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

Date of decision: 09th May, 2025

+ **CUSAA 80/2025 & CM APPL. 28264/2025, 28265/2025,
28266/2025, 28267/2025**

M/S DURGA APPARELS PVT LTDAppellant

Through: Mr. Chinmaya Seth, Mr. A.K. Seth,
Ms. Palak Mathur and Mr. Varun
Phore, Advs.

versus

COMMISSIONER OF CUSTOMSRespondent

Through: Mr. Aakarsh Srivastava, SSC with Ms.
Anugya Gupta, Advs.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present appeal has been filed by the Appellant– M/s Durga Apparels Pvt. Ltd. challenging the Defect Miscellaneous Order No. 50133-50134/ 2025 dated 10th February, 2025 (*hereinafter, 'the impugned order'*) passed by the Customs, Excise & Service Tax Appellate Tribunal (*hereinafter, 'the CESTAT'*).
3. *Vide* the impugned order, the CESTAT has dismissed the appeal filed by the Appellant i.e., Defect Appeal Diary No. 50237 of 2024 on the ground of delay.
4. The brief background of this case is that an investigation was conducted against the Appellant Company and its Directors on the grounds of allegations that certain goods were exported by them which were highly over-valued, only with the intention to earn duty drawbacks.



5. Pursuant to the investigation, a Show Cause Notice was issued upon the Appellant Company on 14th August, 2013 by the Additional Commissioner, Customs & Central Excise, Delhi-IV, Faridabad and a detailed reply dated 27th June, 2016 was filed. Thereafter, the Order-in-Original was passed on 26th September, 2016 and was further challenged by the Appellant along with the Department before the Commissioner of Customs (Appeals).

6. *Vide* order dated 28th May, 2019, the Commissioner of Customs (Appeal) upheld the Order-in-Original dated 26th September, 2016. It was further held that the goods were exported by the Appellant company under fraudulent duty drawback claims, rejecting 365 shipping bills and rendering them liable for confiscation under Section 113 of the Customs Act, 1962. The matter was partially remanded to the adjudicating authority for a fresh determination of penalties under Section 114(iii) of the Customs Act, 1962.

7. In the meantime, the Enforcement Directorate (ED) also initiated an investigation against the Appellant along with the ongoing investigation by the Directorate of Revenue Intelligence (DRI).

8. The case of the Appellant herein is that the Director of the Appellant Company- Mr. Sajjan Kumar, was arrested on 25th September, 2021 and he subsequently faced various medical issues due to which his health condition is stated to have deteriorated.

9. The Order-in-Appeal No. dated 28th May, 2019, passed by the Commissioner of Customs (Appeal) was challenged by the Appellant before the CESTAT. The said appeal was filed after the COVID-19 pandemic, only on 29th January, 2024. Thus, there was a substantial delay in the filing of the appeal of more than 1610 days. The said timeline is captured in brief



hereinbelow:

Date of Order in Appeal	28.05.2019
Date on which the Appellant received the Order in Appeal	03.06.2019
Date on which limitation period of three months for filing appeal under Section 129 of Customs Act, 1962 expired	02.09.2019
Appeal filed on	29.01.2024
Total Days of Delay	1610 days

10. On 10th February, 2025, CESTAT dismissed the appeal filed by the Appellant holding that the Appellant had failed to satisfactorily explain the delay of 1617 days.

11. The case of the Appellant is that the medical condition of the Appellant's Director, coupled with the period of COVID-19 pandemic would completely justify the delay in filing the appeal and thus, sufficient cause has been shown.

12. It is, further, submitted that in fact, the Appellant Company's Director was in custody due to the proceedings before the ED and during such period he could not take any steps to avail of legal remedies. This position is refuted by Id. counsel for the Respondent who submits that no medical records have been filed prior to 2020 which shows the deteriorating mental health of the Appellant Company's Director.

13. Additionally, it is submitted that the Appellant has availed of more than Rs.13 crores in duty drawbacks due to the alleged transactions and the said amount lies with the Appellant.

14. This Court has considered the matter. The limitation period for filing



an appeal under Section 129A of the Customs Act, 1962 is a period of three months. However, Section 129A(5) also provides that if sufficient cause is shown, the delay in filing the appeal can be condoned.

15. After hearing the above stated submissions made by the parties, there are three factors which persuade this Court to consider the issue of condonation of delay:

- i. The investigation by the Directorate of Revenue Intelligence as also by the Enforcement Directorate against the Appellant which commenced in 2019 and culminated into the arrest of the Appellant on 25th September, 2021;
- ii. The outbreak of the COVID-19 pandemic between 2020 to 2022 which has also been dealt with by the Supreme Court in ***Re: Cognizance for extension of Limitation having Misc. Application No. 21 of 2022 in M.A. No. 665 of 2021 in Suo Moto Writ Appeal (C) No. 3 of 2020.***
- iii. The medical condition of the Appellant Company's Director in respect of which some records have been placed along with the present appeal.

16. In view of the above position, this Court is of the opinion that there is sufficient cause shown by the Appellant to justify the delay in filing the appeal.

17. However, the said delay is being condoned, subject to stringent terms and conditions:

- i. The Appellant shall deposit a sum of Rs.5 lakhs as costs with the Respondent- Department.
- ii. No unnecessary adjournments shall be taken before CESTAT.

18. Thus, the impugned order is set aside and the appeal is restored to its



original position before the CESTAT and shall now be adjudicated on merits. The said amount of Rs. 5 lakhs shall be deposited with the Department by 10th July, 2025. The proof of costs shall be furnished before CESTAT. A copy of this order shall be communicated to CESTAT.

19. List before CESTAT on 28th July, 2025.

20. The appeal is disposed of in these terms. Pending applications, if any, are also disposed of.

**PRATHIBA M. SINGH
JUDGE**

**RAJNEESH KUMAR GUPTA
JUDGE**

MAY 9, 2025
dj/ss