

A.F.R.

Neutral Citation No. - 2024:AHC-LKO:43643

Court No. - 2

Case :- WRIT - C No. - 4810 of 2024

Petitioner :- Sahara Prime City Limited Thru. Its Authorized
Representative/ Director Sri Swapan Ghosh

Respondent :- The Central Government Industrial Tribunal/ Employees
Provident Fund Appellate Tribunal And Others

Counsel for Petitioner :- Nimit Srivastava, Aakchad Nath, Amrendra
Nath Tripathi, Chandra Kant Rai, Rahul Tripathi, Ram Sajan Yadav

Counsel for Respondent :- Akhilesh Pratap Singh

Hon'ble Rajesh Singh Chauhan, J.

1. Heard Shri Amrendra Nath Tripathi, learned counsel for the petitioner assisted by Shri Rahul Tripathi and Shri Nimit Srivastava, learned counsels for the petitioner and Shri Akhilesh Pratap Singh, learned counsel for the respondent nos. 2 and 3.

2. There is no need to issue notice to the opposite party no.1 as the opposite party no.1 is an appellate Tribunal.

3. By means of this petition, the petitioner has prayed following main relief(s):-

“(I.) To issue a writ of certiorari quashing/setting aside the impugned judgment/order dated 18.04.2024 passed by the Opposite Party No. 1 in appeal No. 18 of 2023 in Re: Sahara Prime City Ltd. Vs. Central Board of Trustees, (EPFO) and Ors, as contained in Annexure No. 1.

(II.) A writ, order or direction in the nature of Certiorari quashing the assessment order dated 30.03.2021 along with its corrigendum dated 31.03.2021 passed by Opposite Party No. 3, as contained in Annexure No. 2 to the petition.”

4. At the very outset, Shri Tripathi has drawn attention of this Court towards SA-1 of the supplementary affidavit filed on 18.6.2024, which is the show cause notice, before issue of arrest warrant under Form No. CP-25 dated 31.5.2024, issued by the Recovery Officer, Regional Office, Lucknow of Employees' Provident Fund Organization.

5. Shri Tripathi has submitted that earlier the warrant was issued on 19.1.2024 but at that point of time, the order was reserved by the appellate Tribunal in Appeal No. 18 of 2023 (Sahara Prime City Limited vs. CBT & others) and also in Appeal No. 20 of 2023 (Sahara Net Corp. Limited vs. CBT & another), therefore, after passing the impugned appellate order in both the Appeals on 18.4.2024, that warrant has lost its efficacy.

6. Learned counsel for the petitioner has, precisely, assailed the impugned judgement and order dated 18.4.2024 passed by the Appellate Tribunal in Appeal No. 18 of 2023 in re: Sahara Prime City Ltd. Vs. Central Board of Trustees, (EPFO) and others on the ground that the aforesaid appellate order has been passed solely on the ground that the appeal filed by the appellant is barred by the period of limitation, as provided under Rule 7(2) of the Tribunal (Procedure) Rules, 1997. Notably, the appeal had been filed challenging the orders dated 30.3.2021 and its corrigendum order dated 31.3.2021 passed by the opposite party no.3, Assessing Officer/Regional Provident Fund Commissioner-II/EPFO, Lucknow. Undisputedly, the period of limitation to file an appeal is 60 days and further extended period is 60 days, therefore, as per statutory prescription, the aforesaid appeal should have been filed on or before 31.7.2021.

7. To clarify the controversy in hand, Shri Tripathi has drawn attention of this Court towards Annexure Nos. 24 and 25 which are the orders dated 03.06.2021 and 04.06.2021 respectively passed by the Division Bench of this Court in Misc. Bench No. 11379 of 2021.

8. For the convenience, the aforesaid orders dated 03.06.2021 and 04.06.2021 respectively are being reproduced hereunder:-

"The case has been taken up through Video Conferencing.

Heard learned counsel for the petitioner as well as Sri Akhilesh Pratap Singh, learned counsel appearing for opposite party Nos.2 to 4.

Learned counsel for the petitioner submits that on the basis of impugned recovery certificate the opposite parties are pressing hard to recover the alleged outstanding amount, although the petitioner has already preferred an appeal under Section 7-I of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 before the Central Government Industrial Tribunal (in short "CGIT") against the order dated 23.03.2021, pursuant to which recovery proceedings have been initiated, alongwith an application for waiver of the deposit. In appeal interim relief has also been sought. It is also stated that learned Tribunal is not functional at present as there is no Presiding Officer.

Learned counsel for the opposite party Nos.2 to 4 may seek instructions in the matter particularly as to whether the Central Government Industrial Tribunal is functional at present or not and as to whether the cases listed before it are being heard or not. He may also seek instruction as to whether during the pendency of the appeal of the petitioner the opposite parties are going to press for recovery on the basis of impugned recovery certificate or not.

Put up tomorrow i.e. 04.06.2021."

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"The case is taken up through Video Conferencing.

Heard Mr. Akhilesh Kalra, learned counsel for the petitioner as well as Sri Akhilesh Pratap Singh, learned counsel for the opposite parties no.2 to 4.

The instant writ petition has been filed seeking following reliefs:

"(i) Issue a writ order or direction in the nature of certiorari quashing the recovery certificate dated 17.05.2021 annexed as Annexure No.1.

(ii) Issue a writ order or direction in the nature of mandamus directing the respondent not to take any coercive steps pursuant to the order dated 23.03.2021 during till disposal of Appeal pending before the Appellate Tribunal against the order dated 23.03.2021;

(iii) Ad-interim mandamus to the aforesaid effect.

(iv) Any order or direction may also be passed as this Hon'ble Court deems fit in the facts and circumstances of the case."

Mr. Akhilesh Kalra, learned counsel for the petitioner submitted that petitioner is a Public Limited Company dealing in Insurance Business. The petitioner-company is under the supervisory control of Insurance Regulatory and Development Authority of India (in short "IRDA"). The provisions of the Insurance Act, 1938 and Insurance Regulatory and Development Authority Act, 1999 and the rules and regulations made thereunder are applicable to the petitioner-company. It is submitted that after providing Provident Fund Code numbers to the petitioner vide letter dated 11.01.2013 the respondent no.2 issued a notice dated 15.04.2013 under Section 7A(3) of Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (in short "Act of 1952") to the petitioner. After conclusion of enquiry, which required under Section 7A of the Act of 1952, the enquiry officer submitted his report before the respondent no.2 on 22.03.2021. It is also stated that after submission of

enquiry report the petitioner requested for awarding an opportunity to cross-examine the enquiry officer, however, the said opportunity was not provided and the respondent no.2 without providing the reasonable opportunity to the petitioner passed the order dated 23.03.2021, whereby determined the amount due from petitioner. The amount determined by respondent No.2 vide order dated 23.03.2021 is Rs.62,48,07,169.00 (Sixty Two Crore Forty Eight Lac Seven Thousand One Hundred Sixty Nine Only). It is also stated that the respondent no.2 has passed the order dated 23.03.2021 without considering the material evidence on record as also without providing reasonable opportunity of hearing.

Learned counsel for the petitioner further submitted that being aggrieved by the order dated 23.03.2021 the petitioner has approached the Appellate Tribunal by filing a statutory appeal under Section 7-I of the Act of 1952. This appeal was filed by the petitioner within the time prescribed under the statute. In the appeal the interim relief has also been sought. The appeal has been filed along with an application for waiver of pre-deposit as the Appellate Tribunal is empowered to waive the conditions of pre-deposit, as provided under the Act.

It is further submitted that immediately after filing of the appeal the opposite party no.2 initiated the recovery proceedings for recovering the amount as determined vide order dated 23.03.2021 passed by respondent no.2, which is subjudice before the Appellate Tribunal in the appeal filed by the petitioner.

Learned counsel for the petitioner has also stated that being aggrieved by initiation of the recovery proceedings during pendency of statutory appeal, wherein interim relief has also been sought by the petitioner as also the fact that the Appellate Tribunal at Lucknow is vacant, where the appeal has been preferred by the petitioner, and the Central Government Industrial Tribunal, Kanpur (in short "CGIT") is holding the charge of Appellate Tribunal, Lucknow, however, due to the Covid-19 pandemic the Appellate Tribunal at Lucknow is not functional therefore the appeal as well as application for waiver preferred by the petitioner within time are pending consideration before the Appellate Tribunal, as such, the petitioner has approached this Hon'ble Court for the reliefs sought in the writ petition and if in the given facts and circumstances of the case indulgence is refused by this Hon'ble Court then in that event the petitioner would suffer irreparable loss and injury. It is also submitted that considering the situation of the entire State on account of Covid-19 pandemic this Court in Public Interest Litigation (PIL) No.564 of 2020, vide order dated 26.03.2020 issued certain directions to prevent the miscarriage of justice. The relevant portion of order dated 26.03.2020 is reproduced as under:

"Only with the view to ensure that citizens are not deprived of their right to approach the Courts of law, we propose to exercise our jurisdiction under Articles 226 and 227 of the Constitution of India by issuing certain directions. The directions are required to be issued to ensure that litigants should not suffer on account of their inability to approach the Courts of law. We issue the following directions:

(i) All interim orders passed by the High Court of Judicature at Allahabad as well as at Lucknow, all the District Courts, Civil Courts, Family Courts, Labour Courts, Industrial Tribunals and all other Tribunals in the State over which this

Court has power of superintendence, which have been expired subsequent to 19th March, 2020 or are due to expire within a period of one month from today, will continue to operate upto 26th April, 2020. We, however, make it clear that those interim orders which are not of a limited duration and are to operate till further orders will remain unaffected;

(ii) If the Criminal Courts in the State have granted bail orders or anticipatory bail for a limited period which are likely to expire in one month from today, the said orders will stand extended for a period of one month from today;

(iii) If any orders of eviction, dispossession or demolition are already passed by the High Court, District or Civil Courts, the same shall remain in abeyance for a period of one month from today;

(iv) Considering the fact that it will be practically impossible for the citizens to approach the Courts for redressal of their grievances for a period of twenty one days specified in the order of the Ministry of Home Affairs dated 24th March 2020, we sincerely hope that the State Government, Municipal Authorities and the agencies and instrumentalities of the State Government will be slow in taking action of demolition and eviction of persons.

This order be published in the official website of this Court. A softcopy of this order shall be sent to all concerned Courts and Tribunals; the learned Advocate General; the learned Additional Solicitor General of India; the learned Assistant Solicitor General of India; State Public Prosecutor and the Chairman of Bar Council of Uttar Pradesh."

Learned counsel for the petitioner further submitted that in the facts and circumstances of the case as also taking into account the spirit of the order dated 26.03.2020, passed by this Court in Public Interest Litigation (PIL) No.564 of 2020, the interest of the petitioner may kindly be protected during pendency of the statutory appeal else the purpose of filing of appeal against the order of respondent no.2 dated 23.03.2021 would become a futile exercise by the petitioner. The prayer is to allow the writ petition.

At this juncture, it would be appropriate to mention here that after considering the relevant materials available on record as also the submissions made by learned counsel for the parties this court has passed the following order on i.e. 3.6.2021:

"The case has been taken up through Video Conferencing.

Heard learned counsel for the petitioner as well as Sri Akhilesh Pratap Singh, learned counsel appearing for opposite party Nos.2 to 4.

Learned counsel for the petitioner submits that on the basis of impugned recovery certificate the opposite parties are pressing hard to recover the alleged outstanding amount, although the petitioner has already preferred an appeal under Section 7-I of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 before the Central Government Industrial Tribunal (in short "CGIT") against the order dated 23.03.2021, pursuant to which recovery proceedings have been initiated, alongwith an application for waiver of the deposit. In appeal interim relief has also been sought. It is also stated that learned Tribunal is not functional at present as there is no Presiding Officer.

Learned counsel for the opposite party Nos.2 to 4 may seek instructions in the matter particularly as to whether the Central Government Industrial Tribunal is functional at present or not and as to whether the cases listed before it are being heard or not. He may also seek instruction as to whether during the pendency of the appeal of the petitioner the opposite parties are going to press for recovery on the basis of impugned recovery certificate or not.

Put up tomorrow i.e. 04.06.2021."

On a query being put in the light of the order dated 3.6.2021, as quoted above, Mr. Alhilesh Pratap Singh, learned counsel appearing on behalf of respondents no.2 to 4 could not dispute that the Appellate Tribunal at Lucknow is vacant and in regard to the second query it is submitted that the process of recovery would be taken up as per the procedure prescribed under the Act and the Rules made thereunder as there is no stay from any competent court of law on the issue of recovery of the amount determined by respondent no.2 vide order dated 23.03.2021.

We have considered the submissions made by parties counsel and perused the material available on record.

It is undisputed between the parties that against the order dated 23.03.2021 passed by respondent no.2 the petitioner has preferred an appeal before the Appellate Tribunal at Lucknow, within time, along with an application for waiver and in the appeal the petitioner has sought interim relief. It is also not disputed that the appellate tribunal at Lucknow is vacant and CGIT, Kanpur is holding the charge of Appellate Tribunal at Lucknow. It is further not in dispute that the delay in disposal of the application for waiver or interim relief or appeal is not on account of fault or dilatory tactics adopted by the petitioner. The appeal is statutory appeal under Section 7-I of the Act of 1952.

Considering the admitted position that the Appellate Tribunal at Lucknow is vacant and the Appeal, which has been filed within time, can not be heard nor the application for dispensation of pre-deposit, which is said to have been filed along with Appeal, could be heard and in the given facts the delay, if any, for non-disposal of the same is not attributable to the petitioner as also that the petitioner who has a right of statutory appeal can not be burdened with financial liability under the impugned order without the appeal being heard, it is provided that Appellate Tribunal at Kanpur, which is holding the charge of Appellate Tribunal at Lucknow, as stated in para 43 of the writ petition, shall consider and decide the Appeal of the petitioner filed along with the application for waiver of the statutory deposit with expedition say within a period of six weeks from today, as per law. The interim relief in the appeal, if any, may also be decided considering the urgency in the matter. The Appellate Tribunal may hold virtual hearing, if required. Till six weeks from today the opposite parties shall not take any coercive measure to recover the amount determined vide order dated 23.03.2021 passed by the respondent No.2. In the proceedings before the Appellate Tribunal the petitioner shall not take unnecessary adjournments.

With the aforesaid observations/ directions, the writ petition is disposed of."

9. Shri Tripathi has submitted that by means of the aforesaid order dated 03.06.2021, the Division Bench of this Court directed the learned counsel for the opposite party nos. 2 to 4 to seek specific instructions as to whether the Central Government Industrial Tribunal is functional or not and also as to whether the cases listed before it are being heard or not. On the basis of the instructions, the Division Bench has passed an order on 04.06.2021 to the effect that the appellate Tribunal, Lucknow is vacant and the appeal which has been filed within time cannot be heard nor the application for dispensation of pre-deposit, which is said to have been filed along with the appeal, could be heard. Though the CGIT, Kanpur is holding the charge of Appellate Tribunal, Lucknow.

10. In light of the aforesaid admitted position, the present petitioner, instead of filing an appeal before the appellate Tribunal at Lucknow, has approached the High Court of Delhi by filing a writ petition on 13.9.2021 bearing Writ Petition (C) No. 11387 of 2021 (Sahara Prime City Ltd. vs. Union of India and others). Notably, that writ petition at the High Court of Delhi has been dismissed being withdrawn vide order dated 28.3.2023 which reads as under:-

"1. Petitioner inter alia seeks to impugn section 7-O of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 and seeks quashing of orders dated 30.03.2021 passed by the Central Board of Trustees.

2. Learned Senior Counsel appearing for the petitioner submits that petitioner was constrained to approach this court for the reason that the Employee Provident Fund Appellate Tribunal was not functional for lack of quorum.

3. It is pointed out by learned counsel for the respondent that since the filing of the petition, the constitution of the Tribunal has been augmented and now the Tribunal is fully functional.

4. Learned Senior Counsel for the petitioner accordingly, prays that the petition be permitted to be withdrawn reserving the liberty of the petitioner to approach the Tribunal.

5. Learned Senior Counsel prays that since the petitioner had approached this court, the petitioner be granted benefit of the period from which this petition has been pending before this court for the purposes of computation of limitation.

6. In view of the above, the petition is dismissed as withdrawn with liberty to the petitioner as prayed for. However, it is clarified that the question of limitation for filling the appeal would be appropriately considered by the Tribunal in accordance with the law."

11. Shri Tripathi has submitted that the learned counsel for the respondent has itself intimated the High Court of Delhi that '*now the Tribunal is fully functional*'. On the basis of the aforesaid intimation by the learned counsel for the respondent, the petitioner requested before the Division Bench of the High Court of Delhi that his petition may be dismissed being withdrawn and he may be given liberty to file an appeal before the appellate Tribunal making request that he may be granted the benefit of period from which this petition has been pending before the High Court for the purposes of computation of limitation. The Hon'ble High Court of Delhi dismissed the petition with the aforesaid liberty making further clarification that the question of limitation for filing an appeal would be appropriately considered by the Tribunal strictly in accordance with law. After dismissal of the writ petition by the High Court of Delhi on 28.3.2023, the petitioner immediately filed an appeal before the appellate Court on 31.03.2023.

12. Though Shri Tripathi has fairly submitted that the appeal, which should have been filed on or before 31.07.2021 before the appellate authority, could not be filed within time due to compelling circumstances i.e., extreme condition of Covid-19 but has approached the High Court of Delhi on 13.09.2021 after some delay. However, he has referred Annexure-22 which is the order dated 10.01.2022 passed by the Hon'ble Apex Court in Suo Motu Writ Petition (Civil) No. 3 of 2020 in re: Cognizance for Extension of Limitation.

13. Shri Tripathi has referred the relevant portion of the aforesaid judgement of the Hon'ble Apex Court, which is indicated in para nos. III and IV which read as under:

"III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022, is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the

Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”

14. Shri Tripathi has further submitted that considering the extreme condition of Covid-19, the Apex Court has condoned the delay in all the cases where the period of limitation is prescribed w.e.f. 15.3.2020 to 28.02.2022. As per Shri Tripathi, during the aforesaid period, the petitioner had approached the High Court of Delhi on 13.09.2021, as stated above.

15. Shri Tripathi has also referred Section 14 of the Limitation Act, 1963 which provides exclusion of time of proceeding bona fide in the court without jurisdiction. To explain this Section, Shri Tripathi has submitted that in terms of Section 14 of the Limitation Act, such period of limitation may be excluded if that period has been consumed while approaching any court of law which has, however, got no jurisdiction to entertain such petition.

16. Shri Tripathi has further submitted that even if the petitioner had not sought time before the High Court of Delhi for condoning the delay for which the writ petition was pending at the High Court of Delhi, even then that period would have been excluded in view of Section 14 of the Limitation Act. He has further submitted that even Section 29(2) of the Limitation Act does not specifically bar the aforesaid eventuality as the aforesaid Section provides that the provisions contained in Sections 4 to 24 (inclusive) of the Limitation Act shall apply only in so far as the, and to the extent to which, they are not expressly excluded by such special or local law.

17. In support of his aforesaid submissions, Shri Tripathi has drawn attention of various judgements of the Apex Court viz., ***Consolidated Engg. Enterprises vs. Irrigation Deptt. reported in (2008) 7 SCC 169; Laxmi Srinivas R. and P. Boiled Rice Mill versus State of Andhra Pradesh and another reported in 2022 SCC Online 1790; M.P. Steel Corporation versus CCE reported in (2015) 7 SCC 58; M/s Associated***

Auto-mobile versus Central Government Industrial Tribunal cum Labour Court and others reported in 2023 LLR 682; Rauzagaon Chini Mills Ltd. Versus State of U.P. and others reported in 2019 SCC Online All 5541; Amit Metaliks Limited and another versus Central Government Industrial Tribunal-Cum-Labour Court and another reported in 2023 SCC Online Cal 5551; and Ketan vs. Parekh versus Special Director Directorate of Enforcement and another reported in (2011) 15 SCC 30. However, he has pressed the relevant para nos. 3 and 4 of the judgement of the Apex Court in re: *Laxmi Srinivas R. and P. Boiled Rise Mill versus State of Andhra Pradesh and another reported in 2022 SCC Online 1790* which reads under:-

“3. It is an accepted position that the appellant had filed a writ petition before the High Court on 24.02.2018, which was not entertained vide the order dated 07.03.2018 on the ground that the appellant should approach the Appellate Authority. The appellant is entitled to ask for exclusion of the said period in terms of Section 14 of the Limitation Act, 1963. Exclusion of time is different, and cannot be equated with condonation of delay. The period once excluded, cannot be counted for the purpose of computing the period for which delay can be condoned. Of course for exclusion of time under Section 14 of the Limitation Act, 1963, the conditions stipulated in Section 14 have to be satisfied.

4. In the facts of the present case, we find that the period from the date of filing of the writ petition on 24.02.2018 and the date on which it was dismissed as not entertained viz. 07.03.2018, should have been excluded. The writ proceedings were maintainable, but not entertained. Bona fides of the appellant in filing the writ petition are not challenged. Further, immediately after the dismissal of the writ petition, the appellant did file an appeal before the Appellate Authority. On exclusion of the aforesaid period, the appeal preferred by the appellant would be within the condonable period. Accordingly, we direct that the application for condonation of delay filed by the appellant would be treated as allowed. The delay is directed to be condoned.”

18. To sum up his aforesaid arguments, Shri Tripathi has submitted with vehemence that admittedly, the appellate Tribunal at Lucknow was not functional, as specific information to this effect has been given before the Division Bench of this Court by the learned counsel for the respondent itself. The benefit of limitation w.e.f. 15.3.2020 to 18.2.2022 was provided by the general direction/order of the Apex Court in re: **Cognizance for Extension of Limitation case (supra)** and during the

aforesaid period, the petitioner had approached the High Court of Delhi on 13.09.2021 for the reason that the appellate Tribunal was not functional at Lucknow and when the very fact that the appellate Tribunal has now been functional as has been apprised by the counsel for the respondent itself to the High Court of Delhi, the petitioner got his petition dismissed being not pressed seeking liberty to approach the appellate Tribunal making request that the period of limitation may be exempted for the reason that the petitioner was aware that as per statutory bar, the appeal could have not been filed after a lapse of 120 days and the petitioner filed an appeal before the Appellate Tribunal at Lucknow on 31.03.2023, immediate after dismissal of his writ petition on 28.03.2023, therefore, in view of the aforesaid facts and circumstances, dismissing the appeal of the petitioner on the ground of limitation is patently illegal, arbitrary and uncalled for.

19. He has further submitted that on account of the aforesaid impugned appellate order, the right of the petitioner to be heard on merit on the substantial issue has been jeopardized, therefore, Shri Tripathi has requested that the aforesaid impugned appellate order may be set aside and the appellate Tribunal may be directed to hear the matter of the petitioner on merits.

20. Per contra, Shri Akhilesh Pratap Singh, learned counsel for the respondents has submitted that since there is a statutory bar to approach the appellate Tribunal within a maximum period of 120 days, so the petitioner must approach the appellate Court within time so prescribed. If the petitioner has not approached the appellate Tribunal within time so prescribed, the appellate Tribunal has rightly dismissed the appeal of the petitioner on the ground of limitation.

21. He has referred Section 29(2) of the Limitation Act, 1963 which categorically provides that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 of the Limitation Act categorically provides about the bar of the limitation,

therefore, in light of Section 29(2) of the Limitation Act, the appeal of the petitioner has been rightly rejected by the appellate Tribunal on the ground of limitation.

22. Shri Singh has placed reliance on para nos. 5 to 9 of the Apex Court in re: **Oil & Natural Gas Corp. Ltd. vs. Gujarat Energy Transmission Corporation Ltd & Ors., Civil Appeal No. 1315 of 2010 [Judgement & order dated 01.03.2017]**, which read as under:

"5. On a plain reading of the aforesaid provision, it is clear as crystal that this Court, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the period of 60 days from the date of communication of the decision or order of the appellate tribunal to him, may allow the same to be filed within a further period not exceeding 60 days. It is quite clear that this Court has the jurisdiction to condone the delay but a limit has been fixed by the legislature, that is, 60 days.

6. In **Chhattisgarh State Electricity Board vs. Central Electricity Regulatory Commission & Ors. (2010) 5 SCC 23**, the issue that arose before this Court was whether Section 5 of the Limitation Act can be invoked for allowing the aggrieved person to file an appeal under Section 125 of the Act after more than 120 days from the date of communication of the decision of the tribunal. It adverted to the anatomy of Section 125 and the Appellate Tribunal for Electricity (Procedure, Form, Fee and Record of Proceedings) Rules, 2007 and opined thus:-

"25. Section 125 lays down that any person aggrieved by any decision or order of the Tribunal can file an appeal to this Court within 60 days from the date of communication of the decision or order of the Tribunal. Proviso to Section 125 empowers this Court to entertain an appeal filed within a further period of 60 days if it is satisfied that there was sufficient cause for not filing appeal within the initial period of 60 days. This shows that the period of limitation prescribed for filing appeals under Sections 111(2) and 125 is substantially different from the period prescribed under the Limitation Act for filing suits etc. The use of the expression 'within a further period of not exceeding 60 days' in Proviso to Section 125 makes it clear that the outer limit for filing an appeal is 120 days. There is no provision in the Act under which this Court can entertain an appeal filed against the decision or order of the Tribunal after more than 120 days."

7. The two-Judge Bench placed reliance on **Singh Enterprises vs. C.C.E., Jamshedpur & Ors. (2008) 3 SCC 70** and **Commissioner of Customs and Central Excise v. Hongo India Private Limited & Ar. (2009) 5 SCC 79** and came to hold that Section 5 of the Limitation Act cannot be invoked by this Court for maintaining an appeal filed against the decision or order of the tribunal beyond the period of 120 days in view of the prescription under

Section 125 of the Act and the proviso appended thereto. In that context, the Court held:-

"Any interpretation of Section 125 of the Electricity Act which may attract applicability of Section 5 of the Limitation Act read with Section 29(2) thereof will defeat the object of the legislation, namely, to provide special limitation for filing an appeal against the decision or order of the Tribunal and proviso to Section 125 will become nugatory."

8. After so stating, as we find, the Court adverted to the concept of communication and eventually opined:-

"37. The issue deserves to be considered from another angle. As mentioned above, Rule 94(2) requires that when the order is reserved, the date of pronouncement shall be notified in the cause list and that shall be a valid notice of pronouncement of the order. The counsel appearing for the parties are supposed to take cognizance of the cause list in which the case is shown for pronouncement. If title of the case and name of the counsel is printed in the cause list, the same will be deemed as a notice regarding pronouncement of order. Once the order is pronounced after being shown in the cause list with the title of the case and name of the counsel, the same will be deemed to have been communicated to the parties and they can obtain copy through e-mail or by filing an application for certified copy."

9. The eventual conclusion that was arrived at by the Court was that there is no escape from the conclusion that the appeal, in the said case, had been filed for more than 120 days from the date of communication of the tribunal's order and, therefore, as such the same could not be entertained."

23. On being confronted as to whether while rejecting the appeal of the petitioner, the judgement of the Apex Court in re: **‘Cognizance for Extension of Limitation case (supra)’** which came on 10.01.2022 has been considered by the appellate Tribunal or not, Shri Singh has submitted that though the petitioner had taken a specific ground in his appeal, but citing other similar judgements, the appellate Tribunal does not find it proper to return any specific findings thereon, however, the said judgement has been indirectly considered by the appellate Tribunal.

24. On being further confronted on the point that before the Division Bench of this Court, the specific information was provided on 4.6.2021 (supra) to the effect that no appellate tribunal is functional at Lucknow at that point of time, Shri Singh has submitted that though he was counsel in that case before the Division Bench of this Court and has provided the information to the Court on the basis of instructions so received but some alternative arrangement was going on at Kanpur. However, he has fairly

submitted that on account of non-functioning of the appellate Tribunal at Lucknow, the parties were facing some problem.

25. On being further confronted as to why the order of the High Court of Delhi has not been assailed, wherein the statement of the respondent has been recorded on 28.03.2023 that the '*now the appellate Tribunal is fully functional*', after filing of the writ petition of the petitioner on 13.09.2021, Shri Singh has submitted that he had no instructions to challenge the order dated 28.3.2023 passed by the High Court of Delhi. However, he has submitted that the very fact had been apprised to the appellate Tribunal and the appellate Tribunal has considered that fact in its order which is impugned herein.

26. Heard learned counsel for the parties and perused the material available on record and the judgements of the Apex Court cited by the learned counsel for the parties.

27. Notably, the petitioner could not approach the appellate Tribunal on or before 31.7.2021, which is the time so stipulated by the Act i.e., 120 days, challenging the impugned orders dated 30.3.2021 and 31.3.2021 for the reason that the appellate Tribunal was not functional at Lucknow and having no other efficacious and statutory remedy, he approached the High Court of Delhi under Article 226 of the Constitution of India on 13.9.2021 and that writ petition remained pending till 28.3.2023. When the counsel for the respondent itself informed the High Court of Delhi to the effect that '*now the appellate Tribunal is fully functional*', the petitioner got his writ petition dismissed being not pressed seeking liberty to approach the appellate Tribunal making further request that the period of limitation may be condoned and thus, the High Court of Delhi dismissed that petition on the aforesaid request of the petitioner on 28.03.2023 further clarifying that the question of limitation for filing an appeal would be appropriately considered by the appellate Tribunal. Admittedly, the petitioner filed statutory appeal immediately on 31.03.2023 before Appellate Tribunal at Lucknow.

28. The aforesaid observations so given by the High Court of Delhi was purposeful that while considering the application for condonation of delay of the petitioner, the relevant aspect that his writ petition was pending consideration before the High Court of Delhi since 13.9.2021 to 28.3.2023, would be considered in light of Section 14 of the Limitation Act. Besides, the order of the Hon'ble Apex Court dated 10.01.2022 in re: **'Cognizance for Extension of Limitation case (supra)'** would be taken in its letter and spirit, whereby general period of limitation has been condoned by the Apex Court w.e.f. 15.3.2020 to 28.02.2022.

29. Notably, for the repetition sake, after dismissal of the writ petition by the High Court of Delhi on 28.3.2023, the petitioner approached the appellate Court for filing an appeal immediately on 31.3.2023. The Hon'ble Apex Court in re: ***Laxmi Srinivas (supra)*** has categorically directed that the period for which any petition/writ petition is pending before the appropriate court of law, must be condoned for the purpose of computation of limitation in view of Section 14 of the Limitation Act. Section 29(2) of the Limitation Act also provides that the provisions contained in Sections 4 to 24 (inclusive) shall apply in specific circumstances and the facts and circumstances of the present case are having specific circumstances to invoke the provisions of Section 14 of the Act.

30. So far as the judgement so cited by Shri Singh, leaned counsel for the respondent nos. 2 and 3 in re: **Oil & Natural Gas Corp. Ltd. (supra)** is concerned, the Apex Court in re: **'Cognizance for Extension of Limitation (supra)'** has issued general direction on 10.01.2022 condoning period of limitation with effect from 15.03.2020 to 28.02.2022 and this judgement of three-Judge Bench in subsequent to the judgement cited by the counsel for the respondent. Further, the Apex Court in re: **Laxmi Srinivas (supra)** has specifically directed to allow the benefit of Section 14 of the Act, if any petition of the party is pending consideration before any court of law and this judgement is also subsequent to the judgement cited by the respondent. Besides, in re: **Oil & Natural Gas**

Corp. Ltd. (supra), there is no finding or observation of the Apex Court regarding Section 14 of the Act, so the judgment of the Apex Court in re: **Laxmi Srinivas (supra)** would be applicable in this case.

31. In nutshell, it has been noted that since the Appellate Tribunal at Lucknow was not functional when the impugned assessment order dated 30.03.2021 and its corrigendum order dated 31.03.2021 was passed by the assessing authority, to be more precise it was functional in the year 2023 as informed by the counsel for the respondent to the High Court of Delhi, the petitioner, in the critical condition of Covid-19 was not having any other efficacious or statutory remedy, filed writ petition before the High Court of Delhi on 13.09.2021, the period which was exempted for limitation by the Apex Court in re: **‘Cognizance for Extension of Limitation (supra)’** i.e., from 15.03.2020 to 18.02.2022, that writ petition remained pending till 28.03.2023 and he filed the statutory appeal immediately thereafter on 31.3.2023, therefore, the delay in filing that statutory appeal should have been condoned in the light of Section 14 of the Limitation Act and the appeal must have been decided on merits by the Appellate Tribunal, Lucknow. I am of the considered opinion that if there is any possible way which may be permissible under the law to allow the application for condonation of delay to hear and decide the lis or issue or controversy or dispute before the court of law or tribunal etc. on merits, that very application must be allowed so that the controversy or dispute etc. before the competent court of law could be decided on merits. Normally, the technical approach rejecting the lis or issue or controversy or dispute etc. on the ground of limitation should be avoided and the endeavour of the Tribunal etc. should be to decide the issue etc. on merits as per law by affording an opportunity of hearing to the parties. The facts and circumstances of the present case convince me, in the light of the aforesaid judgements of the Apex Court, that instead of rejecting the appeal of the petitioner on the ground of limitation, it must have been decided on merits strictly in accordance with law.

32. Therefore, in view of the aforesaid facts and circumstances as considered and discussed above, the judgements of the Apex Court as considered above as well as the relevant statutory provisions, the impugned order dated 18.4.2024 passed by the appellate Tribunal, whereby the appeal of the petitioner has been dismissed being barred by the period of limitation is unwarranted and uncalled for and is hereby **set aside**.

33. However, the appeal No. 18 of 2023 (Sahara Prime City Limited vs. CBT & others) is hereby remanded back to the Appellate Tribunal at Lucknow to pass a fresh order strictly in accordance with law. While adjudicating/deciding the aforesaid appeal of the petitioner on merits, the Appellate Tribunal may not influence from any observations of the order of this Court inasmuch as this order is only confined to the effect that the appeal of the petitioner was dismissed on the ground of being barred by the period of limitation, therefore, the appellate Tribunal shall decide the aforesaid appeal on merits strictly in accordance with law by affording an opportunity of hearing to the parties concerned with expedition. It is needless to say that if the petitioner files an application for interim relief before the appellate Tribunal, the same may heard and disposed of with expedition strictly in accordance with law.

34. In view of the above, the writ petition is **allowed**.

35. No order as to costs.

Order Date :- 20.6.2024

Shravan

[Rajesh Singh Chauhan,J.]