IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2026

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.2196 of 2025
and
WMP No.2548 of 2025

S.Maria Selvaraj : Petitioner

Vs.

1.Customs, Excise and Service Tax Appellate Tribunal, Chennai (CESTAT)
Shastri Bhavan, Annexe Building,
1st Floor, 26-Haddows Road,
Chennai-600 006.

2.Commissioner of Customs,
Chennai II Commissionerate,
Customs House,
60, Rajaji Salai,
Chennai-600 001. : Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorarified Mandamus, calling for the records on the file of the first respondent pertaining to the impugned orders in Misc Order No.SO/MO/40388/2024-[CR] dated 14.11.2024 and quash the same and consequently direct the 1st respondent to condone the delay and number the appeal C/COD/40637/2024 in Defect Appeal Diary No.41464 of 2024 and pass orders.

For Petitioner : Mr.A.Ganesh

For Respondents : Mr.G.Meganathan
Junior Standing Counsel

ORDER

The present writ petition has been filed challenging the impugned order dated 14.11.2024, whereby petitioner's application for condonation of delay was rejected.

2. Petitioner had suffered an order of adjudication dated 22.01.2019, wherein gold valued at Rs.2,67,76,320/- was *inter alia* confiscated and penalty was also imposed. Aggrieved, petitioner preferred an appeal before Commissioner of Customs (Appeals II), Seaport and appeal came to be rejected vide order dated 04.11.2019. Aggrieved by above order of the appellate authority, petitioner had filed a revision before Joint Secretary, (Revision Application), Government of India, through his counsel in F.No.373/456/B/2019-RA dated 11.11.2019. The above revision was filed by petitioner's counsel Mr.Palanikumar, is who stated to have died sometime in the year 2021. The revision application came to be dismissed, five years after it came to be filed on 03.04.2024, on the premise that remedy against order of appellate authority is before CESTAT and hence found that revision was not maintainable. Petitioner had thereafter filed an appeal before

Tribunal against the order of Appellate authority dated 04.11.2019 along with an application seeking condonation of delay of 1690 days, in filing the said appeal. Tribunal vide order dated 14.11.2024 rejected application, on the premise that petitioner has not explained reasons for inordinate delay. Hence, present writ petition.

3. Learned counsel for petitioner would submit that petitioner had explained the above delay by stating that he had approached wrong forum on the basis of advice given by its erstwhile counsel and secondly, it was also stated that soon after the revisional authority had passed the order, rejecting revision as not being maintainable, petitioner had approached erstwhile counsel's office and it took a while for papers to be traced as stated supra, the counsel, who had filed revision had passed away sometime in the year 2021. It is submitted that it is only for the above reasons there has been a delay of 150 days, if one excludes the time spent in prosecuting the revision application.

4. Heard the learned counsel on either side and perused the materials available on record.

5. Learned counsel for respondent placing reliance upon a recent judgment of the Hon'ble Supreme Cout in the case of *Pathapati Subba Reddy vs The Special*

Deputy Collector (LA) reported in 2024 INSC 286 would submit that Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence.

6. Before proceedings further, the following portion of application filed in support of condone delay application is extracted as it appears to be relevant:

"*4. I state that instead of filing appeal before this Hon'ble Tribunal my counsel had preferred revision before the Revision Authority, New Delhi. I state that his counsel found out the mistake and withdrawn the revision with liberty to file appeal before this Hon'ble Tribunal. I state that in filing the appeal there is delay of 1690 days. I submit that the delay was due to wrong filing of the case before the Joint Secretary (Revision application) New delhi. I state that my former counsel had inadvertently preferred the revision instead of filing appeal before this Hon'ble Tribunal. I state that after I received the order copy from the Revision authority only I came to know about the wrong filing of the revision before the Joint Secretary, New Delhi instead of Appeal before this Hon'ble Tribunal. I state that I did not have any papers and I went to former counsel's office and they took long time to search and handover the file to me. I state that I approach the present counsel and thereafter he prepared the appeal. I state that non filing of the appeal* *before this Hon'ble Tribunal is neither wilful nor wanton but for the reasons stated above."*

7. The Tribunal after finding that pendency of a revision application before wrong forum may be a reasonable cause and therefore, may have to be excluded, however rejected condone delay application finding that what is missing is reasons for belated filing of appeal before this forum, after the receipt of order of revisional authority. This finding of Tribunal, we find it incorrect and contrary to material on record inasmuch as in the affidavit filed in support of condone delay application, petitioner has in fact set out reasons for delay for filing appeal on receipt of the order of the revisional authority viz., that erstwhile counsel had passed away and it took time for them to trace relevant papers and it is only in view thereof there was a delay of 150 days in filing appeal before tribunal since receipt of revisional order.

8. Having heard both sides, this Court is of the view that order of Tribunal appears to be contrary to the material on record inasmuch as it records that no reasons were put forth, whereas we find that reasons have in fact been set out in affidavit filed in support of condone delay application. This Court is satisfied with the above reasons and finds that there is non-application of mind on the part of Tribunal.

9. In that view of the matter, impugned order dated 14.11.2024 of Tribunal is set aside and matter is remanded back to Tribunal to condone the delay, admit and entertain the appeal, if it is otherwise in order and pass orders on merits and in accordance with law.

10. Accordingly, writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

27.03.2026

Speaking (or) Non Speaking Order
Neutral Citation: Yes/No
mrn

To
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MOHAMMED SHAFFIQ, J.

(mrn)

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