



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO.15499 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA sd/-

and

HONOURABLE MR. JUSTICE PRANAV TRIVEDI sd/-

Approved for Reporting	Yes	No
	✓	

SHREE UKAI PRADESH SAHAKARI KHAND UDYOG MANDALI LTD

Versus

UNION OF INDIA & ORS.

Appearance:

MR DHAVAL SHAH(2354) for the Petitioner(s) No. 1

MS HARDIKA VYAS(11450) for the Respondent(s) No. 1,2,3,4

CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA

and

HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 11/12/2025

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. Heard learned advocate Mr.Dhaval Shah for the petitioner and learned advocate Mr.C.B.Gupta for the respondents. With the consent of the parties, the matter is taken up for hearing today itself.

2. **RULE** returnable forthwith. Learned advocate Mr.Gupta waives service of notice of rule on behalf of the respondents.

3. By this petition, the petitioner has prayed to quash and set aside the impugned Miscellaneous Order No. 10352 of 2025 dated 05.06.2025, whereby the Customs, Central Excise and Service Tax Appellate Tribunal, West Zonal Bench, Ahmedabad (for short "CESTAT") has dismissed the application filed by the petitioner being Excise Misc. Application (ROA) No. 11193 of 2024 on the ground that the same has been filed after a gap of seven (7) years.



4. The facts in brief are that the petitioner is a Co-operative Society duly registered under the Gujarat Co-operative Societies Act, 1961, *inter alia*, engaged in the manufacturing of sugar and molasses. The petitioner - Mandali was duly registered with the Central Excise Department under Reg.No.AAAAS5807JXM001 for the manufacture of V.P. Sugar under Chapter No. 1701 and molasses under Chapter No. 1703 of the Central Excise Tariff Act, 1985, respectively. The petitioner - Mandali was availing the facility of CENVAT credit on inputs/capital goods/input services under the provisions of the CENVAT Credit Rules, 2004.

4.1. The petitioner -Mandali was clearing the final product on payment of Central Excise duty through the current account and CENVAT Credit account, as required under Rule 8 of the Central Excise Rules, 2002. It is the case of the petitioner that the petitioner-Mandali was facing a financial crisis since long and had become a sick Mandali. Thereafter, the State of Gujarat came out with a revival plan for the sick co-operative sugar mills. The petitioner - Mandali continued its business. However, in the year 2013, the Assessing Officer, while examining the monthly returns of excisable goods and availing of CENVAT credit for the period from May 2013 to August 2014, observed that the petitioner - Mandali had shown duty payable on levy/non-levy sugar amounting to Rs.73,43,319/- including sugar cess, education cess and health cess, and on molasses amounting to Rs.38,80,352/-. In view of such facts, the Assessing Officer opined that the petitioner - Mandali had not paid the duties either through the Account Current (PLA) or through the CENVAT Credit Account.

4.2. A show cause notice dated 10.12.2014 was served upon the petitioner - Mandali calling upon it to pay the Central Excise duty of Rs.1,12,23,672/- along with penalty at the rate of one per cent per month for the period from 11.07.2014 onwards. Thereafter, the respondent no. 2 passed an Order-in-Original dated 23.07.2015, which was received on 19.08.2015, whereby the entire demand raised in the show cause notice stood confirmed. It is evident that the petitioner did not appear for personal hearing. The petitioner - Mandali thereafter informed respondent no.2 about the payment of Rs.10,00,000/- through PLA and Rs.32,32,980/- through the CENVAT Credit Account. However, Rs.8,41,780/- was paid as pre-deposit for filing an appeal before the CESTAT. The petitioner - Mandali also sought seven (7) equal monthly instalments to deposit the remaining duty amount out of its earnings.

4.3. It appears that during the intervening period, proceedings by the Provident Fund Commissioner were also undertaken and an amount of Rs.25,28,000/- was released from the Bank of India. Accordingly, pursuant to the request of the petitioner - Mandali, the office of the respondent no. 3 allowed the payment of Government dues of Rs. 69,90,692/- in seven (7) equal monthly instalments of Rs. 10,00,000/-.

4.4. Thereafter, the petitioner - Mandali filed an appeal before the CESTAT challenging the Order-in-Original dated 23.07.2015 along with a Misc. Application for condonation of delay of 98 days on 26.02.2016, contending that the factory was under closure from 22.02.2014 to 21.11.2015 due to acute financial crisis.



4.5. Vide order dated 19.08.2017, the CESTAT directed the petitioner - Mandali to file an affidavit in support of the reasons for the inordinate delay of 98 days in filing the appeal. It appears that since no explanation was tendered, the CESTAT, by an order dated 19.09.2017, dismissed the Misc. Application for condonation of delay due to failure to file the affidavit and, consequently, the appeal was also dismissed.

4.6. It is the case of the petitioner - Mandali that the Mandali remained closed from 2016-2017 to 2020-2021 due to financial crisis and hence the order passed by the CESTAT could not be attended to for further course of action. However, in the year 2022, the Gujarat Tribal Development Department came out with a revival plan vide Circular dated 15.09.2022 and the petitioner - Mandali tried to revive its business operations. The officers of respondent nos. 3 and 4 started recovery proceedings and it is the case of the petitioner that at that time the petitioner came to know about the appeal having been dismissed on the ground of delay.

4.7. Thereafter, the petitioner filed a Misc. Application for restoration of the Misc. Application for condonation of delay on 01.10.2024 and explained the reasons for delay that the Mandali was closed due to financial crisis. The CESTAT rejected the same on the ground that the Misc. Application was filed after a long gap of seven (7) years without any convincing explanation. Hence, the order rejecting the application is challenged before this Court in the present petition

5. Learned advocate Mr.Dhaval Shah appearing for the petitioner submitted that the impugned order passed by the CESTAT is

perverse and illegal and the same is required to be quashed and set aside, more particularly for the reason that the petitioner - Mandali had categorically averred in the application that the Mandali was closed due to financial constraints. It is contended that before the CESTAT, the order arising from the Order-in-Appeal dated 15.11.2017 was challenged, whereby vide order dated 24.07.2025, the CESTAT has allowed the delay condonation application wherein there was a delay of more than 2000 days on the same ground that the factory was closed due to financial constraints. It is urged that the present writ petition may be allowed by quashing and setting aside the impugned order.

6. *Per contra*, learned advocate Mr. Gupta appearing for the respondents submitted that the petitioner - Mandali cannot place reliance on the decision dated 24.07.2025 allowing Delay Condonation Application No. 12261 of 2024 setting aside the Order-in-Appeal dated 15.11.2017 since the department was unable to point out that the said order was served on 19.12.2017 on the appellant, and on this ground, as well as deposit of 90% of the amount recovered, the CESTAT condoned the delay, whereas in the instant case, after the order was passed by the CESTAT asking the petitioner-Mandali to tender evidence of delay of 98 days, the petitioner - Mandali did not file any application thereafter and therefore, the CESTAT was constrained to dismiss the application vide order dated 19.09.2017.

7. We have heard the learned advocates appearing for the respective parties.

8. The afore-noted facts about delay in filing the Excise Miscellaneous Application (ROA) No. 11193 of 2024 in Excise Appeal No.10587 of 2016 after a period of more than seven (7) years are not in dispute. The petitioner - Mandali had preferred an appeal being Excise Appeal No. 10587 of 2016 challenging the Order-in-Original dated 23.07.2015, in which there was a delay of 98 days. The CESTAT gave an opportunity to tender an explanation for the delay in filing the appeal, which was not done, and hence, vide order dated 19.09.2017, the said appeal came to be dismissed. The petitioner - Mandali thereafter went into slumber and did not do anything and all of a sudden, after a period of seven (7) years, an application for restoration being Excise Miscellaneous Application (ROA) No. 11193 of 2024 was filed before the CESTAT and the only explanation put forward before the CESTAT was that the Mandali was financially struggling and was closed down and hence could not keep track of its proceedings before the CESTAT.

9. It is interesting to note that the Mandali was already represented by an advocate in all the proceedings. However, neither the advocate nor the petitioner was vigilant enough to pursue the proceedings of Excise Appeal No. 10587 of 2016 in which there was a delay of 98 days. Thus, Excise Appeal No. 10587 of 2016 was belatedly filed having a delay of 98 days and, when the CESTAT directed the petitioner - Mandali to file an appropriate response explaining the delay, nothing was done. Hence, the CESTAT was constrained to dismiss the appeal vide order dated 19.09.2017. The order dated 19.09.2017 reflects that no one remained present on behalf of the petitioner despite extending an opportunity to the petitioner for filing an affidavit. Thus, the petitioner - Mandali was

negligent on four counts, firstly, in filing the appeal belatedly by 98 days; secondly, in not explaining the delay of 98 days despite the directions of the CESTAT; thirdly, in not remaining present in the proceedings; and fourthly, in filing the restoration application after a gap of seven (7) years. The CESTAT, after considering all these facts, has held as under:

“4.4. In the present case, we find that the only ground which has been given by the applicant is that their business was closed. It is, however, observed that the Managing Director of the Company was very much there. If the Tribunal had dismissed their appeal for non-compliance of its order to submit an affidavit explaining the delay of 98 days, he should have engaged a consultant and submitted an affidavit. There is no explanation for not doing the same. Again, after the dismissal order dated 19.09.2017, this miscellaneous application has been filed by the applicant on 01.10.2024, i.e. after a gap of seven (7) years, without any explanation. We therefore find that Miscellaneous Application No. E/COD/10252/2016 with Appeal No. E/10587/2016 and recalling the order No. A/12664/2017 dated 19.09.2017 is devoid of merits and therefore, the same is dismissed.”

10. We do not find any convincing reason to interfere with the order passed by the CESTAT in view of the fact that the petitioner - Mandali has been negligent in pursuing the legal remedy before the CESTAT. We are not convinced that merely because the petitioner - Mandali was closed down, it lost track of the proceedings which it had filed challenging the Order-in-Original dated 23.07.2015. Insofar as the reliance placed by learned advocate Mr. Dhaval Shah on the decision dated 24.07.2025 passed by the CESTAT in Delay Condonation Application No. 12261 of 2024 in Appeal D. No. 12260 of 2024 challenging the Order-in-Appeal dated 15.11.2017 condoning delay of almost 2000 days is concerned, we are of the opinion that the same will not come to the rescue of the petitioner because the facts recorded in the said order disclose that the Order-in-Appeal dated 15.11.2017 was not served upon the appellant and hence they

were unable to file the appeal before the CESTAT. Looking to the aforesaid reasons and also the deposit of 90% of the recovery amount by the appellant - Mandali, the CESTAT condoned the delay. These are vital distinguishing features in the present petition.

11. We may refer to the decision of the Supreme Court in the case of Sheo Raj Singh vs. Union of India, 2023 (10) S.C.C. 531, wherein the Supreme Court has revisited the power of the High Court in condoning delay while examining the expression “*sufficient cause*”. The Apex Court has set aside the order passed by the High Court condoning the delay of 479 days. It is held as under :

“30. Considering the aforementioned decisions, there cannot be any quarrel that this Court has stepped in to ensure that substantive rights of private parties and the State are not defeated at the threshold simply due to technical considerations of delay. However, these decisions notwithstanding, we reiterate that condonation of delay being a discretionary power available to courts, exercise of discretion must necessarily depend upon the sufficiency of the cause shown and the degree of acceptability of the explanation, the length of delay being immaterial.

31. Sometimes, due to want of sufficient cause being shown or an acceptable explanation being proffered, delay of the shortest range may not be condoned whereas, in certain other cases, delay of long periods can be condoned if the explanation is satisfactory and acceptable. Of course, the courts must distinguish between an “explanation” and an “excuse”. An “explanation” is designed to give someone all of the facts and lay out the cause for something. It helps clarify the circumstances of a particular event and allows the person to point out that something that has happened is not his fault, if it is really not his fault. Care must however be taken to distinguish an “explanation” from an “excuse”. Although people tend to see “explanation” and “excuse” as the same thing and struggle to find out the difference between the two, there is a distinction which, though fine, is real.

32. An “excuse” is often offered by a person to deny responsibility and consequences when under attack. It is sort of a defensive action. Calling something as just an “excuse” would imply that the explanation proffered is believed not to be true. Thus said, there is no formula that caters to all situations and, therefore, each case for condonation of delay based on existence or absence of sufficient cause has to be decided on its own facts. At this stage, we cannot but lament that it is only excuses, and not

explanations, that are more often accepted for condonation of long delays to safeguard public interest from those hidden forces whose sole agenda is to ensure that a meritorious claim does not reach the higher courts for adjudication."

12. In the present petition, the petitioner – Mandali was pursuing the remedy of challenging the appeal in which it was called upon to file an affidavit explaining the delay of 98 days, which it did not do, and ultimately, the Misc. Application seeking condonation of delay of 98 days was rejected. The same was responded to by the petitioner after a gap of seven (7) years by filing a Misc. Application for restoration of the application seeking condonation of delay of 98 days. The Apex Court has cautioned that care must be taken to distinguish an explanation from an excuse, since an excuse is often offered by a person to deny responsibility and consequences when under attack, and each case for condonation of delay based on existence or absence of sufficient cause has to be decided on its own facts. The only "excuse" which the petitioner has tendered for the delay is financial constraint. No other plausible explanation for delay is forthcoming from the petitioner.

13. Hence, the writ petition fails and the same stands **rejected**.

sd/-

(A. S. SUPEHIA, J)

sd/-

(PRANAV TRIVEDI, J)

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