



\$~65

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 12th November 2025

+ **CUSAA 166/2025 & CM APPL. 70580/2025**

BHARAT SANCHAR NIGAM LIMITEDAppellant

Through: Mr. Kamal Sawhney, Mr. Deepak
Thackur, Ms. Aakansha Wadhvani &
Mr. Rishab Mishra, Adv.
(07703054406)

versus

COMMISSIONER OF CUSTOMS, ICD PPG AND OTHER ICDS

.....Respondent

Through: Ms. Anushree Narain, SSC with Mr.
Naman Choula, Adv.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE SHAIL JAIN

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present appeal has been filed by the Appellant- Bharat Sanchar Nigam Limited (*hereinafter*, 'B.S.N.L.') under Section 130 of the Customs Act, 1962, assailing the order passed by the Customs, Excise & Service Tax Appellate Tribunal, (*hereinafter*, 'CESTAT'), dated 28th July, 2025, in Appeal Diary No. 55848 of 2024 (*hereinafter*, 'impugned order').
3. A brief background of the Appellant's case is that, B.S.N.L., which is a telecommunications service provider, provides mobile voice and internet services through an expansive network across India. Certain tender was floated by the B.S.N.L., and Advance Purchase Orders (*hereinafter*, 'APOs') were released to the successful vendors. Certain equipment such as Baseband Unit Module (*hereinafter*, 'BBU') and Radio Access Technology (*hereinafter*, 'RAT') were to be imported and B.S.N.L. classified the same



under particular classification being Customs Tariff Head 85176290.

4. However, due to a clarification which was issued by the Customs Department pursuant thereto, the classification was to be under Customs Tariff Head 85177090. Thereafter, B.S.N.L. had directed all its field units to pay the differential duty where BBUs were imported under Customs Tariff Head 85176290. In the present case, the same was paid sometime in 2021.

5. Subsequently, however, three Show Cause Notices dated 8th July, 2021, 9th September, 2021 and 16th September, 2021 (*hereinafter*, 'SCNs') were issued to B.S.N.L. as to why a penalty ought not be imposed.

6. These SCNs were issued under Section 28(4) of the Customs Act, 1962 and the allegations made in the SCNs were that B.S.N.L. had made wilful misstatement.

7. These SCNs were duly replied by B.S.N.L., however, in the Order-in-Original dated 20th February, 2023, which was passed by the Adjudicating Authority (*hereinafter*, 'OIO'), penalties were imposed in the following terms:

"28. Now, let's see whether the importer has paid their duty liability along with interest in full or in part:

28.1 It is a fact that the importer had paid duty along with interest to the Department in the month of February, 2021 and inform such payment in the month of April, 2021. However, it is observed that the importer in respect of ICD-Ballabgarh had paid their duty amounting to Rs. 8,49,44,288/- along with applicable interest on 01.02.2021 whereas, the demanded duty was of Rs. 8,52,49,233/-. Hence, they had made short payment of Rs. 3,04,945/- along with applicable interest in respect of import made at ICD-Ballabgarh. The importer has also not informed any reason as to why he was liable to pay less amount in as much as Rs. 3,04,945/- and how he has arrived at the payable



amount of Rs. 8,49,44,288/-. Therefore, it appears that the Noticee has failed to pay an amount of Rs. 3,04,945/-

28.2 I have further observed that the importer has also not paid any amount of penalty in view Sec. 28(5) of Customs Act, 1962 so as to claim the benefits of the provisions of Section 28(6) of Customs Act, 1962. Therefore, I am forced to confirm penalty under Section 114A of Customs Act, 1962.

[...]

ORDER

i. I reject the classification of the subject goods made by the Importer under CTH 8517 70 90 of the Customs Tariff Act, 1975 and re-classify the subject goods under Chapter Heading 8517 62 90 of the Custom Tariff Act, 1975, in view of the facts discussed in forgone paras;

ii. I confirm the demand of short payment of duty amounting to Rs. 12,63,01,812/- (Twelve Crore Sixty Three Lacs One Thousand Eight Hundred and Twelve only) under Section 28(4) of the Customs Act 1962, from M/s Bharat Sanchar Nigam Limited. However, since the Noticee has paid an amount of Rs. 12,59,96,867, I appropriate the same against the total demand of Rs. 12,63,01,812/-. Accordingly, an amount of Rs. 3,04,945/- is confirmed as recoverable amount of BCD.

iii. I appropriate the interest amount of Rs. 5,38,74,829 already paid by the importer under Section 28AA of Customs Act, 1962.



iv. The act of the noticee renders the goods liable for confiscation under Section 111(m) of the Customs Act, 1962. However, as the goods are not physically available for confiscation, I have no other option except to refrain from confiscating the goods in question under Section 111(m) of the Customs Act, 1962. Accordingly, I also refrain from imposing penalty under Section 112(a) of the Customs Act, 1962.

v. I impose penalty of Rs. 12,63,01,812/- (Rupees Twelve Crores Sixty Three Lakh One Thousand Eight Hundred and Twelve Only) i.e. equal to the duty not paid, under Section 114A of the Customs Act, 1962 on M/s Bharat Sanchar Nigam Limited. However, M/s Bharat Sanchar Nigam Limited shall have option to pay 25% of penalty confirmed within a period of 30 days from the date of the communication of this order, in view of the 1st Proviso to Section 114A of Customs Act, 1962.”

8. It is relevant to note that in the OIO itself, the Adjudicating Authority records that the differential duty has been almost fully paid. However, the Adjudicating Authority proceeded to impose penalty.

9. This OIO dated 20th February, 2023, was an appealable order and B.S.N.L. filed an appeal under Section 129(A)(3) of the Customs Act, 1962, which provides a limitation period of three months from the date of communication of the order. However, the appeal came to be filed belatedly and was delayed by more than 652 days. The CESTAT has *vide* the impugned order, dismissed the appeal on the ground of limitation. The findings of CESTAT are as under:

“ [...]



40. It is also stated that the applicant during the period from May, 2023 to July, 2023 was under an impression that "the matter had reached a quietus". Such an impression belies the order as it specifically imposes a penalty on the appellant under section 114A of the Customs Act. There cannot be any reason for the applicant to be under an impression that "the matter has reached a quietus".

41. It clearly transpires that from March, 2023 to July, 2023 no effective steps were taken by the applicant for filing the appeal and the period of limitation was allowed to expire on 27.05.2023, though the applicant is possessed of many senior competent officers well conversant with the court proceedings and the period of limitation. In fact, as noted above, two senior officers of the Corporate Office had appeared before the Commissioner to make submissions when opportunity of personal hearing was granted. Even otherwise, nothing prevented the applicant from seeking legal advice immediately after the order imposing penalty was received, but what transpires is that from July, 2023 to August, 2023 the applicant was contemplating filing an application for Rectification of Mistake and even after the consultant advised the applicant to file an appeal, the applicant internally deliberated upon this issue and then decided to file an appeal. It has also been stated that the process for engaging a firm/counsel to represent the applicant was initiated in September, 2023 and continued upto October, 2023. When a firm was appointed and it sought certain documents, these documents were not provided "due to re-shuffling of the internal department" and for a long period of about year thereafter the applicant remained inactive and it was left to the audit team, when an audit was carried in September, 2024, to inform the applicant that no appeal had been filed. This shows complete lack of due



diligence on the part of the appellant.

42. *There is, therefore, no manner of doubt that the applicant was grossly negligent in filing the appeal and the reasons given lack bona fides at every stage. **The applicant is under an obligation to satisfactorily explain the delay and only if sufficient cause is shown that the delay can be condoned. What, however, transpires is that vague and general statements have been made without giving details and without even enclosing the necessary documents to substantiate the averments made in the application. Even according to the case of the applicant, a firm was appointed to represent the applicant sometimes in September/October, 2023, but still the appeal was not immediately filed and it was filed on 11.12.2024 contending that the delay should be condoned as "Courts cannot keep a blind eye to the merits while entertaining condonation of delay".** As noticed above, the Supreme Court way back in 2012 had also made it clear in Office of The Chief Post Master General to all the Government bodies, their agencies and instrumentalities that unless they have a reasonable and acceptable explanation for the delay and there is a bona fide effort on their part, the usual explanation offered that time was taken in procedural processes will not be accepted.*

43. **In the absence of any satisfactory explanation having been offered by the applicant for condoning the delay of 652 days, the application would have to be rejected.**

44. **Thus, for all the reasons stated above, the application filed for condonation of delay is rejected. Consequently, the appeal stands dismissed.**

10. Ld. Counsel for the Appellant submits that the imposition of the penalty



would not be justified in the facts of this case as, B.S.N.L. is a public body, and there could not have been any allegation of collusion or wilful statement, as the declaration was made initially itself, and thereafter the payment of the differential duty was fully *bona fide* and was voluntary. Further, Id. Counsel for the Appellant submits that, even before any notice was issued by the Customs Department, B.S.N.L. had paid the differential duty.

11. The submission of Id. Counsel for the Appellant is that, under such circumstances, to invoke the extended period of limitation under Section 28(4) of the Customs Act, 1962, is fully untenable.

12. Id. Counsel for the Appellant also relies upon the decision of the Coordinate Bench of CESTAT in Ahmedabad, titled ***B.S.N.L. v. Commissioner of Central Excise, Ahmedabad 2009 (14) S.T.R. 359 (Tri.-Ahmd)***, which is a case involving BSNL itself, wherein the CESTAT has come to the conclusion on identical facts, that the extended period of limitation could not have been invoked and the SCN itself was held to be not tenable.

13. On the other hand, Id. SSC for the Respondent submits that the present case involves a gross delay. It is submitted that all the four to five reasons advanced by the Appellant to explain the delay have been duly considered in detail, by the CESTAT in the impugned order. However, the said reasons have been found to be completely unsatisfactory, and no sufficient cause has been shown for condonation of delay. Since the impugned order of the CESTAT is a well-reasoned one, no *substantial question of law* arises for consideration, and therefore the present appeal is not maintainable.

14. The Court has considered the matter. There is no doubt that B.S.N.L. is a public autonomous service provider and has, itself declared and paid the



differential duty voluntarily. Therefore, in the opinion of this Court B.S.N.L., is entitled to a hearing on merits.

15. The short question in the present appeal is whether the delay in filing the appeal is liable to be condoned or not. On this issue, the recent decision of the Supreme Court in *Inder Singh v. State of Madhya Pradesh* 2025 SCC OnLine SC 600 and the recent decision of this Court dated 23rd July, 2025 in CUSAA 27/2024 titled *M/s Siddhi Vinayak Importers v. Commissioner of Customs* clearly shows that if there is sufficient cause shown for condonation of delay, merits should be considered.

16. Be that as it may, the CESTAT order cannot be faulted as there appears to have been no valid justification for the delay following the decision in *Office of The Chief Post Master General vs. Living Media India Ltd.* 2012 (277) E.L.T. 289 (SC). However, considering the fact that there was a voluntary declaration by B.S.N.L., *prima facie* there appears to be some merit in the contention of the B.S.N.L., that it is entitled to be heard on merits.

17. Under such circumstances though the CESTAT order is not faulted with, and in fact may be correct in law, the Court is of the opinion that the appeal of B.S.N.L., before CESTAT ought to be restored, and be heard on merits, subject to payment of costs.

18. Let B.S.N.L. deposit a sum of Rs.20,000/- with the Delhi High Court Legal Services Committee, within four weeks of this order.

19. The said amount shall be deposited to the following account:

Name: Delhi High Court Legal Services Committee

A/c No: 15530110008386

Bank: UCO Bank

Branch: Delhi High Court



IFSC: UCBA0001553

20. Subject to the said deposit, the appeal of B.S.N.L. before CESTAT is restored to its original number, for adjudication on merits. Accordingly, the delay shall stand condoned.
21. All rights and contentions of the parties are left open.
22. The parties shall appear before CESTAT on 09th January, 2026.
23. The appeal is disposed of in these terms. Pending applications, if any, are also disposed of.

**PRATHIBA M. SINGH
JUDGE**

**SHAIL JAIN
JUDGE**

NOVEMBER 12, 2025
jyh/kk/sm