IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2025

CORAM :

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

C.M.A. No.636 of 2025
and C.M.P. No.5011 of 2025

M/s.Titanium Equipment and Annode
Manufacturing Company Private Ltd,
Team House, GST Salai, Vandalur,
Chennai 600 048.

Appellant(s)

Vs

The Commissioner of Customs (Imports)
Chennai - Port (Imports),
Office of the Commissioner of Customs,
No.60 Rajaji Salai, Custom House,
Chennai - 600 001.

Respondent(s)

Prayer : Appeal filed under Section 130 of Customs Act, 1962, praying to set aside the interim order No.40168 of 2024 dated 08.10.2024 passed by Customs, Excise and Service Tax Appellate Tribunal, Chennai.

For Appellant(s): Mr.E.Ramesh

For Respondent(s): Ms.Pooja Jain

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

By consent, we have taken up this appeal for hearing at the admission stage itself.

2. Appellant is aggrieved by an order dated 08.10.2024 passed by the Customs, Excise and Service Tax Appellate Tribunal, (CESTAT), Chennai, by which appellant's application for condoning the delay was rejected.

3. Appellant had filed a writ petition, being W.P.No.11163 of 2021, impugning an order-in-original No.79111 of 2021 dated 22.01.2021 passed by respondent. That petition was disposed as withdrawn by an order dated 14.08.2024. Thereafter, appellant filed this appeal before CESTAT, along with the condonation of delay application. It is that condonation of delay application that came to be rejected. It is appellant's case that the time spent in the High Court should be excluded.

4. Ms.Pooja Jain submitted that even that petition itself was filed

after the statutory period was over. Moreover, according to Ms.Pooja Jain appellant ought to have got the delay condoned by the High Court and not having done that, this appeal should be dismissed.

5. We have heard both sides and considered the impugned order as well as the documents annexed with the appeal memo.

6. The only basis on which delay was not condoned is that before the High Court appellant had simply withdrawn the petition and the High Court had not given any direction on the period of limitation for filing the appeal.

7. Shri Ramesh, counsel for appellant, submitted that he was the Advocate who appeared before the learned Single Judge on 14.08.2024 and withdrew the petition and it was his oversight that he forgot to ask for condoning the delay while approaching the appellate Tribunal.

8. Shri Ramesh submitted that for his fault, party should not suffer. He further submitted that if the delay is condoned, the party will get an opportunity to address on a meritorious appeal and if Tribunal finds that

the appeal has no merits, it can pass suitable orders.

9. We would lean towards the appellant. Admittedly, a writ petition was filed, which came to be withdrawn. It is the same Advocate who appeared then and who is appearing today.

10. Delay is condoned to enable doing substantial justice to the parties. By delaying the filing of the appeal, appellant did not stand to benefit. If we do not condone the delay, there is a possibility that a meritorious matter may be thrown out at the very threshold and the cause of justice could be defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.

11. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of a non-deliberate action. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk. The approach of the

authority should be justice-oriented so as to advance cause of justice. If the case of an applicant is genuine, mere delay should not defeat the claim.

12. Therefore, keeping open all rights and contentions of the Revenue, the delay is condoned. Registry of the Tribunal shall proceed to number the appeal and place it for appropriate orders before the CESTAT.

13. We clarify that we have not made any observation on the merits of the matter.

Appeal is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(K.R.SHRIRAM, C.J.) (MOHAMMED SHAFFIQ, J.)

29.04.2025

Index : Yes/No
NC : Yes/No
mrn/mka

To:
The Commissioner of Customs (Imports)
Chennai - Port (Imports),
Office of the Commissioner of Customs,
No.60 Rajaji Salai, Custom House,
Chennai - 600 001.

THE HON'BLE CHIEF JUSTICE
AND
MOHAMMED SHAFFIQ, J.

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