

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
ALLAHABAD**

REGIONAL BENCH - COURT NO.I

**Service Tax Appeal No.70453 of 2019**

(Arising out of Order-in-Appeal No.11/ अपर आयुक्त/ अपील/ नोएडा/ 2018 -19  
दिनांक: 20.04.2018 dated passed by Commissioner (Appeals) Central Tax,  
Noida)

**M/s Synopsys (India) Pvt. Ltd.,**  
(Basement, Ground Floor & 1<sup>st</sup> Floor,  
A-36, Sector-64, Noida)

**.....Appellant**

VERSUS

**Commissioner of Central Excise &**

**Service Tax, Noida**

**....Respondent**

(C-56/42. Renu Tower, Sector-62, Noida)

**APPEARANCE:**

Shri Tarun Gulati Senior Advocate &  
Shri Akash Deep, Advocate for the Appellant  
Shri Manish Raj, Authorised Representative for the Respondent

**CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)  
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

**FINAL ORDER NO.70369/2024**

DATE OF HEARING : 28 February, 2024  
DATE OF PRONOUNCEMENT : 27 June, 2024

**SANJIV SRIVASTAVA:**

This appeal is directed against मूल आदेश संख्या: 11/ अपर आयुक्त/ अपील/ नोएडा/ 2018 -19 दिनांक: 20.04.2018 of Additional Commissioner Central Taxes (Appeal) Noida. By the impugned order following has been held:-

**"ORDER**

*I hereby,-*

- (1) *Confirm demand of service tax cenvat credit of Rs. 1,82,61,160/- (Rs One Crore Eighty Two Lakhs Sixty*

*One Thousand One Hundred and Sixty only) including Education Cess & Sec H Edu Cess under Rule 14 of CENVAT Credit Rules, 2004 read with proviso to Section 73 (1) of the Finance Act, 1994;*

- (2) Confirm demand of interest on the aforesaid amount of service tax credit under Rule 14 of CENVAT Credit Rules, 2004 read with Section 75 of the Finance Act, 1994;*
- (3) Impose penalty of Rs 1,82,61,160/- (Rs One Crore Eighty Two Lakhs Sixty One Thousand One Hundred and Sixty only) M/s Synopsys (India) Private Limited 2<sup>nd</sup> Floor, Tower B, Logix Techno Park, Sector-127, Noida under Rule 15 of CENVAT Credit Rules, 2004 read with Section 78 of the Finance Act, 1994 should not be imposed upon them for the alleged contravention of the relevant provisions of Law.*

*I order that the adjudged amount be paid forthwith."*

2.1 As this appeal has been filed by the appellant against the order of Additional Commissioner, Authorized Representative appearing for the revenue raised a preliminary objection in the appeal against the maintainability of the appeal before the tribunal.

2.2 Learned Authorized representative referred to Section 85 of the Central Excise Act, 1944 and also to the preamble of the impugned order wherein following has been specifically stated:

2 इस आदेश के विरुद्ध, वित्त अधिनियम, १९९४ की धारा 85 के अंतर्गत आयुक्त, केन्द्रीय कर (अपील), नोएडा के यहाँ अपील की जा सकती है और यह कार्यालय सी ५३/४२ रेनू टावर, सेक्टर 62, नॉएडा में है

2.3 In view of the above provision and assertions made in the preamble the appeal filed before the tribunal is not maintainable and should be dismissed for this reason only.

3.1 We have heard Shri Tarun Gulati, Advocate for the appellant on this preliminary objection raised by the authorized representative. Counsel was asked to file written submissions on

this issue, which have been filed vide letter dated 13.03.2014. The submissions made are reproduced below verbatim:

**A. ON MAINTAINABILITY OF THE PRESENT APPEAL**

8. That during the hearing before Hon'ble Tribunal on 28.2.2024, Ld. Authorised Representative for the revenue disputed the very maintainability of the appeal and submitted that appeal under consideration is not maintainable and should have been filed before Commissioner (Appeal) for the reason that order impugned in the appeal is passed by the Ld. "Additional Commissioner (CGST) Appeals, NOIDA"

9. In response to the above submission made by the Ld. Authorised Representative for the Revenue, it is submitted that Appellant was under the bonafide belief that CESTAT is the appropriate forum for filing appeal against the impugned order. Nothing was pointed out at the time of filing of appeal by the Registry nor during the hearings on various dates. It is submitted that at this stage of litigation, the Revenue should not be allowed to challenge the maintainability of appeal as it would cause irreparable loss to the Appellant as time limit for filing appeal before Ld. Commissioner (Appeals) has already been over and same would be rejected on the grounds of limitation and Appellant would have to come in appeal again before this Tribunal. Had the Registry or the Revenue pointed out this defect at the time of filing of appeal or at the time of earlier hearing, specially on 12.09.2019 when Appellant and Revenue both was presented and argued the case, Appellant would have been in a much better position. It is humbly submitted that at this juncture Appellant should not be punished for any act or omission which has been done under bonafide belief and without any malafide intent.

10. It is further submitted that Appellant hereby surrendering its right to appeal under Section 85 of the Finance Act, 1994 and praying to this Hon'ble Tribunal to decide its case on the merits. It is submitted that over the years, the Doctrine of Waiver has also been applied in cases where parties wish to waive off rights

conferred upon them by legislation. There have been instances where a statutory right has been sought to be waived off and the Supreme Court has given its observations on the same. The Waman Shrinivas Kini w. Ratilal Bhagwandas and Co. (AIR 1959 SC 689) (Copy enclosed) was one of the first cases of such kind wherein the Supreme Court has held a waiver of statutory right to be permissible as long as such waiver does not infringe the rights of the others and is not against public policy or morals. It is further submitted that the statutory right can be waived off by parties via contract if it can be shown that such right was conferred only for the private benefit of such parties and does not involve any public interest. In this regard, reliance is placed on the case of Murlidhar Aggarwal w: State of U.P. (1974) 2 SCC 472. Copy enclosed.

11. The Supreme Court has, at many instances, while relying on the literature of eminent theorists, explained the principle of contractual waiver which has to be examined under the legislative intent of the statute under which such right is governed. The Supreme Court has also explained that it has to be seen whether the intent behind conferring of such rights involves any public interest or not. In this regard reliance is placed on the case of Lachoo Mal w. Radhey Shyam (1971) 1 SCC 619 (Copy enclosed). Relevant part of the judgment is reproduced asunder:

"The general principle is that everyone has a right to waive and to agree to waive the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity which may be dispensed with without infringing any public right or public policy. Thus, the maxim which sanctions the non-observance of the statutory provision is *cuilibet licet renuntiare juri pro se introducto*. (See Maxwell on Interpretation of Statutes, Eleventh Edn., pp. 375 and 376). If there is any express prohibition against contracting out of a statute in it then no question can arise of any one entering into a contract which is so prohibited but where there is no

such prohibition it will have to be seen whether an Act is intended to have a more extensive operation as a matter of public policy. In Halsbury's Laws of England, Vol. 8 Third Edn, it is stated in para 248 at p. 143:

"As a general rule, any person can enter into a binding contract to waive the benefits conferred upon him by an Act of Parliament, or, as it is said, can contract himself out of the Act, unless it can be shown that such an agreement is in the circumstances of the particular case contrary to public policy. Statutory conditions may, however, be imposed in such terms that they cannot be waived by agreement, and, in certain circumstances, the legislature has expressly provided that any such agreement shall be void,"

12. Thus, it can be said that a statutory right can be waived subject to the following conditions:

- (a) The parties should have a direct private benefit from the right sought to be waived.
- (b) The conferred right should not be pertaining to any matter involving public interest. This can be ascertained by looking into the legislative intent of the statute.

13. That in the instant case, Section 85 confers a right to appeal on the person aggrieved by any decision or order passed by an adjudicating authority to the Commissioner of central excise (Appeals). Sub-section 3A of Section 85 provides that where order of the adjudicating authority is made on and after 28.5.2012, appeal shall be presented within two months from the date of receipt of the order. However, Commissioner of Central Excise (Appeals) may allow such appeal be presented within a further period of one month where he is satisfied that appellant was prevented by sufficient cause from presenting the appeal within aforesaid period of two months.

14. A perusal of the Section 85 reveals that it is an statutory right conferred by legislation on the assessee and purely for the benefit of assessee only. There is no involvement of any public

policy or public interest. It is purely a matter between assessee and revenue and no other person's right is going to be affected if the assessee chooses to waive off its right to appeal under Section 85 of the Finance Act, 1994. Further, by such waiving of right to appeal under section 85 of the Finance Act, 1994, the revenue is not prejudiced in any manner. The only person who could be prejudiced is the assessee only, however being aware of its situation, the appellant is waiving of its right to appeal under section 85 and praying to this Hon'ble Tribunal to decide the appeal on merits. In the interest of justice, it is humbly prayed that Hon'ble Tribunal may accept waiver of right to appeal under Section 85 of the Finance Act, 1994 by the Appellant and decide the appeal on merits of the case.

15. That it is trite law that justice is virtue which goes beyond all the obstacle and no rule or procedure nor the technicalities of law can stand in its way. It is submitted that applying the law in the present appeal, as per Rule 41 of the CESTAT Rules, the Tribunal has been vested with wide jurisdiction to pass a just order in the larger interest so that justice is done both to the Assessee and the Revenue. The rule is produced below for your reference,

"Rule 41 The Tribunal as may make such orders or give such directions as may be necessary or expedient to give effect or in relation to its orders or to prevent abuse of its process or to secure the ends of justice."

16. It is thus submitted that the objection raised on maintainability of the Appeal at this juncture should not be entertained as it was the bona fide belief of the Appellant to approach this Tribunal. The prescribed time limit for initiating an Appeal under section 85 to the Commissionerate (Appeal) has lapsed, thereby rendering the Appellant unable to approach the Commissionerate (Appeal) at present. It is submitted that since the Registry failed to point out the defect qua maintainability and once the Appeal has been admitted and heard, dismissing the Appeal on maintainability will grossly prejudice the Appellant as

the Appellant is left with no other remedy at this stage. It is a fundamental principle of law that an act of the Court shall prejudice no individual, as encapsulated in the maxim "actus curiae neminem gravabit". It is submitted that in the case of S Nagaraj & Ors vs State of Karnataka & ANR , (1993) 5 SCC 27, the Court after taking the note of the above mentioned maxim held that:

*"Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way, The order of the Court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law., Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be prejudiced from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the Court. In Administrative Law the scope is still wider. Technicalities apart if the Court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order."*

17. That it is further submitted that vide Rule 41 under CESTAT Rules, the legislature has persistently endowed the Tribunal with wide jurisdiction to administer full and equitable justice between the parties if sufficient cause is satisfied to secure the end of justice. Reliance in this regard is placed on the decision in the matter of Indian Oil Corporation Ltd. Vs Commissioner of C. Ex., Chennai [2008 (9) S.T.R. 417 (Tri. - Chennai)] wherein the

Tribunal while exercising power under Rule 41 restrained the jurisdictional Asst. Commissioner of Central Excise and officers subordinate to him from enforcing the demand till disposal of the assessee's application to the Committee on Disputes. The relevant paragraph of the decision is produced below for your ready reference

*"4. We have given careful consideration to the submissions. At is settled law that this Tribunal has incidental and ancillary powers which are required to be exercised to effectuate express powers granted by the statute. It appears to us that it is this species of authority which has been recognized under Rule 41 of the CESTAT (Procedure) Rules 1982 which reads as under :-*

*"RULE 41. Orders and directions in certain cases. - The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect or in relation to its orders or to prevent abuse of its process or to secure the ends of justice.*

*The Hon'ble Supreme Court has also given its stamp of approval for such powers vide, for instance, Paras Laminates (P) Ltd. (supra). We need not repeat the factual circumstances placed before us by Id. counsel. In these circumstances, in our view, it is imperative that the Tribunal should step in for the ends of justice to ensure that the departmental officers act in keeping with the Board's instructions by not proceeding with coercive action for recovery of dues from the appellants till their application is disposed of by the High Power Committee. Accordingly, we restrain the jurisdictional Asst. Commissioner of Central Excise and officers subordinate to him from enforcing the above demand till disposal of the assessee's application by the Committee on Disputes."*

18. That is humbly submitted that the Hon'ble High Court of Punjab & Haryana in Tops Security Ltd Vs Commissioner Of C. EX. & S.T., Ludhiana[2015 (39) S.T.R. 986 (P & H)]. the Hon'ble Court decided the issue on maintainability of the appeal before

CESTAT. In this particular case, the CESTAT had dismissed the appellants' application for restoration of their appeals and the applications for extension of time to deposit the amounts as a condition precedent to the maintainability of the appeal. The Hon`ble Court after interpreting the Rule 41 of the CESTAT Rules allowed the appeal of the Appellant. The Relevant paragraph of the decision is produced below for your reference:

*"10, We do not see any reason to deny the appellants an extension of a mere 7 days. It would be grossly inequitable and unfair to deny the appellants an opportunity of having their case heard on merits on account of their having delayed in complying with the order by just 7 days. The application for extension dated 22-4-2013 was pending when the appeal was dismissed on 23-4-2013 for non-compliance with the said orders. They could not have deposited the amounts on that date without a formal order. Had the order been passed on the date of the application itself, there would be a delay of only 2 days.*

*11. The contention that the CESTAT does not have power or jurisdiction to grant an extension of time or to restore the appeal is not well founded. Section 86(6A) of the Finance Act, 1994 reads thus .-*

*"86. Appeals to Appellate Tribunal. –*

*(6A) Every application made before the Appellate Tribunal,*

*(a) in an appeal for rectification of mistake or for any other purpose; or*

*(b) for restoration of an appeal or an application; shall be accompanied by a fee of five hundred rupees:*

*12. Sub-section (6A) of Section 86 of the Finance Act presupposes the maintainability of an application for restoration of an appeal or an application. Thus, even assuming that there is no separate provision relating to or permitting applications for restoration, it would make no difference. The CESTAT would always have the power to*

*restore an appeal which has been dismissed for any reason including for non-compliance of a deposit order.*

*13. Rule 41 of the Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982 which makes this clearer, reads as under ;-*

*"41. Orders and directions in certain cases.*

*The Tribunal may make such orders or give such directions AS may be necessary or expedient to give effect or. in relation to its orders or to prevent abuse of its process or to secure the ends of justice." (emphasis applied.)*

*14. The concluding words "to secure the ends of justice" are wide enough to cover cases such as these viz. to grant an extension of time to deposit an amount or to restore appeals dismissed on account of the failure to comply with the orders of pre-deposit.*

*15. The appeal is therefore, allowed. The questions of law are answered in favour of the appellants and against the respondents. The appeal shall Stand restored to the file of the CESTAT and shall be heard on merits.*

4.1 We have considered the submissions made by both the sides on maintainability of this appeal before tribunal.

4.2 Relevant provisions of Section 85 and 86 of Finance Act 1994 are reproduced below:

***SECTION 85. Appeals to the Commissioner of Central Excise (Appeals).—***

*(1) Any person aggrieved by any decision or order passed by an adjudicating authority subordinate to the Principal Commissioner of Central Excise or Commissioner of Central Excise may appeal to the Commissioner of Central Excise (Appeals).*

*(2) Every appeal shall be in the prescribed form and shall be verified in the prescribed manner.*

*(3) .....*

*(3A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 receives the assent of the President, relating to service tax, interest or penalty under this Chapter :*

***Provided*** *that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.*

.....

***SECTION 86.Appeals to Appellate Tribunal. —***

*(1) Save as otherwise provided herein an assessee aggrieved by an order passed by a Principal Commissioner of Central Excise or Commissioner of Central Excise under section 73 or section 83A by a Commissioner of Central Excise (Appeals) under section 85, may appeal to the Appellate Tribunal against such order within three months of the date of receipt of the order.*

.....

4.3 From the reading of the above provisions it is quite evident that the appeal against the order of Additional Commissioner was to be filed before the Commissioner (Appeal) and the tribunal do not have jurisdiction to entertain this appeal.

4.4 Counsel for the appellant have vehemently argued on the basis of various decisions referred earlier that the Tribunal should entertain this appeal by invoking the powers conferred on it in terms of Rule 41 of CESTAT Procedure Rules, 1982 to meet the ends of justice. He has also relied upon various decisions in support of his arguments.

4.5 Before we consider the submissions made it is necessary to note the chronology of dates which led to filing of this appeal before this Tribunal:

| Date       | Event                                                                                                                                                                                                                                                                                                                                                                        |
|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 20.04.2018 | Date of the impugned order of the Additional Commissioner                                                                                                                                                                                                                                                                                                                    |
| 19.06.2018 | Date by which the appeal could have been filed before the Commissioner (Appeal)                                                                                                                                                                                                                                                                                              |
| 19.07.2018 | Date by which appeal filed by the Appellant with application for condonation of delay could have been entertained by the Commissioner (Appeal) after recording the reasons for condonation of delay                                                                                                                                                                          |
| 16.08.2018 | Appellant filed a writ tax no 1161 of 2018, before Hon'ble High Court against the impugned order.                                                                                                                                                                                                                                                                            |
| 09.05.2019 | Writ disposed of by the Hon'ble High Court observing as follows:<br><br>"However in respect of any other issue of amalgamation as raised by the petitioner in this writ petition, we leave it open to the petitioner to take recourse to the remedies as provided to them under the Act itself.<br><br>The writ petition shall stand disposed of finally on the above terms" |
| 24.05.2019 | Appellant filed this appeal before the Tribunal                                                                                                                                                                                                                                                                                                                              |

4.6 We observe that the main ground raised by the Appellant counsel in his submissions is that the Appellant has been for the first time on 28.02.2024 at the time of hearing of the appeal informed about the objection in relation to maintainability of appeal. If the said objection is entertained the appellant will be remediless as the time for filing the appeal before Commissioner (Appeal) has expired. We do not find any merits in the said submission. From the table as above it is quite evident that

appeal could have been filed before Commissioner (Appeal) along with application for condonation of delay upto 19.07.2018. Hon'ble Supreme Court has in case of Singh Enterprises [2008 (221) E.L.T. 163 (SC)] clearly laid down that Commissioner (Appeal) could not have condoned the delay in filing the appeal beyond thirty days. Thus no appeal could have been entertained by the Commissioner (Appeal) if the same was filed on or after 19.07.2018. Relevant excerpts from the decision of Hon'ble Supreme Court are reproduced below:

*"8.The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of Statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the Statute. The period upto which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Indian Limitation Act, 1963 (in short the 'Limitation Act') can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the*

*Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period.*

**9.***Learned counsel for the appellant has emphasized on certain decisions, more particularly, I.T.C.'s case (supra) to contend that the High Court and this Court in appropriate cases condoned the delay on sufficient cause being shown.*

**10.***Sufficient cause is an expression which is found in various statutes. It essentially means as adequate or enough. There cannot be any straitjacket formula for accepting or rejecting the explanation furnished for delay caused in taking steps. In the instant case, the explanation offered for the abnormal delay of nearly 20 months is that the appellant concern was practically closed after 1998 and it was only opened for some short period. From the application for condonation of delay, it appears that the appellant has categorically accepted that on receipt of order the same was immediately handed over to the consultant for filing an appeal. If that is so, the plea that because of lack of experience in business there was delay does not stand to be reason. I.T.C.'s case (supra) was rendered taking note of the peculiar background facts of the case. In that case there was no law declared by this Court that even though the Statute prescribed a particular period of limitation, this Court can direct condonation. That would render a specific provision providing for limitation rather otiose. In any event, the causes shown for condonation have no acceptable value. In that view of the matter, the appeal deserves to be dismissed which we direct. There will be no order as to costs."*

4.7 As the appeal before the Commissioner (Appeal) has been delayed beyond the condonable period, appellant proceeded to file a writ tax before the Hon'ble High Court on 16.08.2018 and it is only after the disposal of writ petition appellant filed this

appeal before the tribunal belatedly. It is not clear whether while filing the writ petition before the Hon'ble High Court appellant had disclosed the fact to the court that appellate remedy available under the statute is not available to them in terms of decision of the Hon'ble Supreme Court referred above.

4.8 Filing the writ before Hon'ble High Court and subsequently appeal before this tribunal is nothing but an act of forum shopping and by using the legal forums/ court appellant has attempted to hoodwink the provisions of statute. Such forum shopping has been condemned by the Hon'ble Supreme Court in the decisions as follows:

**A. Neeraj Jhanji [2014 (308) E.L.T. 3 (S.C.)]**

"2. In our opinion, the initial filing of writ petition by the petitioner before the Delhi High Court against the order-in-original passed by the Commissioner of Customs, Kanpur was not at all *bone fide*. The Delhi High Court, however, converted the writ petition into statutory appeal under the Customs Act, 1962 by order dated November 9, 2009. On September 9, 2010 the respondent raised an objection about the territorial jurisdiction of that Court. The matter was adjourned at the instance of the petitioner. Then on January 5, 2012 the petitioner withdrew the appeal with liberty to approach the jurisdictional High Court. The Delhi High Court dismissed the appeal as withdrawn. While doing so, the Delhi High Court observed :

"It is for jurisdictional High Court to decide the prayer for waiver/exclusion. However, it does appear that the appellant in the present case had *bona fidely* filed the appeal in this Court and has been pressing the same, as the Tribunal is located in Delhi."

3. The petitioner then filed statutory appeal before Allahabad High Court and applied for condonation of delay by seeking the benefit under Section 14 of the Limitation Act.

**4.**The Allahabad High Court dismissed the application for condonation of delay and also dismissed the appeal as time barred [2013 (296) E.L.T. 310 (All.)]. It said :

"21. In the present case also as in the case of *Ketan V. Parekh* (supra), the appellant was assisted and had the services of the counsel's, who are expert in the central excise and customs cases. They first filed a writ petition, and then without converting it into appeal obtained an interim order. They kept on getting the matter adjourned and thereafter in spite of specific objection taken, citing the relevant case law, which is well known, took time to study the matter. Thereafter, they took more than one year and three months, to study the matter to withdraw the appeal. They took a chance, which apparently looking to the facts in *Ketan V. Parekh's* case and this case appear to be the practice of the counsels appearing in such matters at Delhi High Court and succeeded in getting interim orders. The Supreme Court has strongly deprecated such practice of forum shopping. In this case also there is no pleading that the writ petition and thereafter appeal was filed in Delhi High Court, under *bona fide* belief that it had jurisdiction to hear the appeal and that the appellant was pursuing the remedies in wrong court with due diligence. The appellant, thereafter, caused a further delay of 20 days in filing this appeal, which he has not explained.

22. For the aforesaid reasons, we are of the opinion that the appellant is not entitled to the benefit of Section 14 of the Limitation Act. This appeal is barred by limitation by 697 days, which has not been sufficiently explained by the appellant."

**5.**The very filing of writ petition by the petitioner in Delhi High Court against the order-in-original passed by the Commissioner of Customs, Kanpur indicates that the petitioner took chance in approaching the High Court at

Delhi which had no territorial jurisdiction in the matter. We are satisfied that filing of the writ petition or for that appeal before Delhi High Court was not at all *bona fide*. We are in agreement with the observations made by the Allahabad High Court in the impugned order. The Allahabad High Court has rightly dismissed the petitioner's application of condonation of delay and consequently the appeal as time-barred."

**B. Ketan Parekh [2012 (275) E.L.T. 3 (S.C.)]**

**23.** There is another reason why the benefit of Section 14 of the Limitation Act cannot be extended to the appellants. All of them are well conversant with various statutory provisions including FEMA. One of them was declared a notified person under Section 3(2) of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 and several civil and criminal cases are pending against him. The very fact that they had engaged a group of eminent Advocates to present their cause before the Delhi and the Bombay High Courts shows that they have the assistance of legal experts and this seems to be the reason why they invoked the jurisdiction of the Delhi High Court and not of the Bombay High Court despite the fact that they are residents of Bombay and have been contesting other matters including the proceedings pending before the Special Court at Bombay. It also appears that the appellants were sure that keeping in view their past conduct, the Bombay High Court may not interfere with the order of the Appellate Tribunal. Therefore, they took a chance before the Delhi High Court and succeeded in persuading learned Single Judge of the Court to entertain their prayer for stay of further proceedings before the Appellate Tribunal. The promptness with which the learned senior counsel appearing for appellant - Kartik K. Parekh made a statement before the Delhi High Court on 7-11-2007 that the writ petition may

be converted into an appeal and considered on merits is a clear indication of the appellant's unwillingness to avail remedy before the High Court, i.e. the Bombay High Court which had the exclusive jurisdiction to entertain an appeal under Section 35 of the Act. It is not possible to believe that as on 7-11-2007, the appellants and their Advocates were not aware of the judgment of this Court in *Ambica Industries v. Commissioner of Central Excise* (2007) 6 SCC 769 = 2007 (213) E.L.T. 323 (S.C.) whereby dismissal of the writ petition by the Delhi High Court on the ground of lack of territorial jurisdiction was confirmed and it was observed that the parties cannot be allowed to indulge in forum shopping. It has not at all surprised us that after having made a prayer that the writ petitions filed by them be treated as appeals under Section 35, two of the appellants filed applications for recall of that order. No doubt, the learned Single Judge accepted their prayer and the Division Bench confirmed the order of the learned Single Judge but the manner in which the appellants prosecuted the writ petitions before the Delhi High Court leaves no room for doubt that they had done so with the sole object of delaying compliance of the direction given by the Appellate Tribunal and, by no stretch of imagination, it can be said that they were *bona fide* prosecuting remedy before a wrong forum. Rather, there was total absence of good faith, which is *sine qua non* for invoking Section 14 of the Limitation Act.

**C. Ambica Industries [2007 (213) E.L.T. 323 (S.C.)]**

**38.** We have noticed hereinbefore that if the decision of the High Court in the aforementioned question is taken to its logical conclusion, the same would lead to a great anomaly. It would also give rise to the problem of *forum shopping*. We may notice some examples to show that the determination of the appellate forum based upon the situs

of the Tribunal would lead to an anomalous result. For example, 'an assessee affected by an assessment order in Bombay may invoke the jurisdiction of the Delhi High Court to take advantage of the law laid down by it which may be contrary to judgments of the High Court of Bombay. This cannot be allowed. [See *Suresh Desai and Associates v. CIT*, 1998 (230) ITR 912 at 915-917 and *CCE v. M/s. Technological Institute of Textile* in 76 (1998) DLT 862 (DB)].

4.9 In case of Zenith Computers Ltd [2014 (303) E.L.T. 336 (Bom.)] Hon'ble Bombay High Court has observed as follows:

**"17.** *Thus, even when seized of an appeal against the order passed by the appellate authority or an original order, this principle has to be borne in mind. The appellate power has to be exercised so as to correct such errors as are referred by the Hon'ble Supreme Court. Equally, due regard and respect must be given to the opinion of the original Authority/Appellate Authority. If the view taken is possible, plausible and probable, then, merely because another opinion can also be rendered on the same facts, every order under appeal need not be interfered with. If this salutary principle and extended by this Court to judicial discipline is borne in mind, there would be few occasions for the Tribunal Members to differ on factual matters and an overall perspective is the requirement in such matters. A broad attitude accompanied by robust common sense is what is expected from the members of the Tribunal. If they bear in mind the parameters and limitation of appellate power, there would not be a friction and conflict in the Tribunal. It does not augur well when there is tension in judicial proceedings. The words 'adjudication' ordinarily means to act and decide judicially. The word 'acting judicially' is not performing some rituals or completing somehow the assigned work, but is a serious business. It requires continued application of mind and*

*alertness. It should not be undertaken casually. No one can approach judicial proceedings in a light-hearted manner. If differing opinions are rendered frequently, then, that creates an imbalance. Certainty and consistency are necessary as that alone instills confidence in the Institution of Judiciary and enables it to earn respect and regard for it. The trust and faith in it is then reaffirmed. Its efficacy is maintained. Then, Rule of Law prevails. The administration of justice and conferment of judicial power is intended to reach this goal. No litigant should thrive on uncertainty and un-predictability. If this basic rules of judicial discipline are not abided by and followed meticulously, there will be several complications and which would, then, require not just judicial intervention by the Higher Court but equally by the Parliament. The members of Tribunal should bear in mind that the Legislature expects them to give finality to certain matters. They are not expected to be left open endlessly. It is often said that lesser the Number of Appeals or interference by the Higher Courts the better it will be for the system. Justice delivery should be expedient and efficient. Ultimately, the adjudication cannot be go on and on. It must end at some stage and at least on factual issues. The issues and matters with regard to levy of tax including customs duty in this case ought to attain finality so as to sub-serve larger interest of justice. It does not augur well for the economic and the business world and equally for judicial fraternity that matter lingers on and issues are left open giving unending scope for differing opinions and views. That enables the litigants to take chances and resort to even forum shopping. This needs to be avoided at all costs. No member, judicial or technical, is above the law. The Supreme Court's decisions and particularly cautioning the Appellate Tribunal/Court/Authority should, therefore, guide the Tribunals in exercise of their appellate power. We expect that the Tribunal at least now takes cognizance*

*of our anxiety and the note of caution. The Tribunal should bear in mind that in the present case when the original order was delivered on 20-6-2012, the order on rectification application was passed on 11-10-2012, till the end of April, 2014 nothing has been achieved. The issues and the matters are kept pending. The delay in deciding tax cases upsets not only the assessee but the Revenue. In a given case it may have adverse impact on the collection of duty. Equally the assessment or valuation proceedings should not drag on and remain pending for years. Thus, avoiding the delay in disposal of cases is an object which needs to be achieved, particularly, when the period for disposal of the appeal is prescribed by law. That may not be binding and there is no mandate flowing therefrom but the provision in that behalf cannot be brushed aside and discarded. If the Tribunal keeps the matter pending in this manner and leaves the issues and questions undecided, then, it may be urged that the very purpose of setting up a specialised Tribunal is defeated and frustrated. The litigant should not come with such grievance or urge that they were better off before a ordinary Civil Court rather than these specialised Tribunals. We would except the Tribunals, at least now, not to keep the references pending and give them priority and earmark them for early disposal. True it is that haste may result in waste but that is not always the experience. The need for urgency in some cases does not mean the Presiding Officer has to act hastily or in a irresponsible manner. He must minimise the adjournments and postponement of adjudication on trivial grounds. When day in and day out the Tribunal is deciding the matters only under the Customs, Excise and Service Tax Acts, then it is expected to be well versed with the law and is expected to be also aware and informed of the latest developments in the business and economic world. The Scientific and Technological advancement can never be lost sight of. This*

*is a normal expectation from those manning the Tribunal. It is expected that Member (Technical) and Member (Judicial) work in coordination and in tandem. They ought to match their experience in their respective fields, their expertise in rendering a quality judgment. This harmony and order has to be maintained on the Bench and in all causes. The Tribunal Members should bear in mind that litigants would suffer and eventually justice would be a casualty if there are frequent differences of opinion resulting in matter being referred to a Third Member. The experience shows that virtually the same members assemble for work day in and day out. If there is lack of cordiality and co-operation between them, then, the composition of the Tribunal itself may have to be altered. It is not possible and frequently to replace members or alter the composition of Benches. The President is not expected to address such issues repeatedly. In these circumstances, we expect a better understanding and coordination between the members manning this Tribunal. At one time this Tribunal was known for its professionalism and expertise. The decisions were rendered efficiently and quickly. It was one of the best Tribunals and its example was cited even during the course of imparting training to the Judicial Officers at Academies. Its working resulted in saving time and costs. Further, both the Revenue and assessee knew where they stand in terms of the applicability of tax laws. That serves larger public interest and guarantees economic justice to all."*

4.10 Following are also settled principle in law

- ***When a statute provides a manner for performing an act the same should be performed in that manner only and all other manners are necessarily debarred.***
- ***Nobody should be allowed the benefits of his own wrongs.***

➤ ***Person pleading equity and justice should come up with clean hands.***

In our view if this appeal is entertained invoking jurisdiction under Rule 41 as pleaded by the appellant counsel then the same would be contrary to above stated principles. We also in terms of the decision of Hon'ble Supreme Court in case of Singh Enterprises, supra do not find that this appeal will be maintainable even by invoking the provisions of the said Rule 41 of CESTAT Procedure Rules 1982. The decisions relied upon by the appellant counsel are clearly distinguishable and cannot be applied to present set of facts.

5.1 Appeal is dismissed as non maintainable.

(Pronounced in open court on-27 June, 2024)

**(P.K. CHOUDHARY)**  
**MEMBER (JUDICIAL)**

**(SANJIV SRIVASTAVA)**  
**MEMBER (TECHNICAL)**

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