

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on: 20th December, 2010

% Judgment Pronounced on: 7th January, 2011

+ W.P.(C) 8084/2010

M/S UTTAM SUCROTECH INTERNATIONAL
(P) LIMITED

..... Petitioner

Through: Mr. Dinesh Kumar Gupta,
Advocate

versus

UNION OF INDIA & ANR.

..... Respondents

Through Ms. Rajdipa Behura, Mr.C.S.
Chauhan, Advs. for R-1
Mr. Mukesh Anand, Adv. for R-2

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE MANMOHAN

1. Whether reporters of the local papers be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

DIPAK MISRA, CJ

Invoking the extraordinary and inherent jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, the petitioner has prayed for issue of a writ of certiorari for quashment of the order No. 137/10-CX dated 8.1.2010 passed by the Joint Secretary of the Government of India, Ministry of Finance, whereby he has concurred with the order dated

8.6.2007 passed by the Commissioner, Customs and Central Excise, the second respondent herein, who had dismissed the appeal preferred by the petitioner under Section 35 of the Central Excise Act, 1944 (for brevity 'the Act') on the ground that the appeal was barred by limitation.

2. The facts which are essential to be stated for adjudication of this petition are that the petitioner, a company incorporated under the Companies Act, 1956, is a merchant exporter and engaged in the export of various engineering goods under Rule 19 of the Central Excise Rules, 2002. It had executed bond with the respondents for exporting the goods by purchasing manufactured excisable goods duty free on the basis of CT-1 issued from time to time by the respondents. It had submitted necessary documents on 28.7.2004 and 19.10.2004 which had been scrutinized by the respondents and thereafter show cause notice No.6 dated 25.7.2005 and show cause notice No.9 dated 30.09.2005 had been served on the petitioner company. The petitioner explained all queries which were made in the aforesaid show cause notices in its replies dated 24.08.2005 and 04.10.2005 and made a prayer to the respondents to drop the proceedings and to withdraw the show cause notices.

3. As put forth, the adjudicator, namely, the Assistant Commissioner of Central Excise, dealt with the show cause notices jointly and issued an order dated 22.8.2006 making a demand of Rs.3,29,819/- in terms of the provisions of Section 11-AC of the Act.

4. The aforesaid composite order passed on 22.8.2006 was received by the petitioner on 29.8.2006 against which the petitioner preferred an appeal on 28.11.2006. The second respondent by order dated 8.6.2007 came to hold that the appeal had been preferred on the 91st day, one day beyond the condonable period of limitation and, accordingly, rejected the application for condonation of delay which was filed along with the memorandum of appeal.

5. Grieved by the aforesaid order, the petitioner company preferred a revision before the first respondent who by the impugned order contained in Annexure 'F' without adverting to the merits of the case gave the stamp of approval to the order passed by the first appellate authority on the basis that the appeal was barred by time as the delay was not condonable by the appellate authority.

6. In the writ petition, though numerous averments have been made contending, inter alia, that the petitioner is entitled to exemption and the demand made by the authorities is totally unsustainable, yet the gravamen of the stand that arises for consideration is whether the respondent No.2 was justified in rejecting the appeal on the ground that delay was non-condonable and the revisional authority was correct in treating the said order as impeccable.

7. We have heard Mr. Dinesh Kumar Gupta, learned counsel for the petitioner and Ms. Rajdipa Behura along with Mr. C.S. Chauhan, learned

counsels for respondent No.1 and Mr. Mukesh Anand, learned counsel for respondent No.2.

8. It is submitted by Mr. Gupta, learned counsel for the petitioner that the petitioner received the order passed by the adjudicating officer on 29th August, 2006 and the right to prefer an appeal under Section 35 of the Act was in subsistence for a period of 60 days and the said period expired only on 28th October, 2006 which was a Saturday and, therefore, he was entitled to have the benefit of 28th and 29th October, 2006 being Saturday and Sunday and, therefore, the Commissioner of Appeal has erred in computing the period of limitation. To put it differently, it is urged by Mr. Gupta that the period has to be computed from the date the right to prefer an appeal had accrued but the Commissioner computed the said period fallaciously and expressed the view that the appeal was preferred on the 91st day and, therefore, he had no authority to condone the delay. To bolster his submissions he has placed reliance on the decisions rendered in ***Manohar Joshi v. Nitin Bhaurao Patil and Anr.***, (1996) 1 SCC 169, ***Ramakant Mayekar v. Celine D' Silva***, (1996) 1 SCC 399 and ***Jindal Steel and Power Ltd. and Anr. v. Ashoka Alloy Steel Ltd. and Ors.***, (2006) 9 SCC 340.

9. Combating the aforesaid submissions Ms. Rajdipa Behura, learned counsel for the respondent No.1 and Mr. Mukesh Anand, learned counsel for the respondent No.2 submitted that the method of computation adopted by

the Commissioner of Appeals cannot be faulted with as the memorandum of appeal was presented on 28th November, 2006 which was a Tuesday. It is submitted by them that had it been filed on 27th November, 2006 the benefit of the Saturday and Sunday prior to the Monday, would have enured to the benefit of the petitioner for the purpose of computation of period of limitation. It is their further submission that if the method of computation as suggested by the learned counsel for the petitioner is accepted then every Saturday and Sunday which will come within 60 days of preferring the appeal would stand excluded which the law of extension of period of limitation does not conceive of and further such a method of computation is totally impermissible.

10. Ms. Rajdipa Behura, learned counsel for the respondent No.1 has commended us to the decisions in *Singh Enterprises v. Commissioner of Central Excise, Jamshedpur*, (2008) 3 SCC 70 and *Commissioner of Customs and Central Excise v. Hongo India Pvt. Ltd. and Anr.*, (2009) 5 SCC 791.

11. First we shall refer to the decision rendered in *Hongo India Pvt. Ltd.* (supra) wherein the Apex Court was dealing with the question whether the High Court has power to condone the delay in presentation of the “reference application” under unamended Section 35(H)(1) of the Act beyond the

prescribed period by applying Section 5 of the Limitation Act. A three-Judge Bench referred to Section 35H of the Act, Sections 5 and 29(2) of the Limitation Act, 1963 and eventually held as follows:

“32. As pointed out earlier, the language used in Sections 35, 35-B, 35-EE, 35-G and 35-H makes the position clear that an appeal and reference to the High Court should be made within 180 days only from the date of communication of the decision or order. In other words, the language used in other provisions makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning the delay only up to 30 days after expiry of 60 days which is the preliminary limitation period for preferring an appeal. In the absence of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. The High Court was, therefore, justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days.

33. Even otherwise, for filing an appeal of the Commissioner, and to the Appellate Tribunal as well as revision to the Central Government, the legislature has provided 60 days and 90 days respectively, on the other hand, for filing an appeal and reference to the High Court larger period of 180 days has been provided with to enable the Commissioner and the other party to avail the same. We are of the view that the legislature provided sufficient time, namely, 180 days for filing reference to the High Court which is more than the period prescribed for an appeal and revision.

34. Though, an argument was raised based on Section 29 of the Limitation Act, even assuming that Section 29(2) would be attracted, what we have to determine is whether the provisions of this section are expressly excluded in the case of reference to the High Court.

35. It was contended before us that the words “expressly excluded” would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. In this regard, we have to see the scheme of the special law which here in this case is the Central Excise Act. The nature of remedy provided therein is such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If, on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our considered view, that even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. In other words, the applicability of the provisions of the Limitation Act, therefore, is to be judged not from the terms of the Limitation Act but by the provisions of the Central Excise Act relating to filing of reference application to the High Court.

36. The scheme of the Central Excise Act, 1944 supports the conclusion that the time-limit prescribed under Section 35-H(1) to make a reference to the High Court is absolute and extendable by a court under Section 5 of the Limitation Act. It is well-settled law that it is the duty of the court to respect the legislative intent and by giving liberal interpretation, limitation cannot be extended by invoking the provisions of Section 5 of the Limitation Act.”

12. In *Singh Enterprises* (supra) while dealing with the issue relating to jurisdiction of appellate authority to condone delay beyond permissible period provided under Section 35 of the Act, a two-Judge Bench of the Apex

Court after referring to Section 35 of the Act which provides “appeals to Commissioner (Appeals)” held thus:

“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 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.”

13. In view of the aforesaid, there can be no scintilla of doubt that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days after expiry of initial 60 days. In the case at hand, the

admitted position is that the order passed by the adjudicating officer was received by the petitioner on 29th August, 2006. The appeal was preferred on 28th November, 2006. The Commissioner excluded the date of receipt of the order in-original by the petitioner in terms of provision contained in Section 35-O and took note of the fact that the appeal was presented on the 91st day of the period commencing after the said date of receipt, i.e., one day beyond the condonable period of 30 days and, hence, the same could not have been condoned. Similar view has been expressed by the revisional authority.

14. The question that emanates for consideration is whether the authorities below were justified in declining to condone the delay. The submission of Mr. Gupta is that the initial period of filing of an appeal is 60 days and the 60th day fell on a Saturday and, therefore, the Saturday and the following Sunday have to be excluded and, in that event, it can safely be held that the appeal was presented on the 90th day. The learned counsel, to buttress his submission, as has been indicated earlier, has commended us to certain authorities. In *Manohar Joshi* (supra), the Apex Court was dealing with presentation of an election petition under Representation of the People Act, 1951 (hereinafter referred to as 'the RP Act'). The last date for filing the election petition according to the limitation prescribed in sub-section (1) of Section 81 of the RP Act was 14.4.1990, but the election petition was

actually presented in the High Court on 16.4.1990. It was an admitted position that 14.4.1990 was a Saturday on which the High Court as well as its office was closed on account of a public holiday and 15.4.1990 was a Sunday on which date also the High Court as well as its office was closed and, therefore, the election petition was presented on 16.4.1990. Their Lordships referred to the amended sub-section (1) of Section 81 of the RP Act and also the decision in *Ramlal v. Rewa Coalfields Ltd.*, AIR 1962 SC 361 and posed the question whether Section 10 of the General Clauses Act, 1897 is applicable to the election petition under the RP Act. After posing the question, their Lordships answered the issue as follows:

13. It is settled by the decision of this Court in *Ramlal, Motilal and Chhotelal v. Rewa Coalfields Ltd.* AIR 1962 SC 361 that the litigant has a right to avail of limitation upto the last day and his only obligation is to explain his inability to present the suit/petition on the last day of limitation and each day thereafter till it is actually presented. This being the basic premise, it cannot be doubted that the election petitioner in the present case was entitled to avail of the entire limitation of 45 days upto the last day, i.e., 14.4.1990 and he was required to explain the inability of not filing it only on 14.4.1990 and 15.4.1990 since the petition was actually presented in the High Court on 16.4.1990. If Section 10 of the General Clauses Act applies, the explanation is obvious and the election petition must be treated to have been presented within time.

14. The question now is: Whether the applicability of Section 10 of the General Clauses Act to the presentation of election petitions under the R.P. Act is excluded? No doubt the R.P. Act is a self-contained code even for the purpose of the limitation prescribed therein. This,

however, does not answer the question. It has to be seen whether the context excludes the applicability of Section 10 of the General Clauses Act which is in the part therein relating to the General Rules of Construction of all Central Acts. The legislative history of prescribing limitation for presentation of election petitions in accordance with sub-section (1) of Section 81 is also significant for a proper appreciation of the context. Admittedly, Section 10 of the General Clauses Act applied when by virtue of the requirement in the then existing sub-section (1) of Section 81, the period of limitation was prescribed by Rules framed under The R.P. Act, in Rule 119 of the 1951 Rules. This was expressly provided by Rule 2(6) of the 1951 Rules. There is nothing to indicate that providing the period of limitation in sub-section (1) of Section 81 itself by substitution of certain words by Act 27 of 1956 instead of prescribing the limitation by Rules, was with a view to exclude the applicability of Section 10 of the General Clauses Act. The change appears to have been made to provide for a fixed period in the Act itself instead of leaving that exercise to be performed by the rule-making authority. An express provision in Rule 2(6) of the 1951 Rules was required since the General Clauses Act ipso facto would not apply to Rules framed under the Central Act, even though it would to the Act itself. The context supports the applicability of Section 10 of the General Clauses Act instead of indicating its exclusion for the purpose of computing the limitation prescribed in sub-section (1) of Section 81 for presentation of election petitions.

15. In view of the basic premise that the election petitioner is entitled to avail of the entire limitation of 45 days for presentation of the election petition as indicated by Ramlal (*supra*), if the contrary view is taken, it would require the election petitioner to perform an impossible task in a case like the present, to present the election petition on the last day of limitation on which date the High Court as well as its office is closed. It is the underlying principle of this legal maxim which suggests the informed decision on this point, leading to the only conclusion that Section 10 of the General Clauses Act

applies in the computation of the limitation prescribed by sub-section (1) of Section 81 of the R.P. Act for presentation of an election petition. So computed, there is no dispute that the election petition presented in the present case on 16.4.1990 was within limitation and there was no non-compliance of sub-section (1) of Section 81 of the R.P. Act.”

15. In *Ramakant Mayekar* (supra), the Apex Court referred to its earlier decision in *Manohar Joshi* (supra) and came to hold that the election petition was filed within time. The principle laid down therein, we have no shadow of doubt, has no application to the case of the petitioner and hence, the said decision does not render any assistance to the proposition canvassed by the learned counsel for the petitioner.

16. In *Jindal Steel and Power Ltd.* (supra), the Apex Court was considering the legal validity of an order passed by the High Court which had quashed the prosecution under Section 138 of the Negotiable Instruments Act, 1881 and Section 420 of the Indian Penal Code on the ground that the complaint was filed two days after the expiry of the period of limitation. Their Lordships came to hold that the cause of action to file the complaint accrued on 26.1.1997 which has to be excluded in computing the period of limitation as required under Section 12(1) of the Limitation Act, 1963 and, therefore, the limitation would be counted from 27.1.1997 and the complaint was filed on 26.2.1997 within a period of one month from that

day. To arrive at the said conclusion, their Lordships referred to the decision in *Saketh India Ltd. & Ors. v. India Securities Ltd.*, (1999) 3 SCC 1. In the said case, their Lordships referred to the decision in *Haru Das Gupta v. State of W.B.*, (1972) 1 SCC 639 wherein it was held thus:

“7. The aforesaid principle of excluding the day from which the period is to be reckoned is incorporated in Section 12(1) and (2) of the Limitation Act, 1963. Section 12(1) specifically provides that in computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded. Similar provision is made in sub-section (2) for appeal, revision or review. The same principle is also incorporated in Section 9 of General Clauses Act, 1897 which, inter-alia, provides that in any Central Act made after the commencement of the General Clauses Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word “from” and for the purpose of including the last in a series of days or any other period of time, to use the word “to”.

8. Hence, there is no reason for not adopting the rule enunciated in the aforesaid case which is consistently followed and which is adopted in the General Clauses Act and the Limitation Act, Ordinarily in computing the time, the rule observed is to exclude the first day and to include the last....”

17. In view of the aforesaid dicta, it is quite clear that the day the cause of action arose for preferring the appeal, that is, the date of receipt of the order from the adjudicator is to be excluded. The Commissioner (Appeals) has excluded the same. Hence, the said decision is also of no help to the learned counsel for the petitioner.

18. In this context, we may refer with profit to the decision in ***H.H. Raja Harinder Singh v. S. Karnail Singh***, AIR 1957 SC 271, wherein the Apex Court stated that the basic object under Section 10 of the General Clauses Act is to enable a person to do what he could not have done on a holiday on the next working day.

19. In ***Rambir Narhargir Gosai v. Prabhakar Bhaskar Gadhwai & Ors.***, AIR 1955 Nagpur 300, a Division Bench has held thus:

“(4) Section 4, Limitation Act and S. 10, General Clauses Act embody by general principles enshrined in the two maxims ‘Lex non cogit and impossibilia & Actus curiae neminem gravabit’. Even if S.4, Limitation Act is not applicable as contended by the appellant, the respondents can invoke S.10, General Clauses Act. If neither of the provisions can assist the respondents, they can still invoke the general principles embodied in the two provisions: ‘Balkrishna v. Tima, 7 Nag LR 176 (C) and ‘Dhanusingh v. Keshoprasad’, AIR 1923 Nag 246 (D).

In ‘Baghelin v. Mathura Prasad’, 4 All 430 at p.434 (E), a cross-objection filed on the reopening day after the vacation during which the last day for filing it expired was held to be in time. We hold that the cross-objection cannot be dismissed as barred by time.”

20. In this context, we may fruitfully refer to the decision in ***Umedsingh Baliram Raghubanshi v. Shankerlal Jhanaklal & Ors.***, AIR (35) 1948 Nagpur 63, wherein Hidayatullah, J. (as his Lordship then was), while dealing with the concept of Court closed when period of limitation expires under Section 4 and Article 166 of the Limitation Act, 1908 held as follows:

5. It has been held in 57 ALL. 242 that Ss. 4 and 14, Limitation Act, are not similar in their effect. Whereas under S.14 of the Act the time spent can be excluded, S.4 does not entitle a person to add the days on which the Court is closed to the statutory period. He must do the act on the very next day on which the Court is open. Applying these rulings in the light of the Privy Council case just referred to here, it was imperative for Umed Singh to file his application and make the necessary deposit on 23rd September 1944 when presumably the Court was present. The applicant has been unable to show why he should be excused for not filing his application on 23rd September 1944 and for not making the deposit also on the same date.”

[Emphasis supplied]

21. In *Maqbul Ahmad & Ors. v. Onkar Pratap Narain Singh & Ors.*, **AIR 1935 Privy Council 85**, it has been held that what Section 4 provides is that, where the period of limitation prescribed expires on a day when the Court is closed, the application may be made on the day when the Court re-opens, that means the proper Court in which the application ought to have been made.

22. In *Samala Sundari Dassi & Ors. v. Sridam Chandra*, **AIR 1954 Calcutta 569**, a Division Bench has opined that the whole effect of Section 4 of the Limitation Act is indirectly to extend the period of limitation. The time limited by law would, therefore, be the time prescribed by the relevant Article as extended or enlarged by Section 4.

23. In *M/s Flowmore Pvt. Ltd. v. Keshav Kumar Swarup*, **AIR 1983 Delhi 143**, this Court after referring to Section 10 of the General Clauses

Act, 1897 came to hold that if the office of the Rent Controller is closed, an application for leave to appear and contest the eviction petition would be filed on the next day of the re-opening of the Court by virtue of Section 10 of the General Clauses Act, 1897.

24. From the aforesaid pronouncement of law, it is clear as crystal that Section 4 of the Limitation Act, 1963 and Section 10 of the General Clauses Act, 1897 enable a person to do what he could not have done on a holiday on the next working day. If the last day for filing an appeal expires on a holiday when the Court is closed and the memorandum of appeal cannot be presented, it is obligatory on the part of the appellant to present the same day when the Court reopens. It is also evincible that where Section 4 of the Limitation Act is not applicable, Section 10 of the General Clauses Act comes into aid by extending period to the next day of reopening of the Court. It is also demonstrable that the said provisions do not entitle a person to add the days on which the Court is closed to the statutory period. To put it differently, if the period of the last day of filing of an appeal comes in the midst of a vacation or a holiday, the said period would not get excluded but is extended by applicability of Section 4 of the Limitation Act or Section 10 of the General Clauses Act which enables the affected party to prefer the appeal on the date when the Court or the office reopens. The submission of Mr. Gupta, learned counsel for the petitioner is that as limitation period of

60 days expired on 28th October, 2006 which was a Saturday, the petitioner was entitled to benefit of 28th and 29th October, 2006 being Saturday and Sunday and, thereafter, the further period of 30 days would commence and, therefore, the appeal was presented within the period of limitation. The said proposition, in our considered opinion, runs counter to the principles which are culled out from the authorities we have referred to hereinbefore. We are disposed to think that the Commissioner as well as the revisional authority has correctly computed the period of limitation and appositely opined that the memorandum of appeal was presented on the 91st day and hence, the Commissioner could not have condoned the delay even if sufficient grounds have been shown beyond 30 days, i.e., 90 days in toto. Thus, the finding recorded on that score stands on terra firma.

25. In view of our aforesaid premised reasons, we do not perceive any merit in this writ petition and accordingly the same stands dismissed with costs which is assessed at Rs.20,000/- only.

CHIEF JUSTICE

MANMOHAN, J

JANUARY 7, 2011

Pk/dk