

**IN THE CUSTOMS, EXCISE & SERVICE TAX  
APPELLATE TRIBUNAL, CHENNAI**

Customs Miscellaneous Application (Stay) No. 40723/2025  
and  
Customs Miscellaneous Application No. 40783/2025 (By Respondent)  
in  
Customs Appeal No. 40796/2024

**Commissioner of Customs**

No. 1, Williams Road  
Cantonment, Trichy – 620 001.

**Appellant**

Vs.

**Shri R. Kumaresan @ Mukesh**

Flat No. 3, 1<sup>st</sup> Floor,  
No. r, Pranav Apartments  
1<sup>st</sup> Trust Line Street  
Chennai – 600 028.

**Respondent**

**APPEARANCE:**

Shri Sanjay Kakkar, Authorized Representative for the Appellant  
Shri A.P. Ravi, Advocate for the Respondent

**CORAM**

**Hon'ble Shri M. Ajit Kumar, Member (Technical)**

**Hon'ble Shri Ajayan T.V., Member (Judicial)**

**MISCELLANEOUS ORDER NOS. 40836 & 40837/2025**

Date of Hearing: 01.08.2025

Date of Decision: 06.08.2025

**Per M. Ajit Kumar,**

This miscellaneous application is filed by the appellant-Revenue for stay of operation of the impugned order passed by the Commissioner of GST and Central Excise (Appeals), Coimbatore at Trichy and is being heard along with the Miscellaneous application filed by the Respondent in furtherance of the Hon'ble Madras High Court's Judgment in W.A. No. 1664 of 2025, dated 14.07.2025 against the appeals filed by D.R.I. and The Commissioner of Customs (Preventive), Trichy.

2. Brief facts of the case are that the officers of DRI, Chennai Zonal Unit searched the respondent's residence, suspecting illegal importation of exotic birds and animals from countries such as Thailand and Myanmar via clandestine routes. The respondent claimed he operated a pet business under his wife's name. The officers seized 69 exotic birds and animals (19 species) worth Rs. 1,10,52,000, along with documents, electronic media, and cars allegedly involved in transport of the birds and animals. A Show Cause Notice dated 05.04.2019 was issued for confiscation of the seized items and for imposition of penalties under the Customs Act. After due process the Adjudicating Authority ordered the absolute confiscation of the seized items and imposed penalties under sec. 112(a) and (b) and under sec. 114AA. On appeal, the Commissioner (Appeals) set aside the order, holding that it is a case of town seizure and not an interception at the point of entry into India. Revenue has appealed this decision and has requested a stay on the order.

3. The Ld. Authorized Representative Shri Sanjay Kakkar appeared for the department and Ld. Advocate Shri A.P. Ravi appeared for the respondent.

3.1 The Ld. AR Shri Sanjay Kakkar drew attention to this Tribunals MISCELLANEOUS ORDER NOS. 40825-40830/2025 Dated 31.07.2025, in the case of **Commissioner Vs. M/s. SKOT India** wherein the inherent powers of the Tribunal to grant stay was discussed. He took us through the 'Grounds of Appeal' from the Appeal Memorandum and submitted the following reasons for seeking stay of the impugned order:

i. The Ld. Commissioner Appeals has not discussed the plethora of evidence as a clear case of smuggling and simply elaborated section

123 of the Customs Act and held that the onus was on the department to produce evidence.

ii. Shri R Kumerasan had smuggled the goods from Thailand through a network of carriers from overseas suppliers. He had admitted to smuggling the birds as it was difficult to import them legally as per CITES, in his statements. Multiple bank transactions were seen for the purchase and sale of birds/ animals. He was then selling the same. Hence the question of discharging the burden under section 123 of the Customs Act does not arise.

iii. The retractions of the statement given by Shri M. Karthikeyan before the remanding court and not before DRI. Statement given are binding. Retractions with no corroborative evidence are prone for rejection as being an afterthought.

iv. Whether the birds/ animals were covered under CITES or not the smuggling of the birds into India renders them to be prohibited goods.

v. This is a case not involving duty, but the smuggling of wild life, hence the value of the goods confiscated is to be considered which is above Rupees one crore and hence the appeal has been rightly filed and will not be hit by the National Litigation Policy.

3.2 He hence prayed that the stay may be granted and the Miscellaneous application filed by the respondent may be rejected.

4. We have perused the 'Application for Stay' which states as under;

"6. It is submitted that the Appellate Authority has failed to appreciate the comprehensive documentary, digital, banking and oral evidence (including voluntary statements and travel records) that clearly establish the act of smuggling and the illicit nature of seized goods and proceeds.

7. It is submitted that the applicant has strong ground on merit in pending appeal and balance of convenience and equity are in favour of the department.

8. It is submitted that the impugned Order in Appeal, if not stayed, the applicant will be put to irreparable loss and hardships.

## PRAYER

It is therefore most respectfully prayed that this Hon'ble Tribunal in the interest of justice under Rule 41 of CESTAT Procedure Rules, 1982 read with Sec. 129A of the Customs Act, 1962 may be pleased to grant stay of the operation of the impugned Order in Appeal No. 15/2024 dated 24.6.2024 passed by the Commissioner (Appeals), Tiruchirappalli, pending disposal of the appeal.”

5. Ld. Advocate Shri A.P. Ravi in his submissions stated that the impugned order has set aside all adjudged dues including penalties and allowed release of the seized item to the appellant. He stated that even while the matter was pending before Ld. Commissioner Appeals, they had filed a Writ [W.P. No. 6115 of 2022], before the Hon'ble Madras High Court seeking interim custody for the safe keeping of the birds and animals, which had been housed at the Arignar Anna Zoological Park, Vandalur (**zoo**). The Hon'ble High Court vide its order dated 23.08.2024, noted that the Commissioner (Appeals) had ordered release of the seized items, and directed that the goods be released without further delay. This judgment was challenged by D.R.I. and the Commissioner of Customs (Preventive), Trichy, before a Division Bench, in W.A. No. 1664 of 2025. During the course of proceedings before the Hon'ble High Court the Deputy Director of the zoo, stated that against 69 birds and 2 animals originally handed over only 28 birds remain. He stated that it is impending upon the investigating officers to safeguard the seized goods. He relied upon the judgments of the Hon'ble supreme Court in;

(i) **N. Nagendra Rao & Co vs State Of A.P** [1994 SCC (6) 205, AIR 1994 SUPREME COURT 2663], and;

(ii) **State Of Bombay (Now Gujarat) vs Memon Mahomed Haji Hasam** [1967 SCR (3) 938, AIR 1967 SUPREME COURT 1885]

He hence pleaded with urgency for getting back custody of the birds / animals now that they have been released by the impugned order. The Hon'ble Madras Court had also, by its judgment dated 14.07.2025, expressed concern about the health of the birds and directed them to approach the Tribunal as an appeal was pending before it, for expeditiously consideration having regard to the fate of the birds now in custody of the zoo. He further prayed that the department's appeal may itself be taken up for final disposed for violating Boards instructions dated 17.08.2011 and 02.11.2023, wherein monetary limits for filing an appeal had been fixed based on duty/ tax under dispute as per the **National Litigation Policy**.

6. We have heard the rival parties. We find that one of the issue raised by the respondent is the maintainability of the departments appeal in the light of Boards instructions on National Litigation Policy, which is binding on departmental authorities. We however find that it does not form a part of their reply to the stay application or the Miscellaneous Application filed by the respondent. As a general principle the appellate court should not travel outside the pleadings made in the Appeal Memorandum or Cross Objections. However, the Hon'ble Supreme Court has in its judgment in **Chittoori Subbanna Vs Kudappa Subbanna** (AIR 1965 SC 1325) recognized that it is possible to include additional grounds in the grounds of appeal by moving a separate application for permission before the appropriate forum for its consideration. The right to admit and examine such an application is a discretionary one of the appellate authority concerned, within the provisions of the statute.

6.1 The Tribunal has an inherent power to prevent the right of reply being abused by a respondent who keeps back till the stage of oral

hearings, points of law or fact which he could have raised in the appeal Memorandum or Cross Objections or in this case by way of filing a Miscellaneous Application in advance of the hearing of the stay application. Not doing so places the other side at a disadvantage as it does not give them a chance to prepare and respond to the new point of law being made by the Appellant. We do not approve of an ambush strategy of catching the other side by surprise as it does not help make good law. Persons with good causes of action or reply in their defence, should pursue the remedy with reasonable diligence at the first available opportunity. The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis, and the disputed issues then travel up in appeal. In this case since the point of law has arisen after the appeal has been filed the issue should have been raised when revenue filed an appeal or at least by way of a Miscellaneous Application once the monetary limits as per the circular were issued. For these reasons taking up their oral plea at this stage will put revenue at a disadvantage, as it did not get a chance to consult and get suitable advice from the Commissionerate - which the Ld. A.R. represents, on the line of arguments to be pursued. We thus do not feel it necessary to examine this plea now and reject the same. We allow the respondent to file additional grounds on the point of law, by way of a Miscellaneous Application, just as they have done after the Hon'ble High Courts judgment, if they so desire, which will be examined and disposed of at the appropriate time.

7. Turning to the impugned order we find that at paras 10 and 11 the Ld. Original Authority has come to the following findings:

“10. I find that this is a case of town seizure and not interception at the point of entry in India. Admittedly, the appellant has purchased the exotic birds and animals from suppliers based in Kolkata and Mizoram. Unless a person is caught smuggling exotic species on the international borders, no presumption can be drawn that domestic keeper has illegally imported the exotic species. As mentioned above, the Hon'ble Allahabad High Court in the case of Dinesh Chandra has held very elaborately on the issue and all the findings and rulings in that case are applicable to the present case as the facts and legal implications in both the cases are similar.

11. In view of the above findings and the ruling of the Hon'ble High Courts and CESTAT, I find that therefore, the confiscation of the said 71 exotic birds and animals under Section 111(d), 111(f) and 111(i) of the Customs Act, 1962, the confiscation of seized vehicles viz., one Mercedes Benz Car bearing Registration No. TN07BQ0777 valued at Rs.7,00,000/- and one Toyota Innova bearing Registration No. TN06B6188 valued at Rs.4,50,000/- under Section 115(2) of the Customs Act, 1962, the confiscation of Rs.15,00,000/- seized from the residence of the appellant and the amount of Rs.87,51,253 lying in the three bank accounts under Section 121 of the Customs Act, 1962 and the imposition of penalty upon the appellant under Section 112(a) and Section 114AA of the Customs Act, 1962 are not sustainable. **They are liable to be set aside. The amounts confiscated have to be returned to the appellant and the vehicles seized have to be returned to the appellant.** (emphasis added)

8. The Hon'ble Madras High Court in its judgment [W.A. No 1664 of 2025, dated 14.07.2025], in the appellants present case has stated as under.

“7.1 **It is very sad to hear that the bulk of the birds seized have died over the last seven years, apart from natural causes, from diseases like pneumonia, trauma, mycocarditis and natural calamities. Had the litigation been concluded in a timely fashion, it might have ensured that some of the birds and animals seized were alive today.** Since the matter is now pending before the CESTAT, the respondent may approach the CESTAT for appropriate directions for release of the birds and animals, to be considered by the CESTAT in accordance with law. As and when such applications are filed, let the same be considered expeditiously having regard to the fate of the birds now in the custody of the zoo. The writ appeal is closed with the aforesaid observation. No costs. Connected miscellaneous applications are also closed.” (emphasis added)

9. A co-ordinate Bench of this Tribunal in **M/s. SKOT India** (supra), speaking through one of us, [Member (Technical), Shri M Ajit Kumar], stated that the proof of there being 'sufficient cause' is a condition precedent to the exercise of discretionary jurisdiction by this Tribunal on a stay application. It went on to state;

“15.1 . . . Hence while examining the request for a stay of an order, it is required that a reasonable decision needs to be taken which balances both the rights, based on sufficient cause being shown by revenue for urgent intervention by the Tribunal.” (emphasis added)

10. We are therefore required to satisfy ourselves as to whether the explanation offered is just and proper and there is sufficient cause to stay the order. The grounds for stay should not be a bland statement and should be backed by proper data/ information and reason. Some such reasons for seeking stay of an order by revenue in Customs cases, though not exhaustive and perhaps overlapping, are:

- (i) The order is illegal or perverse or malafide or capricious or arbitrary in the sense that a reasonably informed person will not enter such a finding and if allowed to stand it would result in gross miscarriage of justice.
- (ii) The order has been issued without jurisdiction.
- (iii) The order ignores relevant facts and hence comes to a wrong conclusion which is palpably incorrect or untenable.
- (iv) The discretion exercised by the Authority is arbitrary, capricious or contrary to the principles of law
- (v) The order allows the release of goods that may cause irreparable damage or harm to the environment/economy/public.
- (vi) The order may result in a substantial refund to persons who are ‘fly-by-night operators’ and the chance of recovery of the money once refunded is slim.
- (vii) The balance of convenience favours the applicant for a stay.
- (viii) It is prima facie shown that the impugned order has been obtained by practicing fraud.

11. We find that revenue has sought to urge the acceptance of their prayer by relying on the ‘Grounds of Appeal’. We find that the



impugned order prima facie appears reasoned and cannot be held to be of a kind where a reasonably informed person will not reach such a conclusion. The Stay Application stresses that the First Appellate Authority failed to appreciate the evidence that clearly establish the act of smuggling. We are of the opinion that a 'mini-trial' is not possible at this stage and appreciation of evidence is best left to a later stage during the final disposal of the appeal and not while examining a stay application, unless the evidences relied upon in the order are palpably illegal or perverse. The balance of convenience is also with the respondent, as the whole matter has dragged on for more than 7 years, which has even anguished the Hon'ble High Court as being a cause of the death of a large number of birds from reasons apart from natural causes. The loss of use of property and money for such a long period of time also tilts the balance of convenience in favour of the respondent. Although these were seized for allegedly having been smuggled or aiding in the said act, they are not shown to be of a kind that would cause injury or harm to the environment/economy/public. Hence as stated by the Hon'ble Supreme court in a case relating to the Essential Commodities Act, 1955, in **N. Nagendra Rao & Co** (supra), "Loss in value of the goods in quality or quantity is neither in public nor in society's interest." Moreover, none of the indicative points stated by us above for seeking a stay, form a part of the 'Application for Stay'. Even the fact whether CITES has been violated in the procurement and custody of birds/ animals by the appellant does not form a main thrust of the stay application. As stated by the Hon'ble Supreme Court in **Memon Mahomed Haji Hasam** (supra);

"The order of the Customs Officer was not final as it was subject to an appeal and if the appellate authority found that there was no good ground for the exercise of that power, the property could no longer

be retained and had under the Act to be returned to the owner. That being the position and the property being liable to be returned there was not only a statutory obligation to return but until the order of confiscation became final an implied obligation to preserve the property intact and for that purpose to take such care of it as a reasonable person in like circumstances is expected to take. Just as a finder of property has to return it when its owner is found and demands it, so the State Government was bound to return the said vehicles once it was found that the seizure and confiscation were not sustainable. There being thus a legal obligation to preserve the property intact and also the obligation to take reasonable care of it so as to enable the Government to return it in the same condition in which it was seized, the position of the State Government until the order became final would be that of a bailee.” (emphasis added)

Hence the right of the owner to demand the return of the property as ordered by the Commissioner (Appeals), or the obligation of revenue to return it cannot be overlooked. For the reasons stated we are of the opinion that the prayer of revenue for a stay of the impugned order merits to be rejected.

12. On the basis of the discussions above we find that the department had not made out a case for stay of the impugned order. The Stay Application is hence rejected and the prayer made by the respondent for release of goods as per the impugned order is allowed. Both the applications are disposed of accordingly.

(Order pronounced in court on 06.08.2025)

**(AJAYAN T.V.)**  
Member (Judicial)

**(M. AJIT KUMAR)**  
Member (Technical)

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