

HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.9104 of 2012

ORDER:

Heard learned counsel for the petitioner and the standing counsel. With the consent of parties, the writ petition is taken up for disposal.

The petitioner assails order dated 20.09.2011 in ATA.No.615(1) of 2011 of Employees Provident Fund and Miscellaneous Provisions Act, 1952. The impugned order reads as follows:

“The appeal in this case is barred by time. The date of filing of the .present appeal is 15.09.2011 whereas the order against which this appeal has been filed was passed on 07.04.2011.

In the decision reported in 2005 Vol.122 DLT page 502 ARPF Vs. Appellate Tribunal the lordship held that rule making authority under the statute has specifically provided that after the statutory period is over, if there is delay of 60 days, on showing sufficient ground for delay of 60 days, the delay can be condoned. Thus applicability of Section 5 of the Limitation Act is specifically excluded and in the matter of M/s. Hindustan Times Vs. Union of India reported in 1992 Vol.2 STC page 242 the lordship held that, “the provision of Indian Limitation Act, 1963 are not attracted.” Also, in the case of Commissioner of Custom and Central Excise Vs. Hango Indian Pvt., Ltd., reported in 2009 Vol.5 SCC page 791, “in the absence of any clause to condone the delay by showing sufficient cause after the prescribed period there is complete exclusion of Section 5 of the Limitation Act.” In this case, since the appeal was filed after the expiration of limitation period, the same is not maintainable and this Court is also not empowered to condone the delay. Hence, the appeal is dismissed. Copy of order be sent to both the parties. File be consigned to record room.”

Learned standing counsel submits that admittedly, the appeal is filed beyond the period prescribed by the Rules and the delay of 60 days can be considered. The power of the Tribunal to condone the delay is no more *res integra* in view of the decisions reported in ***Assistant Regional Provident Fund Commissioner, Meerut Vs. Employees Provident Fund Appellate Tribunal and others***^[1] and

M/s GMR Agro Chemicals (Pvt) Ltd., Vs.the E.P.F.Appellate Tribunal, New Delhi ^[2]

Learned counsel for the petitioner, however, tries to persuade this Court that the applicability of Section 5 of the Limitation Act, 1963 is an independent circumstance, which is required to be considered in matters like these cases and the decisions on which the learned counsel for the respondents relies upon are not applicable and distinguishable.

The relevant portions of the reported cases (1 and 2 supra respectively) are as follows:

“With regard to the applicability of Sections 4 to 24 of the Limitation Act (inclusive) one will have to refer to sub-section (2) of Section 29 of the Limitation Act, 1963. It specifically states that these provisions shall apply only so far as and to the extent to which, they are not expressly excluded by special or local law. Reading the language of Rule 7 of the Rules and Section 5 of the Limitation Act, it is very clear that extension of time for a period of 60 days only can be considered subject to satisfaction and not beyond that. From an examination of Rule 7 of the Rules, it is very clear that Section 5 of the Limitation Act is expressly excluded as a specific provision is made in Rule 7.”

“The provisions of Rule 7 of the 1997 Rules insofar as they prescribe a limitation period of 60 days which period may be condoned by the Appellate Tribunal on satisfactory cause shown by the appellant only for a further period of 60 days thereafter is distinct (different) period of limitation (in a special law) which proprio vigore disapplies the provisions of Sections 4 to 24 (inclusive) of the Limitation Act. In view of the provisions of Section 29(2) of the Limitation Act, beyond the period of 120 days (even if the Appellate Tribunal were satisfied as to reasonable cause arising for the delay), the delay in filing an appeal cannot be condoned.”

After perusing the ratio laid down in these two decisions, I am of the view that the order impugned does not suffer from an illegality or fails to exercise the jurisdiction vested in the 1st respondent.

The writ petition is dismissed. No order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

S.V. BHATT, J

Date: 12.03.2015

KLP

[\[1\]](#) 2006 II ALJ 388

[\[2\]](#) W.P.No.4990 of 1999 dated 21.10.2008