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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/4061/2010-4062/2010,4063,4064/2010-4068 &4069/2010&16 /2011 - EX[DB]WITH E/COD/523-531/2010 &E/04/2011-EX   Date **14/10/2011**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S MINDA AUTOMOTIVE LTD.,
VILLAGE NAHARPUR KASAN, P.O. NAKHROLA,
DISTT. GURGAON, (HARYANA)
122050

M/S MINDA AUTOMOTIVE LTD.,   Appellant

Vs

C.C.E. DELHI III   **MISC ORDER NO. 517-526/2011-EX**   Respondent

I am directed to transmit herewith a certified copy of **Final order No.894-903/ 2011 EX[DB]** dated 11-10-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. DELHI III
UDYOG MINAR, UDYOG VIHAR,
VANIJYA NIKUNJ, PHASE V,
GURGAON - 122016 (HARYANA)

2. Adv. / Consult

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.II

E/COD Nos 523-524 & 526-528/2010 in
E/Appeal Nos.4061-4062 & 4064-4066/2010

E/COD Nos 525&531/2010 in
E/Appeal Nos.4063 & 4069/2010

E/COD Nos 529-530/2010 & COD 4/2011 in
E/Appeal Nos.4067-4068/2010 & E/16/2011

(Arising out of order in appeal Nos.321-328/MA/GGN/2009 dated 4.11.2009 passed by the Commissioner of Central Excise (Appeals), Gurgaon)

Date of Hearing: 28.9.2011

For Approval and signature:

Hon'ble Ms Jyoti Balasundaram, Vice President
Hon'ble Mr.Mathew John, Technical Member

1.	Whether Press Reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT(Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

M/s Minda Automotive Ltd — Appellants

Vs

CCE, Delhi-III — Respondent

Appeared for the Appellant: Shri Mahavir Sharma, Rep.
Appeared for the Respondent: Shri Sumit Kumar, DR

Coram: **Hon'ble Ms Jyoti Balasundaram, Vice President**
Hon'ble Mr. Mathew John, Member Technical

MISC. ORDER No. 517-526/2011-EX
FINAL ORDER No. 894-903/2011-EX

Per Jyoti Balasundaram:

Heard both sides on the applications for condonation of delay of 405 days in preferring the appeals against order passed by the Commissioner of Central Excise (Appeals) upholding rejection of the assessees' refund claims.

2. The Assistant Commissioner had rejected the claims for refund filed by the assesses under Rule 5 of Cenvat Credit Rules, 2004 on the ground that input services on which the appellants had availed Cenvat credit, were not eligible input services, relying upon the order passed by the Additional Commissioner of Central Excise, Gurgaon wherein Cenvat credit on service tax paid on several input services received by the applicants, an EOU unit was denied on the ground that services received by the unit were not eligible input services. However, the order of the Additional Commissioner was set aside by the lower Appellate Authority and in the light of his order, the assesse became eligible to refund of unutilized credit of input service. In the present impugned order, the Commissioner (Appeals) has dismissed the appeals filed by the assessee on the ground that the earlier order of the Assistant Commissioner wherein refund applications of the appellants were rejected, was not challenged by them, which is factually incorrect, as appeals had been preferred against the rejection of the refund claims. As for the delay in filing the present appeals against 8 orders dated 4.11.2009 and 2 orders dated 8.10.2009, the appellants' submission is as under:-

"7. However, it is submitted that in the present case, the appellants did not file appeal against the orders of the Assistant Commissioner rejecting their refund claim for the reason that the only ground on which the Assistant Commissioner has rejected their refund claims was that the Additional Commissioner vide order in original No. 03/VKB/ADC/CE/2008 dated 28.2.2008 had disallowed the Cenvat credit taken by the appellants on the ground that the services on which the credit was availed were not input services and as such, no credit was available to the appellants. In view of the fact that the order of the Additional Commissioner dated 28.2.2008 was alive and kicking at the time the order in original dated 2.12.2008 rejecting the refund claim was passed by the Assistant Commissioner; the appellants did not deem or contemplate that any worthwhile purpose would be served in filing appeal against the rejection of the refund claim. As the Department was seeking to join both the issues that is the issue of refund of unutilized cenvat credit of input services and the issue of availability of Cenvat credit of the input services to the appellants. The appellants finally concluded that till the time the order of the Additional Commissioner denying them the credit of the input services is set aside by an appellate authority or it attains finality their refund of the unutilized Cenvat amount will not be processed and department will keep on joining both the issues and as such no worthwhile purpose can be served in filing appeal before the Commissioner (Appeals)."

3. The further submission of the assessee is that against the impugned orders challenged in the present appeals, the assesse preferred Writ Petition before the Punjab & Haryana High Court on 15.2.2010 which stood dismissed on 27.7.2010 on the ground of availability of alternative remedy before the Tribunal. Therefore, they submit that the delay was not deliberate but only due to

above reasons and therefore, pray that such delay may be condoned.

4. We are not satisfied with the reasoning given in the COD applications - each order by which an assessee is aggrieved is required to be challenged before the higher forum within the statutory period of limitation. The fact that the order of the Additional Commissioner upholding that services received by the assessee were not eligible input services, was set aside by the Commissioner (Appeals), is no ground for the assessee not to file appeals before the Tribunal against the rejection of the refund claims. The Hon'ble |High Court has also not condoned the delay in filing appeals before the Tribunal against the ten orders challenged in the present appeals. We note that in the case of Balwant Singh Vs Jagdish Singh reported in 2010 (262) ELT 50 (SC), the Apex Court has held that delay is just one of the ingredients which has to be considered by the Court and in addition to this, the Court also take into account conduct of the parties, bonafide reasons for condonation of delay and whether delay is easily avoidable by the applicant acting ~~action~~ with normal care and caution. The relevant paragraphs of the Apex Court judgment are reproduced below:-

"14. In the case of Union of India v. Tata Yodogawa Ltd., [1988 (38) Excise Law Times 739 (S.C.)], this Court while granting some latitude to the Government in relation to condonation of delay, still held that there must be some way or attempt to explain the cause for such delay and as there was no whisper to explain what legal problems occurred in filing the Special Leave Petition, the application for condonation of delay was dismissed. Similarly, in the case of Collector of Central

Excise, Madras v. A.MD. Bilal & Co., [1999 (108) Excise Law Times 331 (S.C.)], the Supreme Court declined to condone the delay of 502 days in filing the appeal because there was no satisfactory or reasonable explanation rendered for condonation of delay. The provisions of Order 22 Rule 9, CPC has been the subject matter of judicial scrutiny for considerable time now. Sometimes the Courts have taken a view that delay should be condoned with a liberal attitude, while on certain occasions the Courts have taken a stricter view and wherever the explanation was not satisfactory, have dismissed the application for condonation of delay. Thus, it is evident that it is difficult to state any straight-jacket formula which can uniformly be applied to all cases without reference to the peculiar facts and circumstances of a given case. It must be kept in mind that whenever a law is enacted by the legislature, it is intended to be enforced in its proper perspective. It is an equally settled principle of law that the provisions of a statute, including every word, have to be given full effect, keeping the legislative intent in mind, in order to ensure that the projected object is achieved. In other words, no provisions can be treated to have been enacted purposelessly. Furthermore, it is also a well settled canon of interpretative jurisprudence that the Court should not give such an interpretation to provisions which would render the provision ineffective or odious. Once the legislature has enacted the provisions of Order 22, with particular reference to Rule 9, and the provisions of the Limitation Act are applied to the entertainment of such an application, all these provisions have to be given their true and correct meaning and must be applied wherever called for. If we accept the contention of the Learned Counsel appearing for the applicant that the Court should take a very liberal approach and interpret these provisions (Order 22 Rule 9 of the CPC and Section 5 of the Limitation Act) in such a manner and so liberally, irrespective of the period of delay, it would amount to practically rendering all these provisions redundant and inoperative. Such approach or interpretation would hardly be permissible in law. Liberal construction of the expression 'sufficient cause' is intended to advance substantial justice which itself presupposes no negligence or inaction on the part of the applicant, to whom want of bona fide is imputable. There can be instances where the Court should condone the delay; equally there would be cases where the Court must exercise its discretion against the applicant for want of any of these ingredients or where it does not reflect 'sufficient cause' as understood in law. [Advanced Law Lexicon, P. Ramanatha Aiyar, 2nd Edition, 1997] The expression 'sufficient cause' implies the presence of legal and adequate reasons. The word 'sufficient' means adequate enough, as much as may be necessary to answer the purpose intended. It embraces no more than that which provides a plentitude which, when done, suffices to accomplish the purpose intended in the light of existing circumstances and when viewed from the reasonable standard of practical and cautious men. The sufficient cause should be such as it would persuade the Court, in exercise of its judicial discretion, to treat the delay as an excusable one. These provisions give the Courts enough power and discretion to apply a law in a meaningful manner, while assuring that the purpose of enacting such a law does not stand frustrated. We find it unnecessary to discuss the instances which would fall under either of these classes of cases. The party should show that besides acting bona fide, it had taken all possible steps within its power and control and had approached the Court without any unnecessary delay. The test is whether or not a cause is sufficient to see whether it could have been avoided by the party by the exercise of due care and attention. [Advanced Law Lexicon, P. Ramanatha Aiyar, 3rd Edition, 2005]

15. We feel that it would be useful to make a reference to the judgment of this Court in Perumon Bhagvathy Devaswom (supra). In this case, the Court, after discussing a number of judgments of this Court as well as that of the High Courts, enunciated the principles which need to be kept in mind while dealing with applications filed under the provisions of Order 22, CPC along with an application under Section 5, Limitation Act for condonation of delay in filing the application for bringing the legal representatives on record. In paragraph 13 of the judgment, the Court held as under :-

"13 (i) The words "sufficient cause for not making the application within the period of limitation" should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words 'sufficient cause' in Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the appellant."

(ii) In considering the reasons for condonation of delay, the courts are more liberal with reference to applications for setting aside abatement, than other cases. While the court will have to keep in view that a valuable right accrues to the legal representatives of the deceased respondent when the appeal abates, it will not punish an appellant with foreclosure of the appeal, for unintended lapses. The courts tend to set aside abatement and decided the matter on merits. The courts tend to set aside abatement and decide the matter on merits, rather than terminate the appeal on the ground of abatement.

(iii) The decisive factor in condonation of delay, is not the length, of delay, but sufficiency of a satisfactory explanation.

(iv) The extent or degree of leniency to be shown by a court depends on the nature of application and facts and circumstances of the case. For example, courts view delays in making applications in a pending appeal more leniently than delays in the institution of an appeal. The courts view applications relating to lawyer's lapses more leniently than applications relating to litigant's lapses. The classic example is the difference in approach of courts to applications for condonation of delay in filing an appeal and applications for condonation of delay in "re-filing the appeal after rectification of defects.

(v) Want of "diligence" or "inaction" can be attributed to an appellant only, when something required to be done by him, is not done. When nothing is required to be done, courts do not expect the appellant to be diligent. Where an appeal is admitted by the High Court and is not expected to be listed for final hearing for a few years, an appellant is not expected to visit the court or his lawyer every few weeks to ascertain the position nor keep checking whether the contesting respondent is alive. He merely awaits the call or information from his counsel about the listing of the appeal.

We may also notice here that this judgment had been followed with approval by an equi-bench of this Court in the case of Katari Suryanarayana (supra)

16. Above are the principles which should control the exercise of judicial discretion vested in the Court under these provisions. The explained delay should be clearly understood in contradistinction to inordinate unexplained delay. Delay is just one of the ingredients which has to be considered by the Court. In addition to this, the Court must also take into account the conduct of the parties, bona fide reasons for condonation of delay and whether such delay could easily be avoided by the applicant acting with normal care and caution. The statutory provisions mandate that applications for condonation of delay and applications belatedly filed beyond the prescribed period of limitation for bringing the legal representatives on record, should be rejected unless sufficient cause is shown for condonation of delay. The Larger Benches as well as equi-benches of this Court have consistently followed these principles and have either allowed or declined to condone the delay in filing such applications. Thus, it is the requirement of law that these applications cannot be allowed as a matter of right and even in a routine manner. An applicant must essentially satisfy the above stated ingredients; then alone the Court would be inclined to condone the delay in the filing of such applications."

5. The Assessee has not put forth bonafide reasons for condonation of delay and further the delay could easily be avoided by the assesssee acting with normal care and caution.

6. In the light of the above discussion, we hold that sufficient cause has not been made out for condoning the delay. The COD applications are therefore, dismissed and as a result, the appeals are dismissed as barred by limitation.

(Order dictated and pronounced in the open Court.)

(JYOTI BALASUNDARAM)
Vice President

(MATHEW JOHN)
Technical Member

MPS*