

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

REGIONAL BENCH - COURT NO.II

Customs Appeal No.70468 of 2025

(Arising out of Order-in-Appeal No.27 & 28-CUS/APPL/LKO/2024 dated 24/01/2024 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Lucknow)

Shri Rahul Singh,

(S/o Shri Ashok, Village-Pachwal,
Post-Asnaw, Bazar, Distt. Bhadohi,
Sant Ravidas Nagar-221401)

.....Appellant

VERSUS

Commissioner of Customs (Pre.), LucknowRespondent

(7th Floor, Apratyaksh Kar Bhawan,
Vibhuti Khand, Lucknow-226010)

APPEARANCE:

None, for the Appellant

Shri Santosh Kumar, Authorised Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70022/2026

DATE OF HEARING : 15 January, 2026

DATE OF DECISION : 15 January, 2026

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.27 & 28-CUS/APPL/LKO/2024 dated 24/01/2024 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Lucknow. By the impugned order following has been held:-

"5.5 The Commissioner (Appeals), being the creature of law, is bound by the machinery provisions contained in the statute and cannot exceed the jurisdiction contained in the statute. The Commissioner (Appeals) also does not have the power of writs, available only to the Hon'ble Supreme Court and the Hon'ble High Courts.

5.6 Thus, without going into the merits of the case, in the light of the statutory provisions as detailed above, both the

present appeals filed by the appellants are rejected on the ground of being time barred."

2.1 On the last date i.e. 06.01.2026, matter was adjourned for today on the request of learned Counsel with the following observations:-

"Learned Counsel appearing for the appellant wants to submit her Vakalatnama in the matter. Further, she submits that the matter may be taken up after one week for final hearing.

*2.0 In view of the request made, matter is adjourned to **15.01.2026 for final hearing.**"*

2.2 From the above, it is clear that the matter was fixed for final hearing with the consent of Counsel but she fails to appear today i.e. 15.01.2026. I also note that matter was adjourned either on account of non presence of the counsel or on the request of counsel on 29.09.2025, 06.11.2025, 28.11.2025 and on 06.01.2026. The matter was fixed for hearing after seeking the convenience of counsel and on assurance of presence today. I also note that proviso to Section 35C (1A) restricts the total number of exemptions that could be granted to either side in appeal to three. Thus I do not find any reason to further adjourn this matter in absence of any request.

2.3 I proceed to decide the appeal after hearing Shri Santosh Kumar Authorized Representative for the revenue, who reiterates the findings recorded in the impugned order.

3.1 I have considered the impugned order along with the submissions made in appeal and during the course of arguments.

3.2 I find that the issue involved in the present appeal is with respect of condonation of delay in filing the appeal by the Commissioner (Appeal). In the present case the appeal has been filed as observed by the Commissioner (Appeal) after the condonable period from the receipt of the Order of Original Authority. Section 85 (3A) of the Finance Act, 1994 provides as follows:

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

(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."

In terms of the above, it is observed that the appeal was to be filed before the Commissioner (Appeal) after the condonable period from the date of the receipt of the Order-in-Original by the appellant. As per the proviso Commissioner (Appeal) has been granted the power to condone delay of one month in filing the appeal on sufficient cause being shown. In the present case appeal was filed before the Commissioner (Appeal) after expiry of condonable period from the date of receipt of Order-in-Original. Hence Commissioner (Appeal) has rightly held that appeal was filed beyond the prescribed period of limitation and has dismissed the same on this ground alone.

3.3 This issue is squarely covered by the decision of Hon'ble Supreme Court in the case of M/s Singh Enterprises [2008 (221) E.L.T. 163 (SC)], wherein it has been held that Commissioner (Appeals) could not condone the delay beyond the 30 days in filing the appeal before him, relevant part of the said decision are reproduced bellow for ready reference:-

"6. *At this juncture, it is relevant to take note of Section 35 of the Act which reads as follows :*

"35. Appeals to Commissioner (Appeals). - (1)

Any person aggrieved by any decision or order passed under this Act by a Central Excise Officer, lower in rank than a Commissioner of Central Excise, may appeal to the Commissioner of Central Excise (Appeals) [hereafter in this Chapter referred to as

the Commissioner (Appeals)] within sixty days from the date of the communication to him of such decision or order :

Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.

(2) Every appeal under this section shall be in the prescribed form and shall be verified in the prescribed manner."

7. *It is to be noted that the periods "sixty days" and "thirty days" have been substituted for "within three months" and "three months" by Act 14 of 2001, with effect from 11-5-2001.*

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."

3.4 Hon'ble Supreme Court in the case of M/s Raj Kumar Shivhare 2010 (253) ELT 3 (SC) have held as follows:-

"24. *The word 'any' in this context would mean 'all'. We are of this opinion in view of the fact that this Section confers a right of appeal on any person aggrieved. A right of appeal, it is well settled, is a creature of Statute. It is never an inherent right, like that of filing a suit. A right of filing a suit, unless it is barred by Statute, as it is barred here under Section 34 of FEMA, is an inherent right (See Section 9 of the Civil Procedure Code) but a right of appeal is always conferred by Statute. While conferring such right Statute may impose restrictions, like limitation or pre-deposit of penalty or it may limit the area of appeal to questions of law or sometime to substantial questions of law. Whenever such limitations are imposed, they are to be strictly followed. But in a case where there is no limitation on the nature of order or decision to be appealed against, as in this case, the right of appeal cannot be further curtailed by this Court on the basis of an interpretative exercise. Under Section 35 of FEMA, the legislature has conferred a right of appeal to a person aggrieved from 'any' 'order' or 'decision' of the Appellate Tribunal. Of course such appeal will have to be on a question of law. In this context the word 'any' would mean 'all'.*

25. *Justice Chitty in Beckett v. Sutton (51 Law Journal 1882 Chancery Division 432) had to interpret "any decree or order" in Section 1 of the Trustee Extension Act, 1852 and His Lordship held :-*

"..the words of the section are as wide as possible, and appear to me to apply adopting the language the Legislature has used - to "any decree or order" by which the Court directs a sale".

26. *The word 'any dispute' is somewhat akin to 'any order' or 'any decision'. Any dispute, occurring in Section 51 of Arbitration Act 1975, has been interpreted to have a wide meaning to cover all situations where one party makes a request or demand and which is refused by the other party [See Ellering Bros. (Pty) Ltd. and Another v. Klinger, 1982 (2) AER 737] .*

27. *Justice Bachawat, while in Calcutta High Court, in the case of Satyanarain Biswanath v. Harakchand Rupchand, reported in AIR 1955 Calcutta 225, interpreted the word 'any' in Rule 10 of Bengal Chamber of Commerce, Rules of the Tribunal of Arbitration. Construing the said rule, the learned Judge held that the word 'any' in Rule 10 means one or more out of several and includes all and while doing so the learned Judge relied on an old decision of the Calcutta High court in the case of Jokhiram Kaya v. Ganshamdas Kedarnath, AIR 1921 Cal. 244 at page 246. This Court is in respectful agreement with the aforesaid view of the learned Judge.*

28. *In Black's Law Dictionary the word 'any' has been explained as having a 'diversity of meaning' and may be "employed to indicate all and every as well as some or one and its meaning in a given Statute depends upon the context and subject matter of Statute". The aforesaid meaning given to the word 'any' has been accepted by this Court in Lucknow Development Authority v. M.K. Gupta [(AIR) 1994 SC 787]. While construing the expression "service of any description" under Section 2(o) of Consumer Protection Act, 1986 this Court held that the meaning of the word 'any' depends upon the context and the subject matter of the Statute and held that the word 'any' in Section 2(o) has been used in wider sense*

extending from one to all (para 4 at page 793 of the report) . In the instant case also when a right is conferred on a person aggrieved to file appeal from 'any' order or decision of the Tribunal, there is no reason, in the absence of a contrary statutory intent, to give it a restricted meaning.

29. *Therefore, in our judgment in Section 35 of FEMA, any 'order' or 'decision' of the Appellate Tribunal would mean all decisions or orders of the Appellate Tribunal and all such decisions or orders are, subject to limitation, appealable to the High Court on a question of law.*

30. *In a case where right of appeal is limited only from a final order or judgment and not from interlocutory order, the Statute creating such right makes it clear [See Section 19 of the Family Courts Act, 1984] which is set out below :*

"(19). Appeal

(1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law, an appeal shall lie from every judgment or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law.

(2) No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties [or from an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) :

PROVIDED that nothing in this sub-section shall apply to any appeal pending before a High Court or any order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) before the commencement of the Family Courts (Amendment) Act, 1991]

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of judgment or order of a Family Court.] (Emphasis supplied)

31. Similarly, under Section 104 of the Code of Civil Procedure read with Order XLIII Rule 1 thereof, it has been indicated from which interlocutory order an appeal will lie. But it has been made clear that no Second Appeal from such order will lie [See Section 104 Sub-section (2) of the Code].

But in Debt Recovery Tribunal Act, as in FEMA, an appeal lies from an interlocutory order and this has been made clear in Section 20(1) of the Act.

32. By referring to the aforesaid schemes under different Statutes, this Court wants to underline that the right of appeal, being always a creature of a Statute, its nature, ambit and width has to be determined from the Statute itself. When the language of the Statute regarding the nature of the order from which right of appeal has been conferred is clear, no statutory interpretation is warranted either to widen or restrict the same."

4.7 Further, I find that in a similar situation where a person claimed condonation of delay for the reason that the appeal which writ petition was filed wrongly before Hon'ble Delhi High Court instead of Hon'ble Allahabad High Court, Hon'ble Allahabad High Court in the case of Mr. Neeraj Jhanji Vs CC & CCE 2013 (296) ELT 310 (All.) have held as follows:-

"12.It is further submitted by Shri Kesarwani that although the Delhi High Court permitted the appellant to withdraw the appeal on 5-1-2012, the appeal was filed with a further delay of about 20 days on 25-1-2012. The appeal is reported to be delayed by 1 year and 332 days for which the appellant is not entitled to take benefit of Section 14 of the Limitation Act. Shri Kesarwani submits that the appellant was not bonafidely pursuing the remedies with due diligence in the wrong Court. He and his counsels were fully aware that the Delhi High Court does not have jurisdiction in the matter. An objection was taken as early

as on 22-9-2010. It was open to the appellant assisted by expert counsels to withdraw the appeal for filing appeal before the competent jurisdictional High Court. The appellant delayed the matter for 1 year and 4 months, to take advantage of the interim order passed by the Delhi High Court. Further there are no bona fides pleaded by the appellant in pursuing the remedy at Delhi. All that he has stated in his application for condonation of delay that he had filed appeal bonafidely in Delhi High Court and is entitled to benefit of Section 14 of the Limitation Act.

13.*The Supreme Court held in Suresh Desai & Associates v. Commissioner of Income Tax - 1998 (230) ITR 912 that the appellate jurisdiction depends upon the location/place of the authority, which had passed the order. In Ambica Industries v. Commissioner of Income Tax (supra), the principles of law was upheld. The appellant has not pleaded in his application for condonation of delay that he or his counsel had no knowledge that the appeal has to be filed in Allahabad High Court. Firstly he filed writ petition in which liberty was given on oral prayer to be converted into appeal and on the same day an interim order was passed without converting the writ petition into appeal. The Delhi High Court extended the time to deposit Rs. 3 lacs and inspite of objections taken by the counsel appearing for the department and noticing the judgment in Ambica Industries case, which is well known to the counsels appearing in the relevant branch of law, allowed the counsel appearing for the appellant some time to look into the aspect of jurisdiction of the Delhi High Court. From this date i.e. on 22nd September, 2010, when the counsel appearing for the appellant had taken time to look into the aspect of jurisdiction, it was open to them to withdraw the appeal at any time. They did not object or contest to maintain the jurisdiction of the Delhi High Court and continued to take adjournments. On 5-1-2012 no objection was raised that the Delhi High Court has jurisdiction in the*

matter. The appellant had after the Court pointed out to the order dated 22-9-2010, sought permission to withdraw the appeal with liberty to approach the jurisdictional High Court. The liberty was granted with an observation that the appellant in the present case had bonafidely filed the appeal in this Court and has been pressing the same as the Tribunal is located in Delhi.

14.*We do not find that the Delhi High Court after entertaining the writ petition and giving liberty to convert it into appeal and granting interim order on the same day, and thereafter noticing the preliminary objections on 22nd September, 2010, had any occasion to recommend that the appellant was bonafidely pursuing the appeal in Delhi High Court. After having held that the Delhi High Court did not have territorial jurisdiction, as in accordance with the Suresh Desai and Associates (supra) and Ambica Industries (supra), it should have refrained to make any observations in favour of the appellant.*

15.*In Rabindra Nath Samuel Dawson v. Sivakasi & Ors. - (1973) 3 SCC 381 the Supreme Court held that where the objection to maintain the previous suit was taken at the very initial stage, benefit of Section 14 of the Limitation Act is not available to the person.*

16.*In Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department & Ors. - (2008) 7 SCC 169 the Supreme Court considered the scope of Section 14 of the Limitation Act and held in paragraphs 21 and 22 as follows :-*

Section 14 of "21. the Limitation Act deals with exclusion of time of proceeding bona fide in a court without jurisdiction. On analysis of the said Section, it becomes evident that the following conditions must be satisfied before Section 14 can be pressed into service :

- (1) *Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;*
- (2) *The prior proceeding had been prosecuted with due diligence and in good faith;*
- (3) *The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;*
- (4) *The earlier proceeding and the latter proceeding must relate to the same matter in issue and;*
- (5) *Both the proceedings are in a court.*

The policy of 22. the Section is to afford protection to a litigant against the bar of limitation when he institutes a proceeding which by reason of some technical defect cannot be decided on merits and is dismissed. While considering the provisions of Section 14 of the Limitation Act, proper approach will have to be adopted and the provisions will have to be interpreted so as to advance the cause of justice rather than abort the proceedings. It will be well to bear in mind that an element of mistake is inherent in the invocation of Section 14. In fact, the section is intended to provide relief against the bar of limitation in cases of mistaken remedy or selection of a wrong forum. On reading Section 14 of the Act it becomes clear that the legislature has enacted the said section to exempt a certain period covered by a bona fide litigious activity. Upon the words used in the section, it is not possible to sustain the interpretation that the principle underlying the said section, namely, that the bar of limitation should not affect a person honestly doing his best to get his case tried on merits but failing because the court is unable to give him such a trial, would not be

applicable to an application filed under Section 34 of the Act of 1996. The principle is clearly applicable not only to a case in which a litigant brings his application in the court, that is, a court having no jurisdiction to entertain it but also where he brings the suit or the application in the wrong court in consequence of bona fide mistake or law or defect of procedure. Having regard to the intention of the legislature this Court is of the firm opinion that the equity underlying Section 14 should be applied to its fullest extent and time taken diligently pursuing a remedy, in a wrong court, should be excluded.”

(Emphasis supplied)

17.*The predominant judicial opinion on the interpretation of Section 14 of the Limitation Act is that though the benefit has to be granted if all the conditions given in para 21 are satisfied, the bar of limitation should not affect a person, who was honestly doing his best to get his case tried on merits but failed because the Court was unable to give him such a trial. The Court will condone the delay, if the litigious activity was bona fide, as the equity underline Section 14 should be applied to its fullest extent. The position, however, would be otherwise, where a person is not bonafidely pursuing the remedy in the wrong Court. In this case the appellant assisted and advised by the counsels expert in the subject first filed a writ petition, which he requested to be converted into appeal. He was granted an interim order for which he sought extension of time to deposit the amount. On 22nd September, 2010 an objection was taken by the department that the appeal does not lie in the Delhi High Court in view of the Ambica Industries case (supra). It was open to the appellant to withdraw the appeal and to approach the Allahabad High Court. The counsels, however, took time to look into the aspects and thereafter took one year and three months,*

during which they went on getting the appeal adjourned to withdraw the appeal. They did not contest the matter and meekly surrendered, after having enjoyed the benefit of stay order for more than one year, in requesting to withdraw the appeal.

18.*We find that the appellant's endeavour after 22nd September, 2010 in allowing the appeal to continue to be pending at Delhi High Court, was not in pursuing bona fide litigious activity. After 22-9-2010 the pursuit of appeal in Delhi High Court was not with bona fide intention.*

19.*In Ramji Pandey & Ors. v. Swaran Kali - (2010) 14 SCC 492 the Supreme Court upheld the order of the Allahabad High Court by which the High Court dismissed a writ petition arising out of the orders of the District Court rejecting application under Section 5 read with Section 14 of the Act on the ground that the appellants were not only negligent but were acting and pursuing the entire matter without due diligence. They failed to appear and contest the suit on which ex parte decree was passed. Thereafter they failed to file appeal in the proper forum, which was brought to their notice at the initial stage by the respondents filing an objection. Despite the fact they did not take any step to withdraw the appeal and also did not appear in the High Court on dates fixed in the matter. The observations of the Supreme Court are quoted as below :-*

Considering the "15. entire records, we find that the appellants are not only negligent but have been acting and pursuing the entire matter without due diligence as would be apparent from the fact that they initially failed to pursue the suit in right earnest, having failed to appear and contest the suit, due to which an ex parte decree had to be passed by the court. Even thereafter, they failed to file the appeal in the proper forum, which was brought to their notice right at the initial stage by the respondent's

filing of an objection. Despite the said fact, they did not take any step to withdraw the same and continued with the proceedings which was void ab initio and without jurisdiction and also obtained an order in their favour. Even before the High Court, where the impugned order was passed the appellants did not appear on the date of arguments or even on the previous dates. Absence of due diligence in pursuing the matter is writ large on the face of the records. Suit of 1983 was decreed ex parte in the year 1988 and thereafter the proceeding for setting aside the ex parte decree is being dragged on one way or the other by filing application/appeal and is dragging the matter till date.”

(emphasis supplied)

20.*In Ketan V. Parekh v. Special Director, Directorate of Enforcement - 2012 (275) E.L.T. 3 (S.C.) = 2012 (28) S.T.R. 195 (S.C.) the Supreme Court held in Paras 21 to 25 as follows :-*

The aforesaid three judgments do support the argument of "21. Shri Ranjit Kumar that even though Section 5 of the Limitation Act cannot be invoked for condonation of delay in filing an appeal under the Act because that would tantamount to amendment of the legislative mandate by which special period of limitation has been prescribed, Section 14 can be invoked in an appropriate case for exclusion of the time during which the aggrieved person may have prosecuted with due diligence remedy before a wrong forum, but on a careful scrutiny of the record of these cases, we are satisfied that Section 14 of the Limitation Act cannot be relied upon for exclusion of the period during which the writ petitions filed by the appellants remained pending before the Delhi High Court. In the

applications filed by them before the Bombay High Court, the appellants had sought condonation of 1056 days' delay by stating that after receiving copy of the order passed by the Appellate Tribunal, they had filed writ petitions before the Delhi High Court, which were disposed of on 26-7-2010 and, thereafter, they filed appeals before the Bombay High Court under Section 35 of the Act. Paragraphs 1, 2 and 3 of the applications for condonation of delay which are identical in all the cases were as under :

The Appellant above named has preferred an Appeal against the 1. order dated 2nd August 2007 (hereinafter referred to as the "impugned order") passed by the Respondent No. 1 against the Appellant above named. The Appellant states that the impugned order was received by the Appellant on 5th October 2007. The Appellant states that there is a delay of 1056 days in filing the above appeal, the reasons for which are being stated in detail hereunder and, therefore, the Appellant above named prays that the delay in filing the present appeal may please be condoned.

RELIEFS SOUGHT : 2.

(a) That this Hon'ble Court be pleased to condoned the delay of 1056 days in filing the said Appeal;

(b) That such further and other reliefs as the facts and circumstances may require.

REASONS FOR THE DELAY : 3.

The Appellant declares that there is delay of 1056 days in 3.1 filing the appeal as prescribed in the Limitation Act, 1963.

The 3.2 Appellant further states that the delay occurred as the Writ Petition was filed before Delhi High Court on 5th November, 2007. The said writ was filed under the provisions of Articles 226 and 227 of the Constitution of India seeking issuance of a writ order or direction in the nature of Mandamus or any other writ for setting aside the impugned order dated 2nd August, 2007, passed by the Appellate Tribunal for Foreign Exchange under Rule 10 of the Adjudicating Proceedings and Appeal, 2000 for Dispensation. In the said Writ proceedings Hon'ble High Court of Delhi had passed an order on 26th July 2010. Vide the said order dated 26th July, 2010, while relying on the judgment of the Hon'ble Supreme Court, it was held by the Hon'ble Delhi High Court that even an order passed by the Appellate Tribunal in an application seeking dispensation of pre-deposit of the penalty would be appealable under Section 35 of the FEMA and that remedy under Article 226 is not available against such an order.

Further, Hon'ble Delhi High Court also held that the present petition cannot be entertained by this Court. It is, however, open to the Appellant's to avail of the appropriate remedy in terms of para 45 of the above judgment of the Supreme Court.

Hence, pursuant to the said 3.3 order passed by Hon'ble Delhi High Court the Appellant above named prefers an appeal before this Hon'ble Bombay High Court.

Under the said circumstances the Appellant most humbly prays 3.4 that this Hon'ble Court may be pleased to condone the delay.

It is submitted that the delay, in filing of the present 3.5 Appeal has not prejudiced the Respondent in any

manner, whatsoever, and, therefore, this Hon'ble Court be pleased to condone the said delay.

It is, further submitted that the delay of 1056 days in 3.6 filing the present Appeal was bona fide, unintentional and inadvertent.

A careful reading of the above reproduced averments shows 22. that there was not even a whisper in the applications filed by the appellants that they had been prosecuting remedy before a wrong forum, i.e. the Delhi High Court with due diligence and in good faith. Not only this, the prayer made in the applications was for condonation of 1056 days' delay and not for exclusion of the time spent in prosecuting the writ petitions before the Delhi High Court. This shows that the appellants were seeking to invoke Section 5 of the Limitation Act, which, as mentioned above, cannot be pressed into service in view of the language of Section 35 of the Act and interpretation of similar provisions by this Court.

There is another reason why the benefit of Section 14 of the 23. 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 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.

The issue deserves to be considered from another angle. By 24. taking advantage of the liberty given by the learned Single Judge of the Delhi High Court, the appellants invoked the jurisdiction of the Bombay High Court under Section 35 of the Act. However, while doing so, they violated the time limit specified in order dated 26-7-2010 which, in turn, is based on paragraph 45 of the judgment of this Court in Raj Kumar Shivhare v. Assistant Director, Directorate of Enforcement (supra). Indeed, it is not even the case of the appellants that they had filed appeals under Section 35 of the Act within 30 days computed from 26-7-2010. Therefore, the Division Bench of the Bombay High Court rightly observed that even though the issue relating to jurisdiction of the Delhi High Court to grant time to the appellants to file appeals is highly debatable, the time specified in the order passed by the Delhi High Court cannot be extended.

In view of the above discussion, we hold that the impugned 25. order does not suffer from any legal infirmity.”

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."*

While upholding this order of Hon'ble Allahabad High Court, Hon'ble Supreme Court reported as 2014 (308) ELT 3 (SC) has recorded as follows:-

"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."*

3.5 Further, Hon'ble Supreme Court in the case of M/s Glaxo Smith Kline Consumer Health Care Ltd. 2020 (36) GSTL 305 (SC) have held as follows:-

"15. *We may now revert to the Full Bench decision of the Andhra Pradesh High Court in Electronics Corporation of India Ltd. (supra), which had adopted the view taken by the Full Bench of the Gujarat High Court in Panoli Intermediate (India) Pvt. Ltd. v. Union of India & Ors. [AIR 2015 Guj 97 = 2015 (326) E.L.T. 532 (Guj.)] and also of the Karnataka High Court in Phoenix Plasts Company v. Commissioner of Central Excise (Appeal-I), Bangalore [2013 (298) E.L.T. 481 (Kar.)]. The logic applied in these decisions proceeds on fallacious premise. For, these decisions are premised on the logic that provision such as Section 31 of the 1995 Act, cannot curtail the jurisdiction of the High Court under Articles 226 and 227 of the Constitution. This approach is faulty. It is not a matter of taking away the jurisdiction of the High Court. In a given case, the assessee may approach the High Court before the statutory period of appeal expires to challenge the assessment order by way of writ petition on the ground that the same is without jurisdiction or passed in excess of jurisdiction - by overstepping or crossing the limits of jurisdiction including in flagrant disregard of law and rules of procedure or in violation of principles of natural justice, where no procedure is specified. The High Court may accede to such a challenge and can also non-suit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. However, if the writ petitioner choses to approach the High Court after expiry of the maximum limitation period of 60 days prescribed under Section 31 of the 2005 Act, the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a matter of course. Doing so would be in the teeth of the principle*

underlying the dictum of a three-Judge Bench of this Court in Oil and Natural Gas Corporation Limited (supra). In other words, the fact that the High Court has wide powers, does not mean that it would issue a writ which may be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under Section 31 of the 2005 Act. That would render the legislative scheme and intention behind the stated provision otiose.

16. *The respondent had relied on the decision of this Court in K.S. Rashid & Son v. The Income Tax Investigation Commission [AIR 1954 SC 207]. This decision of the Constitution Bench, no doubt, deals with the extent of power of the High Court under Article 226 of the Constitution and the situation when the High Court can refuse to exercise its discretion, such as when alternative efficacious remedy is available to the aggrieved party. In paragraph 4 (last paragraph) of this decision, however, the Court plainly noted that it was not necessary to express any final opinion on the question as to whether Section 8(5) of the Taxation on Income (Investigation Commission) Act, 1947 (Act XXX of 1947) is to be regarded as providing the only remedy available to the aggrieved party and that it excludes altogether the remedy provided for under Article 226 of the Constitution.*

17. *Reliance was then placed on a three-Judge Bench decision of this Court in ITC Ltd. & Anr. v. Union of India [(1998) 8 SCC 610 = 1998 (101) E.L.T. 9 (S.C.)]. In that case, the High Court had dismissed the writ petition on the ground that the petitioner therein had an adequate alternative remedy by way of an appeal under Section 35 of the Central Excise Act. Concededly, this Court was pleased to uphold that opinion of the High Court. However, whilst considering the difficulty expressed by the petitioner therein that the statutory remedy of appeal had now become time barred during the pendency of the*

proceedings before the High Court and before this Court, the Court permitted the petitioner therein to resort to remedy of statutory appeal and directed the appellate authority to decide the appeal on merits. This obviously was done on the basis of concession given by the Counsel appearing for the Revenue as noted in paragraph 2(1) of the order, which reads thus :-

"2. The High Court has dismissed the writ petition filed by the petitioner on the ground that there is an adequate alternative remedy by way of an appeal under Section 35 of the Central Excise Act. Learned Counsel for the petitioner submits that the petitioner will face certain difficulties in pursuing this remedy :

(1) This remedy may not be any longer available to it because the appeal has to be filed within a period of three months from the date of the assessment order and delay can be condoned only to the extent of three more months by the Collector under Section 35 of the Act. It is pointed out that the petitioner did not file an appeal because the Collector (Appeals) at Madras had taken a view in a similar matter that an appeal was not maintainable. That apart, the petitioner in view of the huge demand involved filed a writ petition and so did not file an appeal. In the circumstances of the case, we are of the opinion that the ends of justice will be met if we permit the petitioner to file a belated appeal within one month from today with an application for condonation of delay, whereon the appeal may be entertained. Learned Counsel for the Revenue has stated before us that the Revenue will not object to the entertainment of the appeal on the ground that it is barred by time. In view of this direction and concession, the petitioner will have an effective alternative remedy by way of an appeal.

(emphasis supplied)

In that case, it appears that the writ petition was filed within statutory period and legal remedy was being pursued in good faith by the assessee (appellant).

18. *Suffice it to observe that this decision is on the facts of that case and cannot be cited as a precedent in support of an argument that the High Court is free to entertain the writ petition assailing the assessment order even if filed beyond the statutory period of maximum 60 days in filing appeal. The remedy of appeal is creature of statute. If the appeal is presented by the assessee beyond the extended statutory limitation period of 60 days in terms of Section 31 of the 2005 Act and is, therefore, not entertained, it is incomprehensible as to how it would become a case of violation of fundamental right, much less statutory or legal right as such.*

19. *Arguendo, reverting to the factual matrix of the present case, it is noticed that the respondent had asserted that it was not aware about the passing of assessment order dated 21-6-2017 although it is admitted that the same was served on the authorised representative of the respondent on 22-6-2017. The date on which the respondent became aware about the order is not expressly stated either in the application for condonation of delay filed before the appellate authority, the affidavit filed in support of the said application or for that matter, in the memo of writ petition. On the other hand, it is seen that the amount equivalent to 12.5% of the tax amount came to be deposited on 12-9-2017 for and on behalf of respondent, without filing an appeal and without any demur - after the expiry of statutory period of maximum 60 days, prescribed under Section 31 of the 2005 Act. Not only that, the respondent filed a formal application under Rule 60 of the 2005 Rules on 8-5-2018 and pursued the same in appeal, which was rejected on 17-8-2018. Furthermore, the appeal in question against the*

assessment order came to be filed only on 24-9-2018 without disclosing the date on which the respondent in fact became aware about the existence of the assessment order dated 21-6-2017. On the other hand, in the affidavit of Mr. Sreedhar Routh, Site Director of the respondent-company (filed in support of the application for condonation of delay before the appellate authority), it is stated that the company became aware about the irregularities committed by its erring official (Mr. P. Sriram Murthy) in the month of July, 2018, which pre-supposes that the respondent must have become aware about the assessment order, at least in July, 2018. In the same affidavit, it is asserted that the respondent-company was not aware about the assessment order, as it was not brought to its notice by the employee concerned due to his negligence. The respondent in the writ petition has averred that the appeal was rejected by the appellate authority on the ground that it had no power to condone the delay beyond 30 days, when in fact, the order examines the cause set out by the respondent and concludes that the same was unsubstantiated by the respondent. That finding has not been examined by the High Court in the impugned judgment and order at all, but the High Court was more impressed by the fact that the respondent was in a position to offer some explanation about the discrepancies in respect of the volume of turnover and that the respondent had already deposited 12.5% of the additional amount in terms of the previous order passed by it. That reason can have no bearing on the justification for non-filing of the appeal within the statutory period. Notably, the respondent had relied on the affidavit of the Site Director and no affidavit of the concerned employee (P. Sriram Murthy, Deputy Manager-Finance) or at least the other employee [Siddhant Belgaonker, Senior Manager (Finance)], who was associated with the erring employee during the relevant period, has been filed in support of the

stand taken in the application for condonation of delay. Pertinently, no finding has been recorded by the High Court that it was a case of violation of principles of natural justice or non-compliance of statutory requirements in any manner. Be that as it may, since the statutory period specified for filing of appeal had expired long back in August, 2017 itself and the appeal came to be filed by the respondent only on 24-9-2018, without substantiating the plea about inability to file appeal within the prescribed time, no indulgence could be shown to the respondent at all."

3.6 In case of Pathapati Subba Reddy (Died) By L.Rs. & Ors. [Order dated 08.04.2024 in Special Leave Petition (Civil) No. 31248 Of 2018] after considering the past precedence Hon'ble Supreme Court has held as follows:

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.*

3.7 Accordingly, I do not find any merits in this appeal filed by the appellant.

4.1 Appeal is dismissed.

(Dictated and pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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