

Gurbax Singh
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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CEA No. 10 of 2017 (O&M)
Decided on : 25.09.2017**

M/s Paras Steel Ltd.

. . . Appellant

Versus

The Commissioner of Central Excise and Service Tax, Chandigarh

. . . Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AMIT RAWAL**

PRESENT: Ms. Jatinder Jit Kaur, Advocate
for the appellant-assessee.

Mr. Saurabh Goel, Sr. Standing Counsel
for the respondent-revenue.

Ajay Kumar Mittal, J.

1. The appellant-assessee has filed the instant appeal under Section 35G of the Central Excise Act, 1944 (in short 'the Act') against the order dated 01.11.2011 (Annexure A-6) passed by the Customs Excise & Service Tax Appellate Tribunal (in short 'the Tribunal') in Excise Appeal No.2926 of 2009. Further prayer has been made for staying the operation of the orders dated 01.11.2011, 30.01.2009 & 30.07.2009 (Annexures A-6, A-2 & A-3, respectively).

2. A few facts relevant for the adjudication of the controversy involved as narrated in the appeal may be noticed. The appellant-M/s Paras Steels Ltd., Mandi Gobindgarh was registered with the Central Excise Department as a registered manufacturer of flats below 3mm in thickness and non-alloy steel ingots. The said registration certificate was surrendered

on 30.05.2008. The Department issued a show cause notice dated 09.07.2008, after investigation of transactions of M/s Rohit Ispat and M/s Shri Balaji Ispat. In the show cause notice, it was alleged that the above said two companies were issuing duty paid invoices without actual supply of goods. It was further alleged that the assessee being manufacturer had entered into paper transactions without actual transfer of goods and wrongfully credited Cenvat credit amounting to ₹4,98,584/-. The assessee reversed appropriate Cenvat credit which was reflected in its register as entry No.811 on 03.03.2008 i.e. even before the issuance of the show cause notice. The assessee submitted a reply to the show cause notice saying that the goods were actually received by it and corresponding manufacturing records were produced. Thereafter, the Deputy Commissioner decided the show cause notice vide order dated 30.01.2009, whereby, recovery of Cenvat credit of ₹4,98,584/- along with applicable interest under Rule 14 of the Cenvat Credit Rules, 2004 read with Sections 11A and 11AB of the Central Excise Act, 1924, was confirmed. Further, a 100% penalty amounting to ₹4,98,584/- was imposed along with payment of interest. Aggrieved by the order, the assessee filed an appeal before the Commissioner (Appeals), Central Excise, Chandigarh. Vide order dated 30.07.2009 (Annexure A-3), the said appeal was dismissed. Still not satisfied, the assessee filed an appeal before the Tribunal along with stay application dated 09.10.2009. The Tribunal vide its stay order dated 19.03.2010 (Annexure A-5), considering the fact that the assessee had already debited the duty amount, asked the assessee to deposit 25% of the penalty amount along with interest. The assessee deposited 25% of the penalty amount, amounting to ₹1,24,646/- vide challan dated 14.09.2011.

The assessee deposited the total penalty amount in various installments by 03.12.2014. The Tribunal vide its common order dated 01.11.2011, dismissed seven appeals including that of the assessee arising out of the order dated 30.07.2009 passed by the Commissioner (Appeals) for non-compliance. The assessee came to know about the dismissal of its appeal on account of non-compliance when other appeals arising out of the same impugned order dated 30.07.2009 were decided by the Tribunal. The Tribunal vide its common order dated 29.08.2016 decided the appeals in favour of the assessee. Hence, the instant appeal by the appellant-assessee.

3. We have heard learned counsel for the parties.

4. There is a delay of 1731 days in filing the present appeal. An application under Section 5 of the Limitation Act, 1963 along with supporting affidavit for condonation of delay has been filed. No satisfactory explanation has been furnished by the assessee for such an inordinately long delay. Learned counsel for the assessee has also not been able to justify such a long delay in filing the appeal in this Court.

5. This Court in **VAT Appeal No. 47 of 2012 (M/s Hansaflon Plasto Chem. Ltd v. State of Haryana and others)** decided on 5.7.2012 following the decisions of the Hon'ble Supreme Court in **Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation and another, (2010) 5 SCC 459** and **R.B. Ramlingam v. R.B. Bhavaneshwari 2009(1) RCR (Civil) 892** had analyzed the broad principles for condonation of delay under Section 5 of the Limitation Act, 1963 as under:-

“6. 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.

7. The Hon'ble 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.”

6. 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. In the present case, the Tribunal vide its order dated 01.11.2011 dismissed seven appeals including that of the assessee arising out of the order dated 30.07.2009 passed by the Commissioner (Appeals) for non-compliance. According to the assessee, it came to know about the dismissal of its appeal on account of non-compliance only when other appeals were decided by the Tribunal. We do not find this as a sufficient ground for condoning the delay.

7. In view of the above, the application for condonation of delay is dismissed. Consequently, the main appeal also stands dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(AMIT RAWAL)
JUDGE

September 25, 2017

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Whether speaking/reasoned:

Yes

Whether Reportable:

Yes