

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 1171 OF 2016**

Mr. Anthony J. N. Rodrigues,
S/o Manuel Francis Philip Rodrigues,
57 years of age, Bachelor,
Indian National,
R/o H. No.80, Near Hotel Neptune,
Panaji-Goa.

.... Petitioner

v e r s u s

1. Commissioner of Excise,
Government of Goa,
Panaji-Goa.

2. The Chief Secretary,
Government of Goa,
Secretariat Building,
Porvorim-Goa.

.... Respondents

(All registered addresses)

Shri Nigel Da Costa Frias , Advocate for the Petitioner.

Ms. N. Kholkar, Additional Government Advocate for the
Respondent nos.1 and 2.

CORAM: C. V. BHADANG, J.
DATE: 24th January, 2017.

ORAL JUDGMENT:

Rule, made returnable forthwith. The learned
Additional Government Advocate waives service for the

respondents.

2. The petitioner is challenging the order dated 29/10/2012 passed by the second respondent refusing to condone the delay in filing an appeal on the ground that there is no provision under the Goa Excise Duty Act, 1964 (the Act, for short) permitting condonation of delay in filing an appeal under section 40 of the said Act.

3. On behalf of the petitioner reliance is placed on the decision of the Hon'ble Supreme Court in the case of **Mukri Gopalan Vs. Cheppilat Puthanpurayll Aboobacker** (1995) STPL, 6068 SC. Reliance is placed on section 29(2) of the Limitation Act 1963 in order to submit that in the absence of the provisions of sections 4 to 24 of (both inclusive) being expressly excluded by the provisions of the Act, section 5 of the Limitation Act would not apply.

4. On hearing the learned counsel for the petitioner and the learned Additional Government Advocate for the

respondents, I find that the matter would be governed by section 29(2) of the Act and as rightly submitted on behalf of the petitioner, in the absence of there being any express exclusion of sections 4 to 24 of the Limitation Act, it cannot be said that the powers to condone the delay were not available.

5. In so far as laches are concerned, it is submitted by the learned counsel for the petitioner that the petitioner was suffering from depression (Bipolar disorder) and was under treatment and was not moving out and as such could not take steps for challenging the order earlier. The learned Additional Government Advocate in all fairness submitted that as the matter is being remanded to the appellate authority she has no serious dispute on the ground of delay and laches in challenging the said order before this Court. In such circumstances the following order is passed:

ORDER:

- (i) The petition is partly allowed. The impugned order is hereby set aside.

- (ii) The second respondent shall decide the application for condonation of delay in filing the appeal on its own merits in accordance with law.
- (iii) Rule is partly made absolute in the aforesaid terms with no order as to costs.

C. V. BHADANG, J.

Ap/