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

Date of decision: 21st February, 2025

+ **CUSAA 47/2025 & CM APPL. 10721/2025**

M/S TECMAX ELECTRONICS

.....Appellant

Through: Mr. Mayank Sharma & Mr. Rahul
Choudhary, Advs. (M:9718900060)

versus

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

Through: Mr. Harpreet Singh, Sr. Standing
Counsel with Ms. Suhani Mathur &
Mr. Jai Ahuja, Advs. (M:
9811253531)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CM APPL.10721/2025 (for exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

CUSAA 47/2025

3. The present appeal has been filed by the Appellant - M/s Techmax Electronics challenging the impugned order dated 18th November, 2024 passed by Customs, Excise and Service Tax Appellate Tribunal ('CESTAT'), by which the delay in filing the second appeal has not been condoned by CESTAT.

4. The brief background is that the Appellant had filed a Bill of Entry for import of certain Brass Ceramic Cartridges from China by **Bill of Entry No. 2995695** dated 28th August, 2017. There was an allegation of misdeclaration,



which was made and the value of the goods was alleged to be under-valued. A differential duty of Rs.2,71,201/- was assessed by the Department and confirmed *vide* the Order-in-Original dated 12th September, 2017 (hereinafter '*OIO*'). The OIO also imposed a redemption fine of Rs. 30,000/- and penalty of Rs. 2,71,201/-. In order to avoid the demurrage and detention charges, the Appellant cleared the goods by paying the differential duty and penalty as imposed by said OIO.

5. This order was then challenged by the Appellant before the Commissioner (Appeals) *vide* appeal dated 10th November, 2017. Thereafter, the Appellant had shifted its business premises from the A-12, Plot No. 71/7, Rama Road, Industrial Area, Najafgarh Road, New Delhi to an adjacent building in the same locality. However, a fire accident is stated to have occurred at the relocated premises on 21st October 2018, following which the Appellant once again shifted its business to a new location, which remains till date to be its office premises. Presently, however the business is stated to be non-operational.

6. Though the first shift in office premises was effected in the GST registration, the same was not informed to the Respondent-Department with respect to the appeal proceedings. Following this a personal hearing notice dated 8th January, 2020 was sent to both, the Appellant (to their old office) and the Appellant's Counsel. The Counsel, attended the hearing on 16th January, 2020, but failed to inform the developments to the client and also failed to inform the change in address to the Department.

7. The Commissioner (Appeals) passed the order dated 1st June, 2020. The case of the Appellant is that the Appellant was never communicated the order by the Commissioner (Appeals) dated 1st June, 2020.



8. According to the Appellant, during the COVID period, the Counsel also did not inform the Appellant about the passing of the order by the Commissioner (Appeals). It is only when the Appellant visited the office of the Department that the Appellant came to know of the order, which was passed. Hence, there was a substantial delay of more than four years in filing of the appeal before CESTAT.

9. The appeal was filed on 24th May, 2024 before the CESTAT. In the said appeal, the CESTAT observed as under:

“3. A perusal of the order that was passed by the Commissioner (Appeals) indicates that the learned consultant appearing for the appellant had actually appeared before the Commissioner (Appeals) on 16.01.2020 when hearing took place. There is no reason as to why the learned consultant should not have made repeated inquiries from the Office of the Commissioner (Appeals) to find out whether any order had been passed.

4. Learned counsel for the appellant has however, pointed out that because of covid, the time period stood extended if the limitation fell within 15.03.2020 and 28.02.2022. The order was passed on 01.06.2020 and therefore, the period of limitation fell within the aforesaid period. The appellant could therefore, have filed the appeal within 90 days from the 28.02.2022.

5. Even though, such a ground has not been taken in the application, yet in view of the orders passed by the Supreme Court, the time period for filing the appeal has to be counted from 28.02.2022 and therefore, the time for filing the appeal will expire on 19.05.2022. There is no explanation whatsoever as to why the appeal was not filed within the stipulated time from 19.05.2022.

6. Only a vague argument has been made in the delay condonation application that when the appellant visited the office of the department in the month of February



2024 the appellant came to know about the passing of the order.

7. As noted above, once the learned consultant for the appellant had appeared before the Commissioner (Appeals) on 16.01.2020 at the time of hearing of the appeal, there is no reason as to why the learned consultant should not have made inquiries from the office of the Commissioner (Appeals) to find out whether the order had been passed. The appellant has been absolutely negligent in the matter. It is not the case of the appellant that the appellant was not informed by the Commissioner (Appeals) about the passing of the order despite seeking such information.

8. The cause of the fire cannot also be a ground for delay in filing the appeal because the learned consultant had actually appeared before the Commissioner (Appeals) for hearing on 16.01.2020 and the fire had taken place much earlier in 2018.

9. The appellant has, therefore, not been able to make out any ground, much less a satisfactory ground, for condoning the delay in filing the appeal. The application is, accordingly, rejected. The appeal, therefore, stands dismissed.”

10. Ms. Vidushi, Id. Counsel for the Appellant has submitted vehemently that under Section 153 of the Customs Act, 1962, the Commissioner (Appeals) had sent the order to the earlier address of the Appellant, which was never served. Hence, there was no communication of the order. The limitation for filing of the appeal would run only from the date when the order is communicated. Id. Counsel further submits that even the Counsel did not inform the Appellant of the personal hearing, which he had attended. Finally, it is also argued that during the COVID period, two years of limitation would be liable to be condoned.



11. Mr. Harpreet Singh, Id. Counsel on behalf of the Department refutes these submissions and states that the Department has done everything within its power to ensure that the appeal order is served upon the Appellant. The Counsel, in fact, attended the hearing in the Pre-COVID time on 16th January, 2020, so COVID cannot be a reason for non-filing of the appeal within time.
12. The Court has perused the record.
13. Admittedly, the Appellant had preferred the appeal before the Commissioner (Appeals) and had engaged the said counsel. The notice for personal hearing was served upon the Appellant as also the Counsel, as is evident from the notice dated 08th January, 2020. The Counsel had also attended the hearing. There was no other alternative address, which the Appellant provided, to the Commissioner (Appeals) for service of the order dated 1st June 2020.
14. Under such circumstances, the Commissioner (Appeals) cannot be blamed for having sent the order to the earlier address of the Appellant. There has been clear lack of alacrity on behalf of the Appellant, who has not bothered to verify as to whether any order was passed by the Commissioner (Appeals) in the appeal preferred at its instance. This Court is of the opinion, that the duty existed, also, upon the Appellant to check if any order was passed in the appeal.
15. In the overall facts and circumstances, the Department did not have any other option and has exercised its due diligence in accordance with the procedure. As the Appellant did not provide an alternate address and the Counsel failed to inform the Appellant, the Department cannot be held responsible.
16. In these circumstances, the order of CESTAT does not warrant any



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interference.

17. The appeal is, accordingly, dismissed.

**PRATHIBA M. SINGH
JUDGE**

**RAJNEESH KUMAR GUPTA
JUDGE**

FEBRUARY 21, 2025/dk/Am