022-24713820 dppare@bankofbaroda.com
MICR Code Number	:-	400012246
IFSC Number	:-	BARB0DBPARE(5 th Letter is Zero)
PAN	:-	AAATK3087D
Type of Account	:-	Saving A/C

Bank Name	:-	Central Bank of India
Branch	:-	Tata Memorial Hospital
Address, Telephone & No. Fax No.	:-	Dr. Ernest Borges Road, Parel Mumbai - 400 012. Tel. No. 022-24126487, Fax No. 022-24126487
Bank Account No.	:-	1002449683
Account Type	:-	Current
IFSC Code	:-	CBIN0284241
MICR Code	:-	400016112

17. However, if the Petitioner fails to make the above payments within the period now prescribed, then this petition shall be deemed to have been dismissed with costs of Rs.10,000/- payable by the Petitioner to the Bar Council of Maharashtra and Goa.

18. We record that this order has been made in exceptional circumstances. Normally, even after setting aside the order, we would have only granted Petitioner an opportunity to file an application for condonation of delay and then directed the Appellate Authority to dispose of the same. However, in this case, considering that the delay was 30 days and the explanation offered was sufficient, we have made this order to expedite the proceedings and avoid duplication.

19. The Rule is made absolute in the above terms. No costs.

20. All concerned must act on an authenticated copy of this order.

(Jitendra Jain, J.)

(M. S. Sonak, J.)