OD-7

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO/111/2026

M/S. S. J. WORLDTRADE PRIVATE LIMITED AND ANR.
VS
UNION OF INDIA AND ORS

BEFORE:
The Hon'ble JUSTICE SMITA DAS DE
Date : 13th MAY, 2026.

Appearance:
Mr. Arijit Chakrabarti, Adv.
Mr. Nilotpal Chowdhury, Adv.
Mr. Prabir Bera, Adv.
... for the petitioner.

Mr. R. Chakraborty, Adv.
... for UOI.

Mr. Vipul Kundalia, Sr. Adv.
Ms. Ekta Sinha, Adv.
Mr. Anindya Kanan, Adv.
... for the respondent.

1. The petitioner has assailed the legality, validity and sustainability of the ex parte Order dated 10th October 2023 passed by the respondent authority.

2. The petitioner has been engaged in the business of export and import under the Importer Exporter Code issued by the competent authority of the Government of India. They have been operating under the name and style of M/s. S.J. Fabrics Private Limited.

3. By a letter dated 18th February 2026 the respondent authorities informed the petitioner that the appeal filed by them has been disposed of on 10th October 2023. The Order in Appeal has been dispatched by Speed Post to the address mentioned in Form C.A.-1 i.e. M/s. S. J. Fabrics Private Limited, 60, Vivekananda Road, Kolkata – 700006.

4. In response, the respondent authority vide letter dated 18th February 2026 stated that an appeal has been dismissed on 10th October 2023 on the ground that the appeal has been filed beyond the statutory period of 90 days accordingly the appeal has been rejected in limine on the ground of limitation.

5. The Learned Counsel for the petitioner submits that the Coordinate Bench of this Court by an Order dated 15th December 2022 in WPA 27236 of 2022 granted liberty to the petitioner to prefer an appeal against the impugned order dated 30th May 2022 within two weeks from the date of that order and to urge all points raised in the Writ Petition before the appellate authority. The appellate authority has been directed to consider the same strictly in accordance with law.

6. Pursuant to the said order, the petitioner filed the appeal on 26th December 2022 within the time granted by the Coordinate Bench of this Court. It is further submitted that, under the First Proviso to Section 128 of the Customs Act, 1962 the Commissioner may condone the delay of upto 30 days beyond the initial period of 60 days provided sufficient cause is shown. The appeal has been filed in compliance with the liberty granted by this Court and ought to have been entertained on merits.

7. Learned Counsel appearing for the petitioner draws the attention of this Court to demonstrate from an order dated 15th December, 2022 passed in WPA 27236 of 2022 that the learned coordinate Bench of this Court has been pleased to grant liberty to the petitioner to file an appeal against the impugned order dated 30th May, 2022 within two weeks from date and to urge all points before the appellate authority which have been raised and relied upon in the said proceedings. The order dated 15th December, 2022 which is reproduced below:

> *"Without going into the merits of the impugned order in original dated 30th May, 2022, on the ground of availability of alternative remedy, I am not inclined to entertain this writ petition and grant any relief to the petitioners except granting liberty to the petitioners to file appeal against the aforesaid impugned order within two weeks from date and to urge all points before the Appellate Authority which have been raised in this writ petition and the same may be considered by the Appellate Authority strictly in accordance with law."*

8. It is further stated that pursuant to the order dated 15th December, 2022 the appeal has been filed on 26th December, 2022 within the periods specified in the said order.

9. The Learned Counsel for the respondents submits that the appeal has not been filed within the statutory period as prescribed under Section 128 of the Customs Act, 1962, therefore the authority has been justified in rejecting the same.

10. Learned senior Counsel for the respondent places reliance upon first proviso to Section 128 of The Customs Act, 1962 to show that the appeal may be filed within 60 days from the date of the communication which is reproduced below:

> "***128. Appeal to [Commissioner (Appeals)]***
> *(1) Any person aggrieved by any decision or order passed under the Act by an officer of customs lower in rank than a [Principal Commissioner 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:*
> *[PROVIDED 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]"*

11. The respondents places reliance on M/s. Hindusthan Apparels Industries Vs. The Commissioner of Customs (EPCG) (2015) 323 ELT 344 MAD, wherein the Madras High Court held that the appellate authority being a creature of the statute, has no power to condone the delay beyond period of 30 days provided in the Proviso to Section 128(1). The Supreme Court in the case of Singh Enterprises Vs. CCE reported at (2008) 3 SCC 70 interpreted a pari materia provision in the Central Excise Act 1944 and held that there is complete exclusion of Section 5 of the Limitation Act, 1963.

12. Learned Counsel further relies upon paragraphs 6 and 7 of the judgment of the High Court of Madras reported in **(2015)**

323 ELT 344 in the case of M/s. Hindustan Apparel Industries Vs. The Assistant Commissioner of Customs (EPCG) which is reproduced below:

"6. In the present case, it is not in dispute that the appeal has been filed with a delay of 1346 days. It is to be noted that the proviso to Section 128(1) enables the Commissioner (Appeals) permits the filing of the appeal beyond the sixty days provided that he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the sixty days prescribed. In fact, while exercising such discretionary power, the authority can condone the delay upto 90 days on sufficient cause shown by the petitioner for not filing the appeal in time. The present appeal was beyond the statutory period of 90 days and the authority has rightly rejected the same, since he cannot be expected to exercise his discretionary power beyond the permissible period that was prescribed by the statute.

7. As regards the issue whether the High Court has power to condone the delay after the expiry of 30 days period, a useful reference can be made to a decision reported in "Singh Enterprises v. CCE" (2008) 3 SCC 70, wherein, the Hon'ble Supreme Court, interpreted Section 35 of the Central Excise Act, 1944 which is pari material to Section 128(1) of the Customs Act and observed as under in para 8:

"8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of statute are not vested with jurisdiction to condone the delay beyond the permissible period provided under the statute. The period up to which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the 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 up to 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."*

13. Having heard the parties upon perusing the materials available on records this Court finds that the petitioner has been able to make out a prima facie case and interference has been warranted at the stage. The respondent authority without appreciating the tenor and the spirit of the order dated 15.12.2022 passed by the Coordinate Bench of this Court has arbitrarily and without due application of mind rejected the appeal solely on the ground of limitation.

14. The appeal has been filed pursuant to the liberty granted by this Court to file the same within two weeks from the date of the Order. The respondent authority is therefore bound to consider the appeal on merits subject to the satisfaction of the statutory conditions.

15. The order dated 10th October 2023 is hereby set aside and quashed.

16. The respondent No. 3 are directed to entertain the appeal and decide on merits preferably within four months from the date of communication of this order.

17. The authority shall pass a reasoned speaking order in accordance with law, upon affording opportunity of hearing to the petitioner and to communicate such decision within a week thereafter.

18. With the above observations and directions the Writ Petition stands disposed of.

19. Since no affidavit has been filed, the allegations made in the Writ Petition shall be deemed to have been denied and not admitted.

20. However, it is made clear that the petitioner shall not seek any adjournment during the course of hearing of the appeal, failing which the appellate authority shall be at liberty to pass appropriate orders in accordance with law.

(SMITA DAS DE, J.)

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