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

\# **CNR No. DLHC010481372026**

\+ W.P.(C) 14795/2026 & CM APPL. 69350/2026

SHRI SANJAY KHUSHALDAS BAVISHI .....Petitioner

Through: Mr. Abhijeet Kumar & Mr. Awanish Kumar, Advs.

versus

THE COMMISSIONER OF CUSTOMS (PREVENTIVE) .....Respondent

Through: Mr. Anushre Narain, SSC with Mr. Naman Choula & Mr. Apruv Yadav, Advs.

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN
HON'BLE MS. JUSTICE SHAIL JAIN

O R D E R

% 03.11.2026

1. This petition has been filed with the following prayers:

"(a) Issue an appropriate writ, order or direction, including a writ in the nature of certiorari, calling for the records of the case and quashing and setting aside the Impugned Order dated 08.04.2026 bearing Defect Misc. Order No.50260/2026 passed by the learned CESTAT, Principal Bench, New Delhi, in Customs Restoration of Appeal Application No.50056 of 2026 in Defect Diary No.55963 of 2024;

(b) Issue an appropriate writ, order or direction, including a writ in the nature of certiorari, quashing and setting aside the order dated 19.12.2025 bearing Defect Misc. Order

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No.51202/2025 passed by the learned CESTAT in Customs Restoration of Appeal Application No.51219 of 2025;

(c) Issue an appropriate writ, order or direction, including a writ in the nature of certiorari, quashing and setting aside the order dated 01.09.2025 bearing Defect Order No.71/2025 passed by the learned CESTAT dismissing the Petitioner's appeal in Defect Diary No.55963 of 2024;

(d) Issue an appropriate writ, order or direction to restore Customs Appeal Defect Diary No.55963 of 2024 to its original number in its file."

2. The grievance raised is that despite the instructions having been given to the counsel appearing before the Customs, Excise and Service Tax Appellate Tribunal (for short 'tribunal') the application for condonation of delay was not filed and consequently the appeal was dismissed for non-removal of the defects.

3. Learned counsel for the respondent contends that there was negligence on the part of the petitioner. Despite granting more than three opportunities the needful was not done and even the counsel was not present on 22.04.2025, 02.06.2025 and 25.06.2025. Moreover, the application for recall was dismissed taking into consideration that it was a case of absolute negligence.

4. It is an undisputed fact that the petitioner was represented by counsel and the objections were being dealt with before the tribunal.

5. In the present system a client after engaging the counsel and giving instructions relies upon the office of the counsel to do the needful and meet the procedural requirements.

6. The Supreme Court in ***Rafiq & Anr. Vs. Munshilal & Anr.*** (1981) 2 SCC 788 held that the party should not be made to suffer due to the conduct

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of the counsel. The law is well settled that technicality when pitted against substantial justice the later would prevail. The petitioner cannot be left remediless due to the conduct of the counsel.

7. The impugned order is set aside. The defects pointed out by the registry shall be removed within four weeks from today. The tribunal may proceed and deal with the appeal in accordance with law thereafter.

8. The writ petition is allowed.

9. Pending application stands disposed of.

AVNEESH JHINGAN, J

SHAIL JAIN, J

NOVEMBER 3, 2026
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