IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 10.07.2026	Delivered On:16.07.2026

CORAM

THE HONOURABLE DR JUSTICE G. JAYACHANDRAN
AND
THE HONOURABLE Mrs. JUSTICE N. MALA

Writ Petition No.1326 of 2026
and
W.M.P.No.1500 of 2026

M/s Mitro Enterprises,
rep.by its Proprietor Sridhar Deshpands,
No.1, First Floor, J.J.Plaza,
Vidyapeeta Circle, Katriguppa Main Road,
BSK 1st Stage,
Bangalore 560 028. ..Petitioner

/versus/

1.The Principal Commissioner of Customs (Air Cargo),
New Customs House,
Meenambakkam, Chennai 600 027.

2.The Commissioner of Customs (Appeals),
New Customs House, Grand Southern Trunk Road,
Ramapuram, Meenambakkam,
Chennai 600 027.

3.The Assistant Commissioner of Customs Group (1-4),
New Customs House, Grand Southern Trunk Road,
Ramapuram, Meenambakkam, Chennai 600 027. ..Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order dated 30.06.2025 issued in C/COD/40366/2025 in Diary No.40537 of 2025 (C) by the Hon'ble CESTAT, Chennai and quash the same and consequently direct the Hon'ble CESTAT,Chennai to number the Appeal and dispose of the same on merits in a time bound manner.

For Petitioner : Mr.A.Mohamed Ismail

For Respondents : Ms.S.Lydia Steffi for Mr.Rajnish Pathiyil, Sr.S.C.

ORDER

(Order of the Court was made by Dr.G.Jayachandran,J.)

The writ petition is filed by the proprietary concern, which has imported goods from Korea through Chennai Customs Airport, declaring the goods as Herbal Classic Menthol, original herbal product (charcoal filter) (tobacco free, nicotine free), sticks made of tea leaves and classified it under Customs Tariff Heading 30049011(Chapter 30). The bill of entry dated 22.05.2023, declared the assessable value as Rs.8,99, 640/- and the bill of entry dated 25/05/2023 declared the accessible value as Rs.17,99,280/-. According to the writ petitioner, the goods imported are tobacco free and nicotine free products. Hence, it has been rightly classified under the tariff 30049011. Whereas, the Assessing Officer, after obtaining the rest of the report confirming the samples, do not contain any tobacco or nicotine product has classified the goods under Tariff Head – CTH24029090 (Chapter 24). Order-in-Original imposing tariff and penalty of Rs.15,000/- levied for mis-declaration.

2.The writ petitioner aggrieved by the order-in-original had preferred appeal before the Commissioner of Customs (Appeal). The appellate authority vide its order dated 10.07.2024, partly allowed the appeal by upholding the classification of the goods imported falls under Chapter 24-CTH 24029010 as determined by the Assessing Officer, however, set aside the penalty levied under Section 117 of the Customs Act, 1962.

3.Not satisfied with the order of the appellate authority, the petitioner herein has filed W.P.No:20422 of 2024 seeking release of the goods on the ground that the classification of the goods by the Department is erroneous. In the said writ petition, mandamus to clear the goods kept in the Customs Bonded Warehouse at Chennai was prayed. Later, on advice that the pendency of the writ petition seeking provisional release of the goods would not be an impediment in filing the statutory appeal before the Central Excise & Service Tax Appellate Tribunal, the writ petitioner has filed an appeal before the Central

Excise & Service Tax Appellate Tribunal, Chennai with a delay of 144 days.

4.The Central Excise & Service Tax Appellate Tribunal (CESTAT) examining the cause shown for the delay, dismissed the miscellaneous petition filed for condonation of delay holding that the cause shown is in the nature of excuse, but not a sufficient cause falling under the criteria listed as acceptable cause.

5.The impugned order of the CESTAT has postulated the following criteria as acceptable criteria for condoning delay:-

> "(i)It must be a cause which was beyond the control of the party invoking it.
>
> ii)The party must not be guilty of negligence.
>
> (iii)Due diligence and care must be shown to have been taken.
>
> (iv)It should not be that the party kept sleeping over their rights for long and woke up when they discovered some judgment of change in law to their advantage."

6.The Learned counsel for the writ petitioner submitted that even according to the CESTAT, the criteria postulated by it, is not exhaustive, but only illustrative. That apart, the cause for delay is very bonafide. The petitioner, being aggrieved by erroneous classification of the goods, has lawfully approached the Court seeking release of the goods, which are perishable in nature. In the said writ petition, the Learned Judge on 09.09.2024 passed the following direction:-

> "(ii)In the meantime, the petitioner is directed to approach the Authority concerned by taking out appropriate application seeking for provisional release of the goods subject to the execution of Bank Guarantee with regard to the differential rate of duty along with a Bond.
>
> (iii)Any such application is being moved by the petitioner, the Authority concerned is directed to consider the same and release the goods within a week's time from the date of execution of such Bank Guarantee.
>
> (5.The respondent-Customs Department is also directed to adjudicate the matter relating to the issue of exemption of duty for import of the goods, viz., Herbal Tea Cigarettes by the petitioner in accordance with law after affording ample opportunities to the petitioner, as

> expeditiously as possible, so that this court need not labour much to resolve the controversy raised in the present Writ Petition and the decision taken in the adjudication proceedings would bind on the issue involved therein."

7.Therefore, he submitted that the issue of classification of the goods still remains a live dispute. As directed by the High Court, the writ petitioner has filed the appeal before the Tribunal explaining the reasonable cause for delay, which is adequate and sufficient. The impugned order of the Tribunal denying right to contest the matter on merits, despite proper explanation for delay, is liable to be set aside and the order to condone the delay and dispose the appeal on merit, has to be passed.

8.The Respondents in the counter affidavit has contented that, the present writ petition is not maintainable and liable to be dismissed *in-limine*. The petitioner, without exhausting the statutory remedy of appeal, expressly provided under Section 130 of the Customs Act,1962 which is effective and efficacious, had resorted to invoke the writ jurisdiction, which can be invoked only in case of absence of alternative remedy.

9.Insofar as the merit, the Department contention is that the Tribunal has dismissed the condone delay petition, after due scrutiny of the reasons stated for the delay of 144 days. The writ petitioner seeking mandamus has filed W.P.No:20422 of 2024 for release of the goods. Only after the interim direction of the High Court on 09.09.2024, the challenge to the order of the Appellate Authority dated 10.07.2024 was made on 20.02.2025. The delay in filing the appeal is reckoned from date of the interim order passed by the High Court in W.P. No:20422 of 2024. If, really the writ petitioner is a bonafide litigant, the appeal before the CESTAT ought to have been filed within 90 days from the order of the Appellate Authority or immediately after the order of the High Court passed on 09.09.2024. No reason has been given by the writ petitioner for the delay in filing the appeal between 09.09.2024 to 20.02.2025. Further, W.P.No:204222 of 2024 is not a litigation in the wrong Forum to save limitation under Article 14 of the Limitation Act, 1963. The relief prayed in W.P.No.20422 of 2024 and the relief prayed before the Tribunal in the appeal are different and hence, the writ petitioner cannot claim to be a bonafide litigant agitating his cause in a wrong Forum to get the benefit of Section 14 of the Limitation Act, 1963.

10.Thus, the writ petition is opposed by the Department on two grounds. The primary objection is the maintainability of a writ petition, when there is remedy of statutory appeal available under Section 130 of the Customs Act, 1962. The second objection is that the reason for delay in filing the appeal has not been properly explained and the explanation given by the writ petitioner is not a satisfactory cause, but mere explanation bereft of reasonable cause.

11.In respect of the preliminary objection regarding maintainability, the Learned Counsel appearing for the writ petitioner relies on the judgment of this court rendered in ***Thiruchitrambalam Projects Limited - vs – CESTAT, Chennai [Reported in 2016 (43) S.T.R. 531 (Mad)],*** wherein a Division Bench of this Court considering the judgment of another Division Bench rendered in ***Metal Weld Electrodes v. CESTAT, Chennai reported in [2014 (299) E.L.T. 3 (Mad)]*** and the judgment of the Hon'ble Supreme Court rendered in ***Rajkumar Shivhare v. Assistant Director, DoE reported in [(2010) 4 SCC 772]*** concur the view of the Division Bench of this Court rendered in *Metal Weld Electrodes* case to the answer to the reference as follows:-

" The order passed by the CESTAT in terms of Section 35F of the Central Excise Act, 1944 or

Section 129 F of the Customs Act, 1962 is appealable in terms of Section 35 G of the Central Excise Act, 1944 or Section 130 of the Customs Act, 1962."

12. The Learned Judges further added, 'however, at the same time, in exceptional circumstances carved out in the second part of paragraph No.38 of the decision of the Hon'ble Supreme Court in *Rajkumar Shivhare case,* the writ petitions are also maintainable.

13.Therefore, in the said circumstances, it is necessary to ascertain whether the case of the writ petitioner falls within the exceptional circumstances mentioned in second part of paragraph No. 38 in *Rajkumar Shivhare case.*

14. For convenience sake the entire paragraph is extracted below:-

"38. The learned counsel for the respondents relied on a judgment of this Court in *Seth Chand Ratan* v. *Pandit Durga Prasad* [(2003) 5 SCC 399] . The learned counsel relied on para 13 of the said judgment which, inter alia, lays down the principle, namely, when a right or liability is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before seeking the discretionary remedy under Article 226 of the Constitution. However, the aforesaid principle is subject to one

> exception, namely, where there is a complete lack of jurisdiction of the tribunal to take action or there has been a violation of rules of natural justice or where the tribunal acted under a provision of law which is declared ultra vires. In such cases, notwithstanding the existence of such a tribunal, the High Court can exercise its jurisdiction to grant relief."

15. In the same judgment at paragraph No.33, the Hon'ble Supreme Court has referred the Constitution Bench decision rendered in *Thansingh Nathmal v. Superintendent of Taxes reported in [AIR 1964 SC 1419].* In the said case, the Hon'ble Supreme Court, while commenting upon the exercise of writ jurisdiction by the High Court under Article 226 of the Constitution of India, subject to self-imposed limitation, had explained that the High Court does not therefore, act as a Court of Appeal against the decision of a Court or Tribunal to correct errors of facts, and does not by assuming jurisdiction under Article 226 of the Constitution, upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to approach the Tribunal, or even itself in another jurisdiction for obtaining reddress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution. The machinery created under the statute cannot be bypassed leaving the party applying to it to seek resort to machinery, so set up.

16. It is well settled by the Hon'ble Supreme Court in catena of judgments that alternate statutory remedy is not an absolute bar to invoke writ jurisdiction under Article 226 of the Constitution of India. In exceptional case, writ can be issued, if there is breach of fundamental right, violation of natural justice principle, challenge to the vires of the provisions of the statute or delegated legislation or excess of jurisdiction. *[Ref: Assistant Commissioner of Sales Tax and others -vs- Commercial Steel Limited – (2021 (10) SCALE 665)].*

17. In the case under consideration, the facts do not fall under any of exceptions to entertain the writ petition challenging the order of dismissal by the Tribunal. Even assuming, failure to avail the alternate statutory remedy under Section 130 of the Customs Act, 1962 is a curable defect, limitation prescribed under the fiscal law cannot be condoned in casual manner. Condonation of delay is a pure question of fact.

18. The learned Counsel for the writ petitioner submitted that after the order of the appellate authority dated 10.07.2024, the writ petitioner believed that the writ petition would give a quietus to the issue. Hence, filed

W.P.No.20422 of 2024. Later, on appropriate legal advice, the statutory appeal filed. The delay, therefore, is a bonafide delay. He reiterates that the issue regarding classification of goods can still be considered in the pending W.P.No: 20422 of 2024. We are not inclined to make any observation about the above submission, which is subject matter of the pending writ petition in W.P.No:20422 of 2024.

19. In so far as the present writ petition, we find the writ petitioner without filing the statutory appeal in time before the Tribunal, has consciously chosen to file the writ petition questioning the classification of goods with a prayer to release the goods treating it as goods under Chapter-30, instead of Chapter-24 for the sake of customs tariff. While so, the statutory appeal filed thereafter with delay should contain sufficient cause. Since the cause shown in the condone delay petition is not satisfactory and the same has been turned down by the CESTAT. In the absence of any breach of fundamental right or violation of natural justice principle seen from the order impugned, the writ petition deserves to be dismissed both on its maintainability as well as merits.

20. Accordingly, **this Writ Petition stands dismissed.** No order as to costs. Consequently, connected Miscellaneous Petition is closed.

(Dr. G.JAYACHANDRAN, J.) (N. MALA, J.)

16.07.2026

Index :Yes/No.
Neutral Citation :Yes/No.
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Pre-Delivery Order made in

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