* THE HONOURABLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA

AND

THE HONOURABLE SRI JUSTICE SANJAY KUMAR

+ Writ Appeal No.351 of 2015

% 30-4-2015

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# M/s. Kallap Dinesh Kumar

… Appellant

Vs.

$ The State of Telangana

Rep. by its Principal Secretary

Prohibition & Excise Department

Secretariat

Hyderabad and others.

… Respondents

***! COUNSEL FOR APPELLANT : Sri Challa Srinivas Reddy***

***^COUNSEL FOR RESPONDENTS : The Advocate General (TG)***

<GIST:

>HEAD NOTE:

? CITATIONS:

HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

PRESENT

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA

AND

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT APPEAL NO.351 OF 2015

DATED:30.4.2015

Between:

Kallap Dinesh Kumar

… Appellant

And

The State of Telangana

Rep. by its Principal Secretary

Prohibition & Excise Department

Secretariat

Hyderabad

and others … Respondents

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA

AND

THE HON'BLE SRI JUSTICE SANJAY KUMAR

-

WRIT APPEAL NO.351 OF 2015

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JUDGMENT: (per the Hon'ble The Chief Justice Sri Kalyan Jyoti Sengupta)

We admit this appeal because there is a point of law involved in this matter. As such, learned Government Pleader for Prohibition and Excise (Telangana) agreed to disposal of the appeal today itself without observing any formalities.

2. This matter pertains to affairs of the Excise Department of State of Telangana. We feel that substantial question of law is involved in this matter and fortunately we got the assistance of the learned Advocate General for the State of Telangana.

3. The writ petitioner, appellant before us, suffered an order of confiscation passed under the provisions of the Andhra Pradesh Excise Act, 1968 (hereinafter referred to as 'the Excise Act') by which the vehicle of the petitioner was directed to be confiscated. It is this order against which an appeal was preferred under Section 46-C of the Excise Act, which is set out hereunder:

***"46-C. Appeal.***

*Any person aggrieved by an order passed by Deputy Commissioner of Prohibition and Excise under Section 46 may, within sixty days from the date of passing such order appeal to the Commissioner of Prohibition and Excise, who may after giving reasonable opportunity to the appellant pass such orders as he deems fit."*

4. It will appear that sixty days time limit has been prescribed for preferring any appeal against order of confiscation under the said Act. The writ petitioner –

appellant preferred an appeal beyond the time prescribed. As there is no express power to condone the delay, the appeal was dismissed on the ground of limitation. The appellant before us took this matter to the learned Trial Judge by filing a writ petition under Article 226 of the Constitution of India against the order of rejection of appeal on the ground of limitation. The learned Trial Judge basically upheld the order of the appellate authority.

5. After hearing the learned counsel for the appellant and the learned Government Pleader and also the contention of the learned Advocate General, we think that the learned Trial Judge was not assisted properly as the aforesaid provision nowhere restricts the power of the appellate authority to condone the delay in preferring the appeal in the event an appeal is preferred beyond the prescribed period of limitation. According to us, in such a situation, Section 29(2) of the Limitation Act, 1963 will be applicable. For the sake of convenience, we reproduce the aforesaid Section:

> *"29(2) 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 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Section 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law."*

6. The appeal provision nowhere indicates, even by necessary implication, exclusion of applicability of the Limitation Act, 1963. Therefore, the power of condonation inheres in the appellate authority under the aforesaid Statute by applying provision of Section 5 of the Limitation Act. However, we hasten to add that if Section 5 of the Limitation Act is applied, there may be chances of abuse of such power by unscrupulous litigants. Hence, unlimited condonable period will not be a healthy situation, but Court cannot prescribe any time limit and it is for the appropriate Legislature to fix appropriate condonable period like in the Arbitration and Conciliation Act, 1996 for setting aside Award under Section 34 thereof.

7. The learned Advocate General for the State of Telangana, taking note of the observations of this Court, assures this Court that his Government will take appropriate steps for suitable amendment to Section 46-C of the Excise Act, making a provision for condonable period if appeal is preferred beyond prescribed period of

limitation.

8. The learned Advocate General for the State of Andhra Pradesh, who is also present in Court, submits that although he is not concerned with the matter since the same Act is applicable to the State of Andhra Pradesh at present, his Government will also respond to the observations of this Court by making a suitable amendment prescribing condonable period in the provision of Section 46-C of the Excise Act.

9. Therefore, we allow this appeal and set aside the judgment and order of the learned Trial Judge. We also keep the order of rejection of appeal made by the appellate authority in abeyance for a period of fortnight from date. In the event, the appellant makes an application for condonation of delay under Section 5 of the Limitation Act, then such an application shall be considered in terms of this judgment and if the appellate authority is satisfied with the explanation for the delay, the same may be condoned and thereafter, the appeal may be heard on merit.

Pending miscellaneous petitions, if any, shall stand closed. There will be no order as to costs.

K.J. SENGUPTA, CJ

SANJAY KUMAR, J

30.4.2015

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Note: Reportable.