

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Tax Case No. 18 of 2015**

Mohd. Saleem Contractor, C/o Bhoramdeo Sahakari Sakkar Utpadak Karkhana
Maryadit, Kawardha, Kabirdham, Chhattisgarh.

---- Appellant

Versus

Union of India, Through the Commissioner of Central Excise & Service Tax,
Central Excise Building, Dhamtari Road, Tikrapura, Raipur, Chhattisgarh 492001

---- Respondent

For Appellant	:	Shri Adhiraj Surana, Advocate.
For Respondent	:	Shri Maneesh Sharma, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Judgment on Board**Per Navin Sinha, Chief Justice****13/08/2015**

1. The present appeal under Section 35-G of the Central Excise Act, 1944 assails the order dated 24.2.2015 passed by the Customs Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter called 'the Tribunal') in Final Order No. ST/A/50651/2015-CU(DB), dismissing the appeal filed by the Appellant as barred by delay of 11 months.

2. Learned Counsel for the Appellant submits that the explanation furnished for delay of 11 months in filing the appeal has not been considered at all. The Tribunal has simply proceeded on an assumption of deemed service of the order of the Lower Appellate Authority, under Section 27 of the General Clauses Act. The deemed presumption is not absolute but is rebuttable. If the Appellant took an objection that the order of the Lower Appellate Authority was not received by it directly, but was served on it on 23.2.2013 by the office of the Superintendent, Central Excise Range,

Rajnandgaon, the deemed presumption halted and the Tribunal was required to give a finding on it. The address mentioned in the appeal before the Tribunal was also different and which has not been considered adequately. The Appellant is serious about the appellate remedy and undertakes to be properly represented before the Tribunal and cooperate for an early disposal.

3. Learned Counsel for the Respondent submitted that if the order of the Lower Appellate Authority was sent at the address furnished in the cause title by the Appellant, there is no error in the deemed presumption under Section 27 of the General Clauses Act. If in the meantime it had changed its address, obligation lay on the Appellant to inform the Lower Appellate Authority appropriately. The order of the Tribunal dismissing the appeal on the grounds of limitation therefore calls for no interference.

4. The law with regard to condonation of delay and what may or may not constitute 'sufficient cause' cannot be put in rigid straitjacket formula. What will constitute sufficient cause will depend upon facts of each case. Duration of delay is also relevant consideration especially when it is not gross and inordinate. The adverse consequences that will follow if an appeal is dismissed on technicalities without going into merits has also to be kept in mind.

5. Before the Lower Appellate Authority, the Appellant had furnished its address at Uttarakhand. Before the Tribunal, it furnished another address at Chhattisgarh. The Appellant may not have been very prudent in informing the Lower Appellate Authority of the change of address. In absence of any finding that it was done deliberately to avoid service and consequent fixation of liability, we do not consider it in the interest of justice to hold that it constitutes sufficient ground to dismiss the appeal on technicalities of law of limitation without consideration of the cause shown. The Tribunal has not disbelieved the contention of the Appellant that the order of the Lower Appellate Authority was served on it on 23.2.2013 by the office of Superintendent, Central Excise

Range, Rajnandgaon. If that be so, presumption of deemed service stood rebutted and a finding was required to be arrived at.

6. We are informed that notices by the Tribunal are sent by registered posts. Even if notice for hearing of the stay application sent by the Tribunal at the Chhattisgarh address was returned with a postal endorsement as "left", it may again raise a presumption but which cannot be absolute. It is not uncommon that if for any reason the postman has not been able to deliver a registered letter within the specified days because the premises may have been locked for one reason or the other on the occasion when the postman went there, he prefers to make his own endorsement and return it.

7. In (1972) 1 SCC 366 (The State of West Bengal v. The Administrator, Howrah Municipality) with regard to condonation of delay, it was observed as follows:

"25. One feature that strikes us on a perusal of the judgment of the High Court is that there is absolute no indication that it has disbelieved of any of the averments made in the affidavits filed on behalf of the appellant. If the High Court had considered the reasons given by the appellant, and rejected them as false or if the High Court had held that there has been such total inaction or negligence on the part of the appellant as would deprive the State of the protection under Section 5 of the Limitation Act, the position would be different. We do not have the benefit of the views of the High Court, one way or the other, on these aspects. At any rate, it has not held that the appellant is guilty of negligence or that the application lack in bonafides.

26. The legal position when a question arises under Section 5 of the Limitation Act is fairly well-settled. It is not possible to lay down precisely as to what facts or matters would constitute "sufficient cause" under Section 5 of the Limitation Act. But it may be safely stated that the delay in filing an appeal should not have been for reasons which indicate the party's negligence in not taking necessary steps, which he could have or should have taken. Here again, what would be such necessary step will again depend upon the circumstances of a particular case and each

case will have to be decided by the courts on the facts and circumstances of the case. Any observation of an illustrative circumstance or fact, will only tend to be a curb on the free exercise of the judicial mind by the Court in determining whether the facts and circumstances of a particular case amount to "sufficient cause" or not. It is needless to emphasize that courts have to use their judicial discretion in the matter soundly in the interest of justice."

8. More recently, in (2013) 12 SCC 649 (Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy) considering the entire conspectus of law based on judicial precedents with regard to condonation of delay and sufficient cause, holding that merit adjudication was always to be preferred to a dismissal of the case at the outset on technicalities leaving the dispute festal, it was observed as follows:

"21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1 (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2 (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3 (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4 (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

...

21.6 (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

...

21.8 (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

...

21.10 (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

...

21.12 (xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception."

9. The order dated 24.2.2015 is set aside. The appeal is restored to file.

10. The Appellant shall appear before the Registrar of the Tribunal alongwith a copy of the present order latest by second week of September, 2015. The Registrar shall then instruct the Appellant to appear before him on a particular date when the next date of hearing shall be intimated to the Appellant who will then pursue its appeal in accordance with law. If the Appellant is not vigilant for protection of its rights and interests, the present order cannot be construed as hindering or fettering the powers of the Tribunal to proceed in accordance with law, if necessary, *ex-parte* also.

11. The appeal is allowed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE