



2026:DHC:8985-DB



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

% **Date of decision: 09.10.2026**

CNR No. DLHC010490102026

+ CUSAA 151/2026, CM APPL. 70481/2026 & CM APPL. 70482/2026

NANCY TRADING COMPANYAppellant

Through: Mr. Harpreet Singh, Mr. Sumit K. Batra, Ms. Suhani Mathur & Mr. Manish Khurana, Advs.

versus

PRINCIPAL COMMISSIONER OF CUSTOMS (IMPORT),
INLAND CONTAINER DEPOT,
TUGHLAKABADRespondent

Through: Mr. Shubham Tyagi, SSC with Ms. Navruti Ojha, Adv.

CORAM:

HON'BLE MR. JUSTICE AVNEESH JHINGAN

HON'BLE MS. JUSTICE SHAIL JAIN

AVNEESH JHINGAN, J. (ORAL)

1. This appeal is filed under Section 130 of the Customs Act, 1962 (for short 'the Act') assailing the order dated 13.11.2025 passed by the Customs, Excise and Service Tax Appellate Tribunal (hereinafter 'the tribunal') dismissing the application for condonation of delay of 694 days in filing the appeal.

2. The brief factual matrix is that the adjudicating authority (for brevity 'AA') passed an order-in-original dated 22.12.2021 (for short 'O-I-O'). The appellant filed the appeal before the tribunal on 16.02.2024. In the application for condonation of delay filed during



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pendency of appeal, the explanation was that the wife of appellant was undergoing treatment for cancer and that the learned counsel appearing before the AA failed to communicate the O-I-O to the appellant. The application was dismissed. Hence, the present appeal.

3. Learned counsel for the appellant contends that considering that the wife of the appellant was undergoing treatment for cancer since December 2021 a liberal view be taken and delay be condoned. The contention is that learned counsel appearing before the AA filed an affidavit in support of the condonation application.

4. *Per contra* factual findings have been recorded by the tribunal and no substantial question of law arises for consideration.

5. Heard the learned counsels for the parties.

6. The appeal against the O-I-O dated 22.12.2021, was filed before the tribunal on 16.02.2024 and the date of communication of the O-I-O in the form submitted with the appeal was mentioned as 15.12.2023. The proof of service of the O-I-O was asked by the tribunal but not submitted by the appellant rather the application dated 04.06.2025 for condonation of delay was filed. The tribunal found the application to be vague as it referred to the illness of the spouse of the appellant and stated that the appellant gained knowledge of the O-I-O in December, 2023 when the department froze the bank accounts. At the request of the appellant the tribunal permitted to file a better application for condoning the delay. The second application was filed on 23.07.2025. Thereafter at the request of learned counsel for the appellant further time was granted and the third application dated 04.09.2025 was filed.

7. The application was considered and on 09.10.2025 the learned



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counsel for the appellant sought time to file an affidavit explaining when the O-I-O was received by the learned counsel appearing before the AA and why the appellant was not apprised for two years about the O-I-O. The affidavit of the learned counsel for the appellant was filed on 03.11.2025.

8. In the affidavit it was deposed that the O-I-O was received by learned counsel for the appellant on 22.12.2021. Upon considering the application and affidavit of the learned counsel, the tribunal concluded that the appellant was aware that learned counsel was attempting to contact him on mobile phone. The tribunal rightly held that the delay of almost two years was sought to be explained by stating that learned counsel appearing before the AA was attempting to contact the appellant on mobile phone but due attention was not given by the appellant. It was taken in account that during the period of delay in filing the appeal, the appellant carried on the trading business. The factual finding recorded by the tribunal is that the affidavit filed by learned counsel is vague and did not state that the phone calls of learned counsel had gone unanswered. The emphasis in the affidavit was that no response was received. Further there was no deposition that an attempt was made to send a phone message to the appellant or a copy of the O-I-O through post. The appellant continued business even during the illness of his wife but took no steps for two years to enquire from counsel with regard to outcome of proceedings before the AA. The appellant immediately became active on initiation of coercive recovery measures and freezing of the bank accounts.

9. The Supreme Court in ***Oriental Aroma Chemical Industries***



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Ltd. v. Gujarat Industrial Development Corpn., (2010) 5 SCC 459

has held that though a liberal view is to be taken for condoning the delay but strict approach is justified in case of an inordinate delay.

The relevant paras are as under:

“14. We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time.

15. The expression “sufficient cause” employed in Section 5 of the Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which subserves the ends of justice. Although, no hard-and-fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate—Collector (L.A.) v. Katiji [(1987) 2 SCC 107 : AIR 1987 SC 1353] , N. Balakrishnan v. M. Krishnamurthy [(1998) 7 SCC 123 : JT (1998) 6 SC 242] and Vedabai v. Shantaram Baburao Patil [(2001) 9 SCC 106] .”

(emphasis supplied)

10. The Supreme Court in ***Rajneesh Kumar v. Ved Prakash, 2024 SCC OnLine SC 3380*** has held that for an inordinate delay the entire blame cannot be shifted upon learned counsel. The relevant paras as



under:

“10. It appears that the entire blame has been thrown on the head of the advocate who was appearing for the petitioners in the trial court. We have noticed over a period of time a tendency on the part of the litigants to blame their lawyers of negligence and carelessness in attending the proceedings before the court. Even if we assume for a moment that the concerned lawyer was careless or negligent, this, by itself, cannot be a ground to condone long and inordinate delay as the litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about the judicial proceedings pending in the court initiated at his instance. The litigant, therefore, should not be permitted to throw the entire blame on the head of the advocate and thereby disown him at any time and seek relief.

11. In the aforesaid context, we may refer to a decision of this Court in the case of *Salil Dutta v. T.M. & M.C. Private Ltd.*, (1993) 2 SCC 185, wherein this Court observed as under:—

“8. The advocate is the agent of the party. His acts and statements, made within the limits of authority given to him, are the acts and statements of the principal i.e. the party who engage him. It is true that in certain situations, the court may, in the interest of justice, set aside a dismissal order or an ex parte decree notwithstanding the negligence and/or misdemeanour of the advocate where it finds that the client was an innocent litigant but there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognized. Such an absolute rule would make the working of the system extremely difficult. The observations made in *Rafiq [(1981) 2 SCC 788 : AIR 1981 SC 1400]* must not be understood as an absolute proposition. As we have mentioned hereinabove, this was an on-going suit posted for final hearing after a lapse of seven years of its institution. It was not a second appeal



filed by a villager residing away from the city, where the court is located. The defendant is also not a rustic ignorant villager but a private limited company with its head office at Calcutta itself and managed by educated businessmen who know where their interest lies. It is evident that when their applications were not deposed of before taking up the suit for final hearing they felt piqued and refused to appear before the court. May be, it was part of their delaying tactics as alleged by the plaintiff. May be not. But one thing is clear they chose to non-cooperate with the court. Having adopted such a stand towards the court, the defendant has no right to ask its indulgence. Putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory which cannot be accepted and ought not to have been accepted.”

(Emphasis supplied)”

11. Even assuming the explanation of the appellant to be true, the record indicates that the appellant was carrying on business despite the sickness of his wife. For two years despite the efforts made by learned counsel *via* mobile to contact the appellant, no step was taken by the appellant to enquire about the outcome of the proceedings. The Supreme Court in ***Pathapati Subba Reddy v. Collector (LA), (2024) 12 SCC 336*** has held that there has to be a sufficient cause for condoning the delay and condonation cannot be done mechanically. The relevant paras are as under:

“18. In *Collector (LA) v. Katiji* [*Collector (LA) v. Katiji*, (1987) 2 SCC 107 : (1987) 62 Comp Cas 370 : AIR 1987 SC 1353] , this Court in advocating the liberal approach in condoning the delay for “sufficient cause” held that ordinarily a litigant does not stand to benefit by lodging



an appeal late; it is not necessary to explain every day's delay in filing the appeal; and since sometimes refusal to condone delay may result in throwing out a meritorious matter, it is necessary in the interest of justice that cause of substantial justice should be allowed to prevail upon technical considerations and if the delay is not deliberate, it ought to be condoned. Notwithstanding the above, howsoever, liberal approach is adopted in condoning the delay, existence of "sufficient cause" for not filing the appeal in time, is a condition precedent for exercising the discretionary power to condone the delay. The phrases "liberal approach", "justice-oriented approach" and cause for the advancement of "substantial justice" cannot be employed to defeat the law of limitation so as to allow stale matters or as a matter of fact dead matters to be revived and reopened by taking aid of Section 5 of the Limitation Act.

25. In *Basawaraj v. LAO* [*Basawaraj v. LAO*, (2013) 14 SCC 81] , this Court held that the discretion to condone the delay has to be exercised judiciously based upon the facts and circumstances of each case. The expression "sufficient cause" as occurring in Section 5 of the Limitation Act cannot be liberally interpreted if negligence, inaction or lack of *bona fide* is writ large. It was also observed that even though limitation may harshly affect rights of the parties but it has to be applied with all its rigour as prescribed under the statute as the courts have no choice but to apply the law as it stands and they have no power to condone the delay on equitable grounds."

(emphasis supplied)

12. The factual findings recorded by the tribunal do not suffer from factual or legal error. No substantial question of law arises.
13. The appeal is dismissed.



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14. All pending applications stand disposed of.

AVNEESH JHINGAN, J

SHAIL JAIN, J

OCTOBER 9, 2026

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Reportable: Yes

Signature Not Verified

Signed By:AWANISHI
CHANDRA MISHRA
Signing Date:12.10.2026
16:02:45

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