$~107

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **CUSAA 72/2025**

GLOBAL LINKS .....Appellant

Through: Dr. Prabhat Kumar and Mr. Karan Kanwal, Advs.

versus

PRINCIPAL COMMISSIONER OF CUSTOMS (AIRPORT AND GENERAL), NEW DELHI .....Respondent

Through: Mr. Gibran Naushad, Senior Standing Counsel with Mr. Harsh Singhal, Mr. Suraj Shekhar Singh, Advs.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

<u>O R D E R</u>

% 20.05.2025

1. This hearing has been done through hybrid mode.

2. The present appeal has been filed by the Appellant under Section 130 of the Customs Act, 1962 challenging the defect miscellaneous order dated 12th February, 2025 passed by the Central Excise and Service Tax Appellate Tribunal (hereinafter '*CESTAT/Appellate Tribunal*') by which the appeal of the Appellant bearing ***Defect Diary No. 54429/2024*** has been rejected on the ground of being barred by limitation.

3. The said appeal arose out of the order passed by the Principal Commissioner dated 3rd November, 2023. The appeal before CESTAT was filed with a delay of five months and 26 days. It appears that the CESTAT may have under ordinary circumstances condoned the said delay if the Appellant had made out sufficient cause. However, as is clear from the reading of the order, the CESTAT has taken umbrage to the stand of the Appellant that the Appellant never received the order-in-original from the

Department. The enquiries with the Postal Department is seen to have revealed that the same was actually served upon the Appellant on 9th November, 2023 and since the said fact had not been disclosed fairly to the Appellate Tribunal, it did not condone the delay. The relevant portions of the CESTAT order are set out below:

> *"6. **On 08.01.2025, learned authorized representative appearing for the department took time to ascertain from the Postal Department proof of service of the envelope containing the impugned order.***
>
> ***7. It needs to be noted that the order dated 03.11.2023 was not only dispatched to the appellant by speed post but was also sent to the appellant by e-mail. Copy of the e-mail was produced by learned authorized representative appearing for the department on 16.12.2024.***
>
> *8. Today, learned authorized representative appearing for the department has placed before the Bench the communication dated 10.01.2025 sent by the Department of Posts to the Assistant Commissioner enclosing a document that shows that the speed-post sent to the appellant was received by the appellant on 09.11.2023. It also mentions the name of the postman and the document also contains signature of the person receiving the post.*
>
> *9. **It is, therefore, clear that the order dated 03.11.2023 that was sent to the appellant was received by the appellant on 09.11.2023. The appellant has, therefore, not come to this Tribunal with clean hands.** It was incumbent upon the appellant to state in the delay condonation application that the order dated 03.11.2023 was received by the appellant by e-mail on 03.11.2023 and that the envelope sent by the department containing the order dated 03.11.2023 was also*

received by the appellant on 09.11.2023. The appellant, it clearly transpires, took a chance that the department will not be able to provide proof of service of the letter and that is why an allegation was made that the order was never served upon the appellant prior to the date on which the learned authorized representative handed over a copy of the order dated 03.11.2023 to the learned counsel appearing for the appellant on 08.07.2024.

10. Faced with the documentary proof provided by the department, learned counsel for the appellant submitted that the order may have been received by the appellant on 09.11.2023, but as the licence of the appellant had earlier been revoked on 30.10.2023, the office of the appellant was lying closed and thereafter, was also shifted.

11. Be that is it may, the envelope containing the order dated 03.11.2023 was actually received by the appellant on 09.11.2023. Steps should have been taken up by the appellant to file the appeal within the stipulated time.

xxx xxx xxx

*20. **Though the delay is only of about 5 months and 26 days as has been stated in the application, but as the appellant has not come to the Tribunal with clean hands and has deliberately made a false averment in the application, discretion should not be exercised in favour of the appellant.***

*21. **It cannot be said that the appellant acted with due diligence and was not negligent in filing the appeal. As noted above, the appellant also took a chance that the department would not be able to produce evidence before this Tribunal to specify the date on which the envelope containing the order was actually served upon the appellant. It is, therefore, not possible to come to the aid of such an assessee.***

22. There is, therefore, no good reason to condone

> *the delay. The delay condonation application is, accordingly, rejected."*

4. The licence of the Appellant has been revoked by the order-in-original. Any such revocation of a licence of the custom broker would have deleterious consequences as the same would be perpetual in nature and would disable such custom broker from doing any business in future. Though the concealment or misrepresentation about receipt of the order is not usually acceptable, considering the overall interest of justice and the fact that the Appellant has not had an occasion to argue the matter on merits, this Court is inclined to allow appeal after condoning the delay. However, the same is subject to the payment of a cost of Rs.50,000/-. The cost shall be deposited with the Respondent - Customs Department within a period of six weeks.

5. Let the Appellant appear before the CESTAT on 15th July, 2025 along with the proof of payment of costs shall also be produced before the CESTAT.

6. If the Appellant so appears along with the receipts proving payment of the Costs, the Defect Diary number shall be converted into an appeal before the CESTAT and the same shall be adjudicated on merits and shall not be dismissed on the ground of limitation.

7. Petition is disposed of in these terms. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J.

RAJNEESH KUMAR GUPTA, J.

MAY 20, 2025

Rahul/Ar.