

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

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70440 of 2017

(Arising out of Order-in-Appeal No.16-ST/LKO/2014 dated 22.10.2014 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Lucknow)

M/s Shanker Construction,
(610/320, Sitapur Road,
Keshav Nagar, Lucknow)

.....Appellant

VERSUS

Commissioner of Central Excise &

Service Tax, Lucknow

....Respondent

(7A, Ashok Marg, Lucknow)

APPEARANCE:

Shri Vineet Kumar Singh, Advocate for the Appellant

Shri Santosh Kumar, Authorised Representative for the Respondent

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

FINAL ORDER NO.70906/2024

DATE OF HEARING : 13 November, 2024

DATE OF DECISION : 13 November, 2024

SANJIV SRIVASTAVA:

This appeal is directed against order in appeal No 216-ST/LKO/2014 dated 22.10.2014. By the impugned order following has been held:

"Aggrieved of the Order-in-Original No. 119/ADC/ST/LKO/2010 dated 16.11.2010, the appellant filed appeal No.03-ST/2014 on 08.01.2014 after a long time after the receipt (25.07.2011) of the said Order-in-Original vide ST-4 filed by him alongwith application for condonation of delay

The appellant was given the opportunities of personal hearing on 05.09.2014 and 13.10.2014 But none appeared

for the personal hearing in the case. Instead, the appellant vide letter dated 14.10.14 informed that their appeal may be decided on merits. DISSCUSSION AND FINDING:

I have gone through the appeal and submissions of appellant and I observe that the appeal is to be decided primarily on the issue of delay in filing of appeal. As per section 85(3A) introduced by Finance Act, 2012, the time limit for filing appeal is two months from the date of receipt of the decision or order by such adjudicating authority. Proviso to this section further provides that the Commissioner. (Appeals) has power to condone the delay in filing of appeal for a further period of one month provided he was satisfied that the appellant was prevented by sufficient cause from. presenting the appeal within a period of two months. However, it is noticed from the records i.e. ST-4 dated 08.01.2014 that the appeal has been filed by the appellant beyond the statutory period of 60 days from the date of communication of the order i.e.25.07.2011. Moreover, it was filed beyond the condonable period of 30 days after the expiry of the statutory period. Therefore, in view of section 85(3A) of Finance Act, 2012, the said appeal can not be entertained as being time barred and beyond my power of condonation and as such I pass the following order

ORDER

I reject the Appeal No.03-ST/2014 dated 08.01.2014 filed by the appellant as being time barred and uphold Order-in-Original No. 119/ADC/ST/LKO/2010 dated 16.11.2010 passed by the Additional Commissioner, Central Excise & Service Tax, and Lucknow. Accordingly, the Appeal No.03-ST/2014 dated 08.01.2014 is disposed off.

2. The impugned order was challenged by the appellant by way of writ before the High Court and Hon'ble High Court dismissed the writ as per order dated 03.04.2017 observing as follows:

Case :- MISC. BENCH No. - 316 of 2015

Petitioner :- M/S Shanker Construction Thru. Prop. Shanker Lal

Respondent :- The Commissioner (Appeals) Customs Central Excise & 3 Ors.

Counsel for Petitioner :- Rajesh Kumar Verma

Counsel for Respondent :- Rajesh Singh Chauhan

Hon'ble Sudhir Agarwal,J.

Hon'ble Virendra Kumar-II,J.

Against the order impugned in this writ petition passed by Commissioner (Appeals), Customs Central Excise and Service Tax, Lucknow in Appeal No.216-ST/Lko./2014, there is statutory remedy of appeal under section 35-B of Central Excise Act, 1944 before the Tribunal.

Learned counsel for the petitioner could not advance any substantive argument so as not to relegate it to avail statutory alternative remedy.

The writ petition is dismissed on the ground of alternative remedy of appeal.

Order Date:- 3.4.2017

3. Thereafter appellant filed this appeal, before the tribunal along with the application for condonation of delay. The application for condonation of delay has been allowed as per Misc. Order No 70234/2017 dated 20.07.2017, observing as follows:

"5. Having considered the rival contentions I find that so far the delay in filing this appeal before the Tribunal is concerned the limitation is adequately explained and accordingly, I hold that the time taken before the Hon'ble High Court is required to be excluded under the provisions of Limitation Act and on such exclusion the appeal seems filed within time. So far the appeal before the learned Commissioner (Appeals) was concerned I find that though

the delay is attributed to the office of the advocate who was entrusted to draft and file appeal, but I find that the appellant has also been negligent and/or easy-going in pursuing the appeal remedy. However, in the interest of justice' I condone the delay and allow the Condonation of delay Application subject to payment of cost Rs. 5000/- to be deposited in Prime Minister's National Relief Fund within a period of six weeks and compliance reported to the Assistant Registrar."

4. Appellant complied and made the deposit as directed by the bench. The matter has now been listed as regular matter for hearing of the appeal.

5. We have heard Shri Vineet Kumar Singh, Advocate for the appellant and Shri Santosh Kumar, Authorized Representative for the revenue.

6. In case of Pathapati Subba Reddy by order dated 08.04.2024 in Special Leave Petition (Civil) No. 31248 OF 2018, Hon'ble Supreme Court has observed as follows:

"7. The law of limitation is founded on public policy. It is enshrined in the legal maxim "interest reipublicae ut sit finis litium" i.e. it is for the general welfare that a period of limitation be put to litigation. The object is to put an end to every legal remedy and to have a fixed period of life for every litigation as it is futile to keep any litigation or dispute pending indefinitely. Even public policy requires that there should be an end to the litigation otherwise it would be a dichotomy if the litigation is made immortal vis-a-vis the litigating parties i.e. human beings, who are mortals.

8. The courts have always treated the statutes of limitation and prescription as statutes of peace and repose. They envisage that a right not exercised or the remedy not availed for a long time ceases to exist. This is one way of

putting to an end to a litigation by barring the remedy rather than the right with the passage of time.

9. Section 3 of the Limitation Act in no uncertain terms lays down that no suit, appeal or application instituted, preferred or made after the period prescribed shall be entertained rather dismissed even though limitation has not been set up as a defence subject to the exceptions contained in Sections 4 to 24 (inclusive) of the Limitation Act.

10. Section 3(1) of the Limitation Act, for the sake of convenience, is reproduced hereinbelow:

"3. Bar of limitation.- (1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence."

11. Though Section 3 of the Act mentions about suit, appeal and application but since in this case we are concerned with appeal, we would hereinafter be mentioning about the appeal only in context with the limitation, it being barred by time, if at all, and if the delay in its filing is liable to be condoned.

12. In view of the above provision, the appeal which is preferred after the expiry of the limitation is liable to be dismissed. The use of the word 'shall' in the aforesaid provision connotes that the dismissal is mandatory subject to the exceptions. Section 3 of the Act is peremptory and had to be given effect to even though no objection regarding limitation is taken by the other side or referred to in the pleadings. In other words, it casts an obligation upon the court to dismiss an appeal which is presented beyond limitation. This is the general law of limitation. The exceptions are carved out under Sections 4 to 24 (inclusive) of the Limitation Act but we are concerned only with the exception contained in Section 5 which empowers the courts to admit an appeal even if it is preferred after the

prescribed period provided the proposed appellant gives 'sufficient cause' for not preferring the appeal within the period prescribed. In other words, the courts are conferred with discretionary powers to admit an appeal even after the expiry of the prescribed period provided the proposed appellant is able to establish 'sufficient cause' for not filing it within time. The said power to condone the delay or to admit the appeal preferred after the expiry of time is discretionary in nature and may not be exercised even if sufficient cause is shown based upon host of other factors such as negligence, failure to exercise due diligence etc.

13. It is very elementary and well understood that courts should not adopt an injustice-oriented approach in dealing with the applications for condonation of the delay in filing appeals and rather follow a pragmatic line to advance substantial justice.

14. It may also be important to point out that though on one hand, Section 5 of the Limitation Act is to be construed liberally, but on the other hand, Section 3 of the Limitation Act, being a substantive law of mandatory nature has to be interpreted in a strict sense. In Bhag Mal alias Ram Bux and Ors. vs. Munshi (Dead) by LRs. and Ors. [(2007) 11 SCC 285], it has been observed that different provisions of Limitation Act may require different construction, as for example, the court exercises its power in a given case liberally in condoning the delay in filing the appeal under Section 5 of the Limitation Act, however, the same may not be true while construing Section 3 of the Limitation Act. It, therefore, follows that though liberal interpretation has to be given in construing Section 5 of the Limitation Act but not in applying Section 3 of the Limitation Act, which has to be construed strictly.

15. It is in the light of the public policy upon which law of limitation is based, the object behind the law of limitation and the mandatory and the directory nature of Section 3

and Section 5 of the Limitation Act that we have to examine and strike a balance between Section 3 and Section 5 of the Limitation Act in the matters of condoning the delay.

16. Generally, the courts have adopted a very liberal approach in construing the phrase 'sufficient cause' used in Section 5 of the Limitation Act in order to condone the delay to enable the courts to do substantial justice and to apply law in a meaningful manner which subserves the ends of justice. In Collector, Land Acquisition, Anantnag and Ors. vs. Katiji and Ors. [(1987) 2 SCC 107 = AIR 1987 SC 1353], this Court in advocating the liberal approach in condoning the delay for 'sufficient cause' held that ordinarily a litigant does not stand to benefit by lodging an appeal late; it is not necessary to explain every day's delay in filing the appeal; and since sometimes refusal to condone delay may result in throwing out a meritorious matter, it is necessary in the interest of justice that cause of substantial justice should be allowed to prevail upon technical considerations and if the delay is not deliberate, it ought to be condoned. Notwithstanding the above, howsoever, liberal approach is adopted in condoning the delay, existence of 'sufficient cause' for not filing the appeal in time, is a condition precedent for exercising the discretionary power to condone the delay. The phrases 'liberal approach', 'justice oriented approach' and cause for the advancement of 'substantial justice' cannot be employed to defeat the law of limitation so as to allow stale matters or as a matter of fact dead matters to be revived and re-opened by taking aid of Section 5 of the Limitation Act.

17. It must always be borne in mind that while construing 'sufficient cause' in deciding application under Section 5 of the Act, that on the expiry of the period of limitation prescribed for filing an appeal, substantive right in favour of a decree-holder accrues and this right ought not to be lightly disturbed. The decree-holder treats the decree to be

binding with the lapse of time and may proceed on such assumption creating new rights.

18. This Court as far back in 1962 in the case of Ramlal, Motilal And Chhotelal vs. Rewa Coalfields Ltd [A.I.R. 1962 SC 361] has emphasized that even after sufficient cause has been shown by a party for not filing an appeal within time, the said party is not entitled to the condonation of delay as excusing the delay is the discretionary jurisdiction vested with the court. The court, despite establishment of a 'sufficient cause' for various reasons, may refuse to condone the delay depending upon the bona fides of the party.

19. In Maqbul Ahmad and Ors. vs. Onkar Pratap Narain Singh and Ors. [A.I.R. 1935 PC 85 5 2014 (4) SCALE 504], it had been held that the court cannot grant an exemption from limitation on equitable consideration or on the ground of hardship. The court has time and again repeated that when mandatory provision is not complied with and delay is not properly, satisfactorily and convincingly explained, it ought not to condone the delay on sympathetic grounds alone.

20. In this connection, a reference may be made to Brijesh Kumar and Ors. vs. State of Haryana and Ors.⁵ wherein while observing, as above, this Court further laid down that if some person has obtained a relief approaching the court just or immediately when the cause of action had arisen, other persons cannot take the benefit of the same by approaching the court at a belated stage simply on the ground of parity, equity, sympathy and compassion.

21. In Lanka Venkateswarlu vs. State of Andhra Pradesh & Ors. [(2011) 4 SCC 363], where the High Court, despite unsatisfactory explanation for the delay of 3703 days, had allowed the applications for condonation of delay, this Court held that the High Court failed to exercise its discretion in a reasonable and objective manner. High Court should have exercised the discretion in a systematic and an informed

manner. The liberal approach in considering sufficiency of cause for delay should not be allowed to override substantial law of limitation. The Court observed that the concepts such as 'liberal approach', 'justice-oriented approach' and 'substantial justice' cannot be employed to jettison the substantial law of limitation.

22. It has also been settled vide State of Jharkhand & Ors. vs. Ashok Kumar Chokhani & Ors. [AIR 2009 SC 1927] , that the merits of the case cannot be considered while dealing with the application for condonation of delay in filing the appeal.

23. In Basawaraj and Anr. vs. Special Land Acquisition Officer [(2013) 14 SCC 81], this Court held that the discretion to condone the delay has to be exercised judiciously based upon the facts and circumstances of each case. The expression 'sufficient cause' as occurring in Section 5 of the Limitation Act cannot be liberally interpreted if negligence, inaction or lack of bona fide is writ large. It was also observed that even though limitation may harshly affect rights of the parties but it has to be applied with all its rigour as prescribed under the statute as the courts have no choice but to apply the law as it stands and they have no power to condone the delay on equitable grounds.

24. It would be beneficial to quote paragraph 12 of the aforesaid decision which clinches the issue of the manner in which equilibrium has to be maintained between adopting liberal approach and in implementing the statute as it stands. Paragraph 12 reads as under:

"12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A Court has no power to ignore

that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute."

25. This Court in the same breath in the same very decision vide paragraph 15 went on to observe as under:

"15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature." (emphasis supplied)

26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

- (i) *Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;*
- (ii) *A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;*
- (iii) *The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;*
- (iv) *In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;*
- (v) *Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;*
- (vi) *Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;*
- (vii) *Merits of the case are not required to be considered in condoning the delay; and*
- (viii) *Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.*

(ix) 27. *It is in the light of the above legal position that now we have to test whether the inordinate delay in filing the proposed appeal ought to be condoned or not in this case.*

28. *The submission of learned counsel for the petitioners is that in somewhat similar situation, delay in filing appeal for the enhancement of compensation had been condoned by this Court. He placed reliance upon the case of Dhiraj Singh (Dead) through Legal Representatives & Ors. vs. State of Haryana & Ors. [(2014) 14 SCC 127]. In this case, delay in filing appeal was condoned as in other appeals compensation awarded at the rate of Rs.200/- per sq. yd. was upheld and the proposed appellants were also held entitled to the same benefit of compensation at the rate of Rs.200/- per sq. yd. instead of Rs.101/- per sq. yd. as awarded but with the rider that they will not be entitled for interest for the period of delay in approaching the High Court.*

29. *The other decision relied upon in this regard is the case of Imrat Lal & Ors. vs. Land Acquisition Collector & Ors. [(2014) 14 SCC 133]. In this case also the matter was regarding determination of compensation for the acquired land and there was a delay of 1110 days in filing the appeal for enhancement of compensation. Despite findings that no sufficient cause was shown in the application for condoning the delay, this Court condoned the delay in filing the appeal as a large number of similarly situate persons have been granted relief by this Court.*

30. The aforesaid decisions would not cut any ice as imposition of conditions are not warranted when sufficient cause has not been shown for condoning the delay. *Secondly, delay is not liable to be condoned merely because some persons have been granted relief on the facts of their own case. Condonation of delay in such circumstances is in violation of the legislative intent or the*

express provision of the statute. Condoning of the delay merely for the reason that the claimants have been deprived of the interest for the delay without holding that they had made out a case for condoning the delay is not a correct approach, particularly when both the above decisions have been rendered in ignorance of the earlier pronouncement in the case of Basawaraj (supra)."

7. We also note that in case of Singh Enterprises [**2007-TIOL-231-SC-CX**] Hon'ble Supreme Court has observed as follows:

"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."

8. Thus in our view the matter needs to be remanded back to the Commissioner (Appeal) for reconsideration of the appeal and

application for condonation of delay filed by the appellant before him, in light of the above decisions of Hon'ble Supreme Court.

9.1 Thus appeal is partly allowed and matter remanded to the Commissioner (Appeal) in terms of para 8 above.

9.2 As the matter is quite old Commissioner (Appeal) to decide the matter within three months of receipt of this order.

(Operative part of the order pronounced in open court)

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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