

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

STA No. 5 of 2016 (O&M)

Date of Decision: 1.4.2016

M/s Premier Motor Garage, Chandigarh

....Appellant

Versus

Commissioner, Central Excise Commissionerate, Chandigarh & another

...Respondents.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? **YES**
3. Whether the judgment should be reported in the Digest?

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE RAJ RAHUL GARG.**

PRESENT: Mr. Sanyan Malhotra, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. This appeal has been filed by the assessee under Section 35G of the Central Excise Act, 1994 (in short “the Act”) read with Section 83 of the Finance Act, 1994, against the order dated 6.12.2013 (Annexure A-4) passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as “the Tribunal”), claiming the following substantial questions of law:-

A. Whether a litigant can be made to suffer dire consequences on account of mistake of counsel?

B. Whether a litigant can be condemned unheard due to

fault on part of its counsel?

C. Whether the issue/matter deserves to be heard and decided on merits?

D. Whether substantial justice can be denied on mere technicalities?

2. The facts necessary for adjudication of the present appeal as narrated therein may be noticed. The appellant was the authorized dealer of the car manufacturer company-M/s Hindustan Motors Ltd. and purchased motor cars from the manufacturer on principal to principal basis and sold the same to respective buyers. It provided services, namely, "Authorized Service Station" and "Business Auxiliary Service" and discharged service tax liabilities from time to time. A show cause notice dated 4.10.2006 (Annexure A-1) was issued to the appellant demanding service tax to the tune of ₹ 15,29,240/- (₹ 4,08,297/- + ₹ 4,26,409/- + ₹ 6,86,972/- + ₹ 7562/-) inclusive of education cess along with interest and penalty. The appellant filed reply dated 28.11.2006 to the said show cause notice. The adjudicating authority vide order dated 19.2.2007 (Annexure A-2) confirmed the demand of service tax amounting to ₹ 14,07,448/- along with interest under Section 75 of the Act. The adjudicating authority directed that the amount of service tax and interest already deposited by the noticee be appropriated against the total demand and interest due thereon. Feeling aggrieved, the appellant filed an appeal before the Commissioner (Appeals) who vide order dated 4.4.2008 (Annexure A-3) partly allowed the appeal and quashed the service tax demand of ₹ 11,13,381/- (₹ 6,86,972/- + ₹ 4,26,409/-). Against the order, Annexure A-3, respondent No.1 filed an appeal bearing STA No. 426 of 2008 before the Tribunal. The Tribunal

vide order dated 6.12.2013 (Annexure A-4) allowed the appeal exparte and set aside the order, Annexure A-3, passed by the Commissioner (Appeals) and restored the order of the adjudicating authority. On receiving information from the department, the appellant contacted its earlier counsel and enquired about the status of the appeal whereby the appellant came to know that the appeal had been allowed vide order dated 6.12.2013. The appellant asked the counsel to hand over the documents. On his failure to do so, the appellant moved an application dated 14.3.2016 (Annexure A-5) before the Tribunal for the certified copy of the order dated 6.12.2013. Accordingly, the appellant filed the present appeal. Since the appeal was barred by time, an application bearing CM No. 6800-CII of 2016 has been filed for condonation of 638 days' delay in filing the instant appeal.

3. We have heard learned counsel for the appellant.

4. The primary question that arises for consideration in the appeal is whether there was sufficient cause for condonation of delay in filing the appeal.

5. Examining the legal position relating to condonation of delay under Section 5 of the Limitation Act, 1963 (in short, the "1963 Act") it may be observed that the Supreme Court in **Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation and another, (2010) 5 SCC 459** laying down the broad principles for adjudicating the issue of condonation of delay, in paras 14 & 15 observed as under:-

"14. We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe

limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time.

15. The expression “sufficient cause” employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate-Collector (L.A.) v. Katiji N. Balakrishnan v. M. Krishnamurthy and Vedabai v. Shantaram Baburao Patil.”

6. It was further noticed by the Apex Court in **R.B. Ramlingam v. R.B. Bhavaneshwari 2009(1) RCR (Civil) 892** as under:-

“.....It is not necessary at this stage to discuss each and every judgment cited before us for the simple

reason that Section 5 of the Limitation Act, 1963 does not lay down any standard or objective test. The test of “sufficient cause” is purely an individualistic test. It is not an objective test. Therefore, no two cases can be treated alike. The statute of limitation has left the concept of “sufficient cause” delightfully undefined, thereby leaving to the Court a well-intentioned discretion to decide the individual cases whether circumstances exist establishing sufficient cause. There are no categories of sufficient cause. The categories of sufficient cause are never exhausted. Each case spells out a unique experience to be dealt with by the Court as such.”

It was also recorded that:-

“For the aforestated reasons, we hold that in each and every case the Court has to examine whether delay in filing the special leave petition stands properly explained. This is the basic test which needs to be applied. The true guide is whether the petitioner has acted with reasonable diligence in the prosecution of his appeal/petition....”

7. From the above, it emerges that the law of limitation has been enacted which is based on public policy so as to prescribe time limit for availing legal remedy for redressal of the injury caused. The purpose behind enacting law of limitation is not to destroy the rights of the parties but to see that the uncertainty should not prevail for unlimited period. Under Section 5 of the 1963 Act, the courts are empowered to

condone the delay where a party approaching the court belatedly shows sufficient cause for not availing the remedy within the prescribed period. The meaning to be assigned to the expression “sufficient cause” occurring in Section 5 of the 1963 Act should be such so as to do substantial justice between the parties. The existence of sufficient cause depends upon facts of each case and no hard and fast rule can be applied in deciding such cases.

8. The Apex Court in **Oriental Aroma Chemical Industries Ltd. and R.B. Ramlingam's cases (supra)** noticed that the courts should adopt liberal approach where delay is of short period whereas the proof required should be strict where the delay is inordinate. Further, it was also observed that judgments dealing with the condonation of delay may not lay down any standard or objective test but is purely an individualistic test. The court is required to examine while adjudicating the matter relating to condonation of delay on exercising judicial discretion on individual facts involved therein. There does not exist any exhaustive list constituting sufficient cause. The applicant/petitioner is required to establish that inspite of acting with due care and caution, the delay had occurred due to circumstances beyond his control and was inevitable.

9. Adverting to the factual matrix in this case, we do not find any merit in the application for condonation of delay. The question regarding whether there is sufficient cause or not depends upon each case and primarily is a question of fact to be considered taking into totality of events which had taken place in a particular case. According to the learned counsel for the appellant, the appellant engaged a counsel, namely, Shri Joy Kumar before the Tribunal to defend the appeal filed by

the department. However, the said counsel did not put in appearance before the Tribunal on 6.12.2013 and the appeal was allowed exparte. In the year 2015, the appellant contacted its counsel to know the status of the appeal filed by the department wherein it was informed that the said appeal had been dismissed by the Tribunal. Thereafter, the appellant in February, 2016 received a call from the department enquiring if any appeal had been filed by the appellant against the order, Annexure A-4. On receiving such information, the appellant inquired about the status of the appeal from its earlier counsel wherein he came to know that the appeal stood allowed on 6.12.2013. Thereafter, the appellant asked its earlier counsel to handover the case file and certified copy of the order which were not supplied. Accordingly, the appellant applied for the certified copy of the order dated 6.12.2013 from the Tribunal on 14.3.2016. It was urged that the delay, if any, has occurred in the aforesaid circumstances in filing the appeal before this Court. Learned counsel further argued that the delay was unintentional and due to the circumstances beyond the control of the appellant.

10. In the present case after appreciating the plea of the appellant, the explanation furnished by it cannot be held to be plausible. It cannot be said that there was sufficient cause for condonation of delay. The Tribunal had decided the appeal on 6.12.2013. However, the appeal before this Court was required to be filed on or before 5.3.2014, i.e. within the stipulated period of limitation of three months. But the appellant filed the appeal before this Court on 28.3.2016, after a long and inordinate delay of 638 days. According to the version of the appellant, it was informed by the counsel that the appeal of the revenue was dismissed in 2015 but still the appellant never bothered to obtain

certified copy of the order. Nothing had been produced to substantiate the said plea either in the form of an affidavit of the counsel or by producing other material on record. Further, this version does not appear to be natural and cannot be said to be reasonable and logical as a litigant would always like to keep his record complete in case the lis had been decided either in his favour or against him by obtaining certified copy of the order and other relevant papers from its counsel which had not been done here. The story put forth by the appellant is a camouflage to cover the inordinate and unexplained delay in filing the present appeal. Since no sufficient cause has been shown in the present case, no ground for condonation of delay is made out.

11. In view of the above, there is no merit in the application for condonation of delay and the same is hereby dismissed. Consequently, the appeal is also dismissed as barred by time.

(AJAY KUMAR MITTAL)
JUDGE

April 1, 2016
gbs

(RAJ RAHUL GARG)
JUDGE