IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I

APPLICATION Nos. C/COD/86707,86708/2018
APPEAL Nos. C/89309,89316/2018

(Arising out of Order-in-Original No. 15/RT/PC/2016-17 dated 27.02.2017 – CAO No 38/2016-17 dated 27.02.2017 passed by Commissioner of Customs (Import-I), Mumbai-1)

Commissioner of Customs (Import-I), Mumbai **Appellant**

Vs.

Aban Offshore Ltd. **Respondent**

Appearance:

Ms. Vinita Sekhar, Additional Commissioner (AR), for appellant
Ms. Poorva Garg, Advocate, for respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. Sanjiv Srivastava, Member (Technical)

Date of Hearing: 17.12.2018
Date of Decision: 07.02.2019

ORDER No. **A/85253-85254/2019**

Per: Sanjiv Srivastava

Revenue has filed this appeal against Order in Original No 15/RT/PC/2016-17 dated 27.02.2017 – CAO No 38/2016-17 dated 27.02.2017 passed by the Commissioner of Customs (Import-1) New Custom House Ballard estate Mumbai-1. Since there is delay in filing the appeal an application for condonation of delay also has been filed.

1.2 These applications for condonation of delay have been filed by the revenue seeking a CESTAT to condone the delay in filing the appeal beyond the prescribed from the date of receipt of order by the Committee of Chief Commissioners. The relevant dates leading to delay in filing the appeal are as indicated in table1.

Table 1	Chronology of events leading to filing the appeal before CESTAT
Date of Order in original, Appealed Against	27.02.2017
Date of Receipt of Order by Committee of Chief Commissioners	20.04.2017
Date when the order for review, passed under Section 129 D (1)	09.06.2017
Date of Receipt of order for review by Commissioner	23.06.2017
Date of filing the Appeal before CESTAT	18.10.2018

2.1 Seeking condonation of delay of Four Hundred and Fifty Two (452) days in filing the appeal appellant revenue has given following grounds for making such a prayer-

"7. Here it is stated that due to heavy workload in the section and many Supreme Court, High Court cases to be attended on priority, the subject case may has escaped the scrutiny of concerned officers. Also, it may be noted that the subject Review order was passed in the month of June '17 during the period there is a transition among the officers due to the Annual General Transfer. There is inflow of new officers in every section and the officers being new to the section might have inadvertently missed the order of the

Committee. Therefore, due to this, delay may have occurred in filing of appeal within the prescribed time.

8. During the routine scrutiny and updation of pending legal matters, the pendency of action in respect of this case was noted and it was then taken up immediately for filing an appeal in the Hon'ble CESTAT. The delay is deeply regretted and it is humbly requested to the Hon'ble CESTAT to kindly condone the delay and examine the matter on merit.

9. It is respectfully submitted that the delay of 452 days in filing the present Appeal is unintentional on the part of the Revenue. There is no mala fide intention and it is a genuine oversight which may kindly not be allowed to affect the merit of the case. The delay is sincerely regretted and immediate efforts have been undertaken to avoid recurrence of such delay in the future. All the officers of the department have been cautioned and all such cases having similar circumstances have been examined to ensure no such delay recurs. Corrective measures have already been undertaken to avoid the recurrence of any such delay in the future.

10. The Revenue has a good case on merits. The committee in their Review Order dated 09.06.2017 concluded that the adjudicating authority erred in not imposing interest along with the penalty under Section 114A. Therefore, no prejudice will be caused to the Respondent if the delay in filing the above Appeal is condoned, and the same is heard and decided on merits. If the delay is condoned, the Department will have an opportunity to pursue the Appeal on merits as the OIO will attain finality by inclusion of the interest along with penalty under Section 114A of the Customs Act, 1962.

11. The delay is deeply regretted before the Hon'ble Tribunal and it is humbly requested to the Hon'ble Tribunal to kindly condone the delay and examine the matter on merit."

3.1 The power to review the Order in Original passed by the Commissioner/ Principal Commissioner has been vested to the Committee of Chief Commissioner as per

Section 129 D (1) of the Customs Act, 1962 and appeal in the case where the order is reviewed needs to filed within one months from the date of receipt of order of review the by Commissioners. Tribunal has been given power to allow filing of appeal beyond the period as prescribed, provided that appellant is able to show that there was sufficient cause for not being able to file the appeal within prescribed period.. The relevant provisions of Customs Act, 1962 are reproduced below:

SECTION 129D. Powers of Committee of Principal Chief Commissioner of Customs or Chief Commissioner of Customs or Principal Commissioner of Customs or Commissioner of Customs to pass certain orders.-

(1) The Committee of Principal Chief Commissioner of Customs or Chief Commissioner of Customs may, of its own motion, call for and examine the record of any proceeding in which a Principal Commissioner of Customs or Commissioner of Customs] as an adjudicating authority has passed any decision or order under this Act for the purpose of satisfying itself as to the legality or propriety of any such decision or order and may, by order, direct such Commissioner or any other Commissioner to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order as may be specified by the Committee of Principal Chief Commissioners of Customs or Chief Commissioners of Customs in its order.

Provided that where the Committee of Principal Chief Commissioners of Customs or Chief Commissioner of Customs differs in its opinion as to the legality or propriety of the decision or order of the Principal Commissioner of Customs or Commissioner of Customs, it shall state the point or points on which it differs and make a reference to the Board which, after considering the facts of the decision or order passed by the Principal Commissioner of Customs or Commissioner of Customs, if is of the opinion that the decision or order passed by the Principal Commissioner of Customs or Commissioner of Customs is not legal or proper, may, by order, direct such Commissioner or any other Commissioner to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order, as may be specified in its order.

(2) ….

(3) *Every order under sub-section (1) or sub-section (2), as the case may be, shall be made within a period of three months from the date of communication of the decision or order of the adjudicating authority.*

Provided that the Board may, on sufficient cause being shown, extend the said period by another thirty days.

(4) *Where in pursuance of an order under sub-section (1) or sub-section (2), the adjudicating authority or any officer of customs authorised in this behalf by the Principal Commissioner of Customs or Commissioner of Customs, makes an application to the Appellate Tribunal or the 63[Commissioner (Appeals)] within a period of one month from the*

> *date of communication of the order under sub-section (1) or sub-section (2) to the adjudicating authority, such application shall be heard by the Appellate Tribunal or the Commissioner (Appeals), as the case may be, as if such application were an appeal made against the decision or order of the adjudicating authority and the provisions of this Act regarding appeals, including the provisions of sub-section (4) of section 129A shall, so far as may be, apply to such application."*

3.2 Thus as per the above provisions, statutorily prescribed period is of one month for filing the appeal from the dated of receipt of order of review made under Section 129D(1) by the Committee of Chief Commissioner. Thus the appeal was to be filed by 22.07.2017. Since the appeal was actually presented on 18th October 2018, there is delay of 452 days in filing the appeal. The application under considerations seeks the condonation of this delay in presenting the appeal.

4.1 We have heard Ms P Vinita Sekhar, Additional Commissioner (Authorized Representative) for the revenue and Ms. Poorva Garg, Advocate for respondents.

4.2 Arguing for the Appellants, learned Authorized Representative submitted that in the present case the delay has occurred in filing the appeal. In interest of justice she requested the application for condonation of delay should be considered sympathetically and allowed. She further argued that issue for consideration in the appeal is whether the penalty under Section 114A of the Customs Act, 1962 should be equivalent to the duty evaded or should be the sum of duty evaded and interest due on such duty evaded.

4.3 Learned Advocate arguing on behalf of respondents submitted that the application in the present case needs to be dismissed as no sufficient cause has been shown explaining the delay in filing the appeal. Further learned counsel submitted that even on merits revenue has no case as the issue has been adjudicated by this tribunal in series of decisions stating that penalty under Section 114A is equivalent to the duty evaded.

5.1 We have considered the ground made for seeking the condonation of delay in the presenting the appeal before Tribunal and also the grounds presented during the arguments.

5.2 The only reason that has been stated by the Appellant in their application is that the delay has occurred on account of the on account of heavy workload in the section dealing with the matter and the transfer of the officers from the section. No other ground has been mentioned for seeking such condonation of delay.

5.3 An interesting feature to be noted in this case is Committee of Chief Commissioner gave an order for review dated 09.06.2017, received by the Commissioner on 23.06.2017. From the date of receipt Committee of Chief Commissioner orders for review appeal should have been filed within one month time. In our view this delay in undertaking the statutory obligation caused on the officer authorized by the Committee of Chief Commissioners to file the appeal within period of one month cannot be explained on the ground of heavy workload and transfers of concerned persons. If such a ground is pleaded and admitted, then prescription of statutory time limit for filing the appeal within one month from the date of receipt of order from Committee of Chief Commissioners will lose its relevance. We are convinced that substantial cause to be shown for delay in presenting the appeal cannot be the work load on the section. Even transfers cannot be reason as the period of delay is nearly 452 days.

5.11 In case Chief Post Master General & Others vs Living Media India Ltd.& Anr {2012 (277) ELT 289 (SC)], Hon'ble Apex Court has in similar circumstances held as follows:

"11) We have already extracted the reasons as mentioned in the "better affidavit" sworn by Mr. Aparajeet Pattanayak, SSRM, Air Mail Sorting Division, New Delhi.

It is relevant to note that in the said affidavit, the Department has itself mentioned and is aware of the date of the judgment of the Division Bench of the High Court in LPA Nos. 418 and 1006 of 2007 as 11.09.2009. Even according to the deponent, their counsel had applied for the certified copy of the said judgment only on 08.01.2010 and the same was received by the Department on the very same day. There is no explanation for not applying for certified copy of the impugned judgment on 11.09.2009 or at least within a reasonable time. The fact remains that the certified copy was applied only on 08.01.2010, i.e. after a period of nearly four months. In spite of affording another opportunity to file better affidavit by placing adequate material, neither the Department nor the person in-charge has filed any explanation for not applying the certified copy within the prescribed period. The other dates mentioned in the affidavit which we have already extracted, clearly show that there was delay at every stage and except mentioning the dates of receipt of the file and the decision taken, there is no explanation as to why such delay had occasioned. Though it was stated by the Department that the delay was due to unavoidable circumstances and genuine difficulties, the fact remains that from day one the Department or the person/persons concerned have not evinced diligence in prosecuting the matter to this Court by taking appropriate steps.

12) It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings.

In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

13) In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any *acceptable and cogent reasons sufficient to condone such a huge delay.*

Accordingly, the appeals are liable to be dismissed on the ground of delay."

5.12 In our view in the present case no sufficient cause has been shown for delay in presenting the appeal in present case, as is required to be shown in terms of Section 129D(4) read with Section 129A(5) of the Custom Act, 1962. In absence of any such justification we do not find any merits in the application for condonation of delay.

5.13 Before we close we also observe that issue which has been raised by the Revenue in this appeal is no longer res-integra and is squarely covered against the revenue in a series of decisions as listed below by this tribunal. Hence even if the application for condonation of delay was to be allowed, the appeal itself could not have been sustained on merits. Thus we are of the view that no prejudice is going to be caused to revenue in the matter by dismissing the application for condonation of delay.

i. Bharti Airtel [2012 (286) ELT 270 (T)];

ii. Mangalore Refinery and Petrochemicals Ltd [2014 (313) E.L.T. 353 (T)];

iii. B. Suresh Vasudev Baliga [2015 (329) ELT 433 (T-Bang)].

6.1 The Applications for condonation of delay filed by revenue are thus dismissed and accordingly appeals are also dismissed.

(Pronounced in court on 07.02.2019)

(S.K. Mohanty)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

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