IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2025

CORAM :

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.28745 of 2025
and W.M.P.Nos.32191 & 32193 of 2025

Kap Cones Private Limited,
represented by its Authorised Signatory,
A Private limited company having its office at
SIPCOT industrial park,
B-43, 44 Irungattukottai,
Sriperumbudur, Kanchipuram,
Tamil Nadu – 602 105. ... Petitioner

Vs.

1. Commissioner of Customs [Appeals – II]
   Customs House,
   60, Rajaji Salai, Chennai – 600 001.

2. Additional Commissioner of Customs – Group 2
   Customs House,
   60, Rajaji Salai, Chennai – 600 001.

3. Assistant Commissioner of Customs, ARC,
   Customs House, 60, Rajaji Salai,
   Chennai – 600 001. ... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records relating to the impugned order C.Cus.11 No.792/2025 dated 09.07.2025 issued by the respondent 1 and quash the same.

For Petitioner : Mr.R.Parthasarathy

For Respondents : Mr.Sai Srujan Tayi,
Senior Standing Counsel

ORDER

This writ petition has been filed challenging the order dated 09.07.2025 passed by the first respondent rejecting the petitioner's appeal on the ground that it is barred by limitation.

2. The petitioner has challenged the impugned order on the ground that the impugned order has been passed in violation of principles of natural justice and has been passed by total non application of mind to the fact that the petitioner never received any notices, which includes the show cause notice and also did not receive the order in original dated 19.06.2023 passed by the second respondent. As seen from the impugned order passed by the first respondent, only on the ground of limitation, the appeal filed by the petitioner has been dismissed. The first reason is that the date of order in original i.e., 19.06.2023 is the date when the cause of action arose for the petitioner to file the statutory appeal before the first respondent. However, the petitioner has categorically contended before the first respondent that they never received any notices issued by the second respondent prior to passing of the order in original dated

19.06.2023. They have also categorically contended that they did not receive the order in original dated 19.06.2023 passed by the second respondent. According to the petitioner, only after the shipments were stopped on account of the alleged non payment of duty and penalty imposed under the order in original dated 19.06.2023, they came to know about the passing of the order in original dated 19.06.2023 by the second respondent and that too only on 10.12.2024. Immediately after coming to know of the same, the petitioner claims that they filed the statutory appeal before the first respondent challenging the order in original dated 19.06.2023 passed by the second respondent.

3. In fact, as seen from the documents filed along with this writ petition, the petitioner had requested the second respondent through its letter dated 10.01.2025 for copies of the documents and other relevant details pertaining to the order in original dated 19.06.2023 passed by the second respondent. The following documents were sought for by the petitioner:

a) order in original dated 19.06.2023 passed by the second respondent.

b) show cause notice dated 16.02.2023, which culminated in passing of the order in original dated 19.06.2023 by the second respondent.

c) Letters of personal hearings granted by the second respondent on 16.05.2023, 30.05.2023 and on 09.06.2023.

d) Details of mode of service of the impugned notice, letters and impugners order as per Section 153 of the Customs Act, 1962.

4. Admittedly, no reply was sent by the second respondent to the aforementioned communication sent by the petitioner requesting for the supply of the aforementioned documents. However, without furnishing those documents as per Section 153 of the Customs Act, 1962, the first respondent, before whom the statutory appeal was filed by the petitioner, aggrieved by the order in original dated 19.06.2023 passed by the second respondent, has dismissed the appeal only on the ground of limitation.

5. The first respondent, under the impugned order dated 19.06.2023, without any evidence that the petitioner had received the order in original dated 19.06.2023 passed by the second respondent, had dismissed the appeal on the ground of limitation, which, in the considered view of this Court, is erroneous and has been passed by total non-

application of mind.

6. As seen from the impugned order passed by the first respondent, the Appellate Authority has failed to consider the request made by the petitioner through its letter dated 10.01.2025 to the second respondent requesting the second respondent to furnish the documents sought for in the said letter under Section 153 of the Customs Act, 1962 as those documents are also required for the purpose of disproving the contentions of the respondent that the petitioner was aware of the order in original dated 19.06.2023 passed by the second respondent on that date itself. Without any evidence, a finding has been given by the first respondent under the impugned order that the petitioner had received the order in original passed by the second respondent on 19.06.2023. By total non-application of mind, the first respondent has rejected the contention of the petitioner that they came to know about passing of the order in original dated 19.06.2023 by the second respondent only on 10.12.2024.

7. Therefore, from the above discussion, it is clear that the impugned order dated 09.07.2025 has been passed by the first respondent

in violation of principles of natural justice and by total non application of mind. If 10.12.2024 was the actual date on which the petitioner had knowledge about the order in original dated 19.06.2023 passed by the second respondent, the statutory appeal filed by the petitioner on 13.02.2025 is well within the period of limitation.

8. For the foregoing reasons, since the first respondent has not decided the statutory appeal on merits, the impugned order dated 09.07.2025 passed by the first respondent has to be quashed and the matter has to be remanded back to the first respondent for fresh consideration on merits and in accordance with law within a time frame to be fixed by this Court.

9. In the result, the impugned order dated 09.07.2025 passed by the first respondent is hereby quashed and this writ petition is allowed by remanding the matter back to the first respondent for fresh consideration on merits and in accordance with law. The first respondent shall pass final orders within a period of three months from the date of receipt of a copy of this order. The second respondent shall supply the documentary evidence, which the first respondent relies upon with regard to the service

of notices prior to the passing of the order in original dated 19.06.2023 as well as the service of notice of the order in original dated 19.06.2023. No costs. Connected miscellaneous petitions are closed.

01.08.2025

Index: Yes/ No
Speaking order / Non speaking order
Neutral citation : Yes / No
mp

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ABDUL QUDDHOSE, J.

mp

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