CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

CUSTOMS APPEAL NO. 86233 OF 2025

(Arising out of Order-in-Appeal No. MUM-CUS-TK-IMP 214 & 215/2024-25/NCH dated 10/03/2025 passed by the Commissioner of Customs (Appeals), Mumbai Customs Zone-I)

Parekh Cranes and Machinery **.....Appellant**
Flat No.5, Gr. Floor, Bharat Kunj,
Bapubhai Vahi Raod, Vile Parle West
Mumbai – 400 056

versus

Commissioner of Customs (Import), **.....Respondent**
New Custom House, Ballard Estate
Mumbai–400001

WITH

CUSTOMS APPEAL NO. 86234 OF 2025

(Arising out of Order-in-Appeal No. MUM-CUS-TK-IMP 214 & 215/2024-25/NCH dated 10/03/2025 passed by the Commissioner of Customs (Appeals), Mumbai Customs Zone-I)

Manan Manoj Parekh **.....Appellant**
Flat No.5, Gr. Floor, Bharat Kunj,
Bapubhai Vahi Raod, Vile Parle West
Mumbai – 400 056

versus

Commissioner of Customs (Import), **.....Respondent**
New Custom House, Ballard Estate
Mumbai–400001

APPEARANCE:

Shri Chirag Shetty, Advocate for the Appellants

Shri Dinesh Nanal, Authorized Representative for the Respondent

CORAM: **HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

DATE OF HEARING: 17.04.2026
DATE OF DECISION: 17.04.2026

FINAL ORDER NO's. 85565-85566/2026

JUSTICE DILIP GUPTA:

These appeals have been filed for setting aside the order dated March 10, 2025 passed by Commissioner of Customs (Appeals) by which

the appeals that were filed by the appellants against order dated May 16, 2024 passed by the Additional Commissioner of Customs have been dismissed for the reason that the appeals were filed beyond the period prescribed under section 128(1) of the Customs Act, 1962[1].

2. Section 128(1) of the Customs Act deals with filing of appeals before Commissioner (Appeals). It provides that any person aggrieved by any order passed by an officer of customs lower in rank than the Principal Commissioner of Customs or Commissioner of Customs, may appeal to the Commissioner (Appeals) within 60 days from the date of communication to him of such order. The proviso, however, stipulates 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.

3. In the present case, it is not in dispute that the order dated May 16, 2024 passed by the Additional Commissioner was served upon the appellant on May 22, 2024. The appeal was, however, filed on August 22, 2024. It was, therefore, filed beyond two days after the expiry of initial period of 60 days and the extended period of 30 days contemplated under section 128(1) of the Customs Act and this fact of filing after two days has been admitted by the learned counsel for the appellant.

4. The appellant had filed an application for condonation of delay in terms of the proviso to section 128(1) of the Customs Act. The relevant paragraphs of the application are reproduced below

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1. the Customs Act

"**2.** That the Applicant herein has this day filed an appeal against the Order-in-Original No. 26/ADC/MKJ/ADJ/2024r-25 dated 16.05.2024 ('Impugned Order') passed by the Ld. Additional Commissioner of Customs, Adjudication Cell, Import-I, New Customs House, Mumbai Zone-I.

3. That the Applicant received Order-in-Original dated 16.05.2024 on 22.05.2024 and the normal period for filing the appeal were till 22.07.2024 but the appeal is filing today on 22.08.2024 with a delay of 30 days.

4. That the facts of the case in brief are that the Applicant had filed Bill of Entry No. 3935302 dated 28.12.2022 for clearance of 'ONE UNIT OLD & USED NACELLE CAMION W/ MULTTTEL J360 TELESCOPIC BOOMLIFT Sr. No. XLEP8X40005221725 with accessories' under CTH 84279000. However, the department has pointed out the Applicant has wrongly classified the goods under CTH 84279000 as the same are classifiable under CTH 87059000. Further, the Ld. Additional Commissioner has passed the impugned order without considering the submissions made by the Applicant, The Ld. Additional Commissioner has ordered for confiscation of goods along with imposition of penalty on Applicant and its partner. However, no evidence is against the Applicant, thus, the confiscation along with imposition penalty is not sustainable in the eyes of law.

4. That the appeal in the instant case has been delayed due to the fact that the Mr. Manoj Parekh, the partner of Applicant was not in India and was travelling abroad during the substantial portion of May 2024 and June 2024. A copy of the electronic ticket evidencing the absence of Mr. Manoj Parekh, the partner of Applicant in India is enclosed as Anneuxre-I. Subsequently, Mr. Manoj Parekh, being a senior citizen and due to several health issues has not been keeping well lately which led to delay in filing of the present appeal. A copy of the prescription slip issued by Nanavati Max Hospital is enclosed as Annexre-2. **After regaining health, the Applicant approached its consultant to understand the implications of the**

order. However, after discussion with the consultant, it was decided to approach an advocate for understanding the way forward in the matter. The Applicant shared copy of the order with an advocate having expertise in the matter. The advocate asked for all the relevant documents concerning the present matter. The Applicant provided all the relevant documents to the advocate. The advocate perused all the relevant documents and advised us to file an appeal challenging the impugned order before Commissioner (Appeal). Both the Applicant and advocate took some time to agree upon the commercials. The advocate then drafted the appeal and shared the draft appeal to the Applicant for verification and confirmation. Finally, the draft was finalised and filed before Your Honour on 22.8.2024. The Hon'ble Commissioner may appreciate that the delay in filing appeal does not occur because of any negligence on the part of the Applicant. The said delay is not deliberate or intentional or wanton.

5. It may kindly be appreciated that the refusal to condone delay will not only legitimize and arbitrary action of the Ld. Additional Commissioner but also result in rejection of the Applicant's meritorious appeal on the very threshold. It is respectfully submitted that the condonation of delay for filing the present appeal would not cause any undue hardship to the Ld, Additional Commissioner. The Applicant submits that irreparable harm and prejudice will be caused to Applicant in the event the relief as prayed for is not granted."

(emphasis supplied)

5. It is stated that the appellant subsequently filed an affidavit sworn on May 16, 2025. The relevant paragraphs of the affidavit are reproduced below

"**3.** That the impugned order even though delivered to the Applicant on 22.05.2024, however the same was received later as the Applicant was traveling and not in

India and hence there was a delay in filing of the Appeal.

4. That the appeal in the instant case has been delayed due to the following circumstances:

a. Travel Abroad: I, being the partner of the Applicant, was not in India and was travelling abroad during the substantial portion of May 2024 and June 2024. A copy of the electronic ticket evidencing my absence from India is enclosed herewith as Annexure-1:

b. Health Issues: Subsequent to my return, I have been facing several health issues as I am a senior citizen. These health concerns prevented me from undertaking any immediate action. A copy of the prescription slip issued by Nanavati Max Hospital is enclosed herewith as Annexure-2.

5. That upon regaining health, I approached the Applicant's consultant to understand the implications of the order. After thorough discussions with the consultant, it was decided to seek guidance from an advocate having expertise in such matters.

6. That the following steps were undertaken thereafter:

a. The Applicant shared a copy of the order and all relevant documents with the advocate for review and advice.

b. The advocate requested all supporting documents concerning the matter, which wee duly provided by the Applicant.

c. After reviewing the documents, the advocate advised filing an appeal before the Hon'ble Commissioner (Appeals).

d. Both the Applicant and the advocate took some time to finalize the commercial terms of engagement.

e. The advocate prepared the draft appeal and shared the same with the Applicant for verification and confirmation.

f. The draft appeal was finalized and filed before the Hon'ble Commissioner on 22.08.2024.

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9. That the delay in filing the appeal was neither deliberate nor intentional, but due to the reasons stated above, which were beyond the control of the Appellant.

10. That I respectfully pray for the condonation of delay in filing the appeal, and for the matter to be heard on merits in the interest of justice.

11. I'm executing this affidavit in support of the application for condonation of delay being filed by the Applicant."

(emphasis supplied)

6. A prescription slip issued by Nanavati Hospital was enclosed as Annexure-2 of the affidavit. A perusal of the said prescription slip shows that it does not mention the date.

7. The Commissioner (Appeals) noted the explanation offered by the appellant and in view of the provisions of rule 3 of Customs (Appeals) Rules, 1982 observed as follows

"**10.**…… Moreover, I find that Statutes cited above, contain detailed provsions governing procedural aspects, including specific timelines for filing appeals, and prescribed time limit for condonation of delay. **If appeals arc not filed within statutory prescribed limitation and certainly, such delay, cannot be condoned by statutory authorities. As per the Section 128 of the Customs Act, 1962, the appeal has to be filed within 60 days from the date of communication of the order and in terms of the 1st proviso, further 30 days time can be allowed by the appellate authority to file the appeal. In this case, both the appeals have been filed after 90 days (60 days appealable +30 days further period which can be condoned by the**

Commissioner (Appeals). The 1st proviso to Section 128 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. Hence, in terms of Section 128 of the Customs Act, 1962 read with Customs (Appeals) Rules, 1982, I find that there is no merit in the Appellants' contention and does not deserve any Consideration.

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14. ***** **Considering the above facts and relying on the various judicial pronouncements, as discussed above, it clear that Commissioner (Appeals) has power to condone delay of only 30 days and In case of appeals filed beyond the expiry of 30 days of condonable period, the Commissioner (Appeals) is not empowered to condone delay in filing appeals. In the instant case, I find that both the appeals have been filed beyond the period of 90 days and such delay is not condonable under Section 128 of the Customs Act, 1962.**

15. Hence, without going into the merits of the case, I reject both the appeals us not maintainable, as they have been filed beyond the period of limitation prescribed under the provisions of Customs Act, 1962. Thus, the Appeal Nos. S/49-123/Cus-I/Mum-l/2024-25'NCH, and S/49-l24/Cus-l/Mum-l/2024-25^NCH are disposed of accordingly by way of rejection under section 128 of the Customs Act, 1962,"

(emphasis supplied)

8. Learned counsel for the appellant submitted that the period from May 18, 2024 to June 11, 2024 during which one of the partner of the appellant was away from India should be excluded and if that is done then there would be a delay of only 13 days after the expiry of 60 days, which delay could have been condoned by the Commissioner (Appeals). Learned

counsel also submitted that it was incumbent upon the department to serve a copy of the order on the partner of the appellant or his authorised agent but it was not served upon them but on some person in his office. To support this contention, learned counsel placed reliance upon the judgment of the Supreme Court in **Saral Wire Craft Pvt Ltd vs. Commissioner of Customs, Central Excise and Service Tax[2].**

9. Shri Dinesh Nanal, learned authorized representative appearing for the department supported that the order passed by the Commissioner (Appeals) and submitted that the appeals should be dismissed. Learned authorized representative pointed out that it is not the case of the appellant that the other partner of the firm was not in India during the relevant period and even otherwise, the affidavit that was filed was very vague and did not give particulars. Learned authorized representative also pointed out that even the prescription of the doctor does not mention the date.

10. The submissions advanced by the learned counsel appearing for the appellants and the learned authorized representative appearing for the department have been considered.

11. It is not in dispute that the order dated May 16, 2024 passed by the Additional Commissioner, against which appeals were filed before the Commissioner (Appeals), were sent by speed-post to both the appellants. It is also not in dispute that the speed-post was received in the office of the appellant on May 22, 2024 but both the appeals were filed after the expiry of normal period of 60 days and the extended period of 30 days.

12. The submission of learned counsel for the appellant is that the period from May 18, 2024 to June 11, 2024, during which time one

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2. 2015 (7) TMI 894 –SUPREME COURT

partner of the appellant-firm was outside India, should be excluded and if that is done the appeals were filed within 13 days after expiry of 60 days.

13. This submission of learned counsel cannot be accepted. In the first instance, it is not the case of the appellants, as set out in the application or in the affidavit, that both the partners of the firm were outside India. Nothing prevented the other partner to authorize filing of the appeal. Even otherwise, a perusal of the application that was filed for condoning the delay shows that relevant dates have not been mentioned. What has been stated is that the Managing Partner of the applicant was travelling abroad during the substantial portion of May 2024 and June 2024. The date-chart submitted by the appellant shows that he was outside India from May 18, 2024 to June 11, 2024. An incorrect impression has been sought to be conveyed that he was absent during the substantial portion of May 2024 and June 2024. The application further mentions that the Managing Partner was not keeping well which led to the delay in filing of the present appeal. A vague statement has been made thereafter that after regaining health, the appellant approached a consultant and after consultation it was decided to approach an advocate for understanding the way forward in the matter. The applicant shared a copy of the order with the advocate having expertise in the matter and the advocate asked for all the relevant documents and after providing all the documents the applicant and advocate took some time to agree upon the commercials. Thereafter, the advocate took some time to draft the appeal and the appeal was filed on August 22, 2024.

14. The application lacks specific details and even the dates have not been mentioned.

15. Even otherwise, in terms of the proviso to section 128(1) of the

Customs Act only 30 days after expiry of normal period of 60 days can be condoned. The Legislature has made it absolutely clear that any delay beyond the expiry of 30 days after the expiry of 60 days of normal period cannot be examined by the Commissioner (Appeals).

16. This position has been emphasised by the Supreme Court in **Singh Enterprises** vs. **Commissioner of Central Excise, Jamshedpur**[3]. The Supreme Court examined the provisions of section 35 of the Central Excise Act, 1944 which are para materia to section 128(1) of the Customs Act. In this case, the appeal was filed before the Commissioner (Appeals) after expiry of the normal period of 60 days and the extended period of 30 days. The Supreme Court held that the provisions of section 5 of the Limitation Act will not apply and if the delay was to be condoned in such a case, the provision providing for limitation would become otiose. The Commissioner (Appeals) and the High Court were, therefore, justified in holding that there was no power to condone the delay after the expiry of the extended period of 30 days. The relevant portion of the judgement is reproduced below:

> "**8.** The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of Statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the Statute. **The period upto which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Indian Limitation Act, 1963 (in short the 'Limitation Act') can be availed for condonation of delay.** ***** **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**

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3. 2008 (221) ELT 163 (SC)

> **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 upto 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.**"
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> **(emphasis supplied)**

17. The judgment of the Supreme Court in **Saral Wire**, on which reliance has been placed by the learned counsel for the appellant, does not come to the aid of the appellant. It is a case where an order was served by the Inspector of the department. After noting that there was a gap of about 8 months after the hearing was concluded and order reserved by the adjudicating authority, the Supreme Court observed Inspector should have served the copy on the appellant or the authorised representative.

18. In the present case, the order was sent by speed-post and it was admittedly received in the office of the appellant-firm. It is not the case of the appellant that any inspector of the department served the order upon a person in the office.

19. The Commissioner (Appeals), therefore, did not commit an error in dismissing the appeals filed by the appellants as they were filed beyond

the period stipulated under section 128(1) of the Customs Act. These two appeals have, therefore, to be dismissed and are dismissed.

(Dictated and Pronounced in Open Court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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