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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **SERTA 10/2018**

PNEUMATIC POWER TOOLS & CO. ..... Appellant

Through Mr. Karan Sachdev and Mr. Yogendra Aldak, Advs.

versus

UNION OF INDIA & ANR. ..... Respondents

Through Mr. Dev P. Bhardwaj, CGSC for R-1/UOI
Mr. Sanjeev Narula, Sr. Standing Counsel for Custom with Mr. Abhishek Ghai, Adv.

AND

\+ **SERTA 11/2018**

PNEUMATIC POWER TOOLS & CO. ..... Appellant

Through Mr. Karan Sachdev and Mr. Yogendra Aldak, Advs.

versus

UNION OF INDIA & ANR. ..... Respondents

Through Mr. Dev P. Bhardwaj, CGSC for R-1/UOI
Mr. Sanjeev Narula, Sr. Standing Counsel for Custom with Mr. Abhishek Ghai, Adv.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

<u>O R D E R</u>

% **15.05.2018**

CHANDER SHEKHAR, J.

CM No. 16833/2018 in SERTA 10/2018
CM No.16835/2018 in SERTA 11/2018

Exemptions allowed subject to all just exception. The applications are disposed of.

CM No. 16834/2018 in SERTA 10/2018
CM No.16836/2018 in SERTA 11/2018

These are applications filed under Section 151 of Code of Civil Procedure, 1908 seeking condonation of delay of 115 days in filing of the present appeals.

It is submitted by the appellant that the stipulated time of 180 days for filing of the present appeals in terms of Section 35G of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994, expired on 18.11.2017. It is further submitted by the appellant that the appellant had earlier approached the High Court of Chhattisgarh at Bilaspur against the impugned order by way of an appeal filed on 08.08.2017 and the said appeal was dismissed by the said High Court at vide order dated 09.01.2018 permitting the appellant for withdrawal of the appeals with liberty to agitate the matter appropriately.

It is stated in the applications that the delay is on account of the fact that earlier the appeal was filed bona fide before another forum, thus, it is requested that the delay in filing the present appeals be condoned, while relying upon the Section 14 of the Limitation Act, 1963.

For the reasons as stated above, the delay of 115 days in filing of both the appeals is condoned.

Applications are disposed of.

SERTA 10/2018 and SERTA 11/2018

1. This judgment shall govern the disposal of the aforestated two appeals i.e. SERTA No. 10/2018 and SERTA No.11/2018 filed by the same appellant M/s Pneumatic Power Tools & Co., under Section 35G of the Central Excise Act, 1944 wherein the appellant has made the following common prayers:

> i) To set side the impugned Misc. Order No. MO/50172-50173/2017-CU[DB] dated 11.04.2017 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi.
>
> ii) To condone the delay in making the pre-deposit of the amount required to be deposited in terms of Section 35F of the Central Excise Act, 1944 read with Section 83 of the Act.
>
> iii) To restore the Service Tax Appeal Nos. 562/2007 & 565/2007 filed by the appellant before the Tribunal, New Delhi.

2. The Central Excise and Service Tax Appellate Tribunal ('Tribunal' for short) vide its impugned order dated 11.4.2017 dismissed the applications filed by the appellant for restoration of appeals by recalling its Final Order No. ST/163-164/2009 dated 08.05.2009 passed by the Tribunal, whereby the Tribunal dismissed the said appeals filed by the appellant for non-

compliance of the stay order dated 28.1.2008, directing the appellant to deposit 50% of the adjudicated demand.

3. Brief common facts of the appeals filed before this Court are that the appellant is a partnership firm and it was *inter alia* engaged in undertaking packaging & bundling of iron and steel products within the premises of Bhillai Steel Plant of Steel Authority of India Ltd. (SAIL). Pursuant to investigations carried out by the preventive officers of the Central Excise Division - I, Bhillai, Show Cause Notices dated 15.10.2004 in SERTA No. 10/2018 and 29.08.2005 in SERTA No.11/2018 were issued to the appellant by the Deputy Commissioner, Central Excise, DN.I, Bhillai wherein the department alleged that:

a. Appellant was providing the services of cargo handling, taxable under Section 65(105)(zr) read with Section 65(23), to Bhilai Steel Plant, Steel Authority of India (SAIL).
b. The activity in question was that of unitization, nesting packing & bundling of goods for convenience of segregating and for easy transportation of such goods. These activities were undertaken by Appellant within the factory premises of Bhilai Steel Plant.
c. Accordingly, service tax demands of Rs. 8,62,924/- (SERTA No. 10/2018) and Rs.4,66,953 (SERTA No.11/2018) were proposed to be recovered from appellant along with demand of interest and the proposal to impose penalties under Sections 76, 77 & 78 of the Act.

4. Learned counsel for the appellant has contended that the activity undertaken by appellant was not in the nature of cargo handling services and that appellant was not a cargo handling

agency. The Additional Commissioner of Customs & Central Excise, Raipur, vide Order-In-Original dated 30.11.2006 in *SERTA No. 10/2018 and* Order-In-Original dated 21.02.2007 in *SERTA No.11/2018* confirmed the demand proposed in the show cause notices along with interest and penalties.

5. The appeals filed by appellant against the aforestated Orders-In-Original were dismissed by the Commissioner (Appeals), Central Excise, Raipur-II vide Orders-in-Appeal dated 28.06.2007 and 17.07.2007 respectively. The said orders-in-appeal were challenged before the Tribunal, wherein a stay order dated 28.1.2008 was passed directing the appellant to deposit 50% of the tax demand within the period of 08 weeks from that date. Aggrieved by the said stay order, the appellant filed a Writ Petition (c) No. 3673/2008 before this Court. Though this Court vide order dated 10.7.2008 dismissed the said Writ Petition but it extended the time to deposit the amount as directed by Tribunal by further eight weeks from that date. Further, on an application filed by the appellant, this Court vide order dated 9.9.2008 extended the time to make the pre-deposit by six weeks from that date. On 24.11.2008, this Court orally directed the Appellant to move to the Tribunal in view of the changes in the legal position. However, the Tribunal vide order dated 17.03.2009 dismissed the appellant's application praying modification of the earlier stay order dated 28.01.2008.

6. Thereafter, the appellant preferred an appeal to the Supreme Court and during its pendency, the Tribunal vide its

order dated 08.05.2009 dismissed the appeals of the appellant on failure to comply with its earlier stay order dated 28.01.2008 vide which the appellant was directed to deposit 50% of the tax demand.

7. On 13.07.2009, the appeal of the appellant before the Supreme Court was dismissed in default.

8. Thereafter, the appellant deposited the entire tax component vide challan dated 20.03.2015.

9. The appellant thereupon moved an application before the Tribunal requesting to recall its final order dated 08.05.2009 in both the service tax appeals. The Tribunal vide its impugned common order dated 11.04.2017 dismissed the appellant's applications and refused to restore the appeals. Aggrieved by the said order of the Tribunal, the appellant preferred an appeal before the High Court of Chhattisgarh at Bilaspur being Tax Case No. 138-139/2017 wherein the following order was passed on 09.01.2018:

> *"2. Particularly in view of the fact that on an earlier occasion the matter was agitated before the Delhi High Court but the same withdrawn, however, the Delhi High Court allowed 8 weeks time to make the required pre-deposit which was later on extended by further 6 weeks but the deposit of entire principle amount together with the part interest was made only on 20th March, 2015, we permit withdrawal of the appeals with liberty to agitate the matter appropriately."*

10. It is stated that on 09.03.2018 the appellant has also deposited the remaining balance amount of interest and penalty

in both the cases, totaling to Rs. 12,06,777/-. Hence, the entire amount of demand stands deposited in the present case.

11. In view of the aforesaid facts, it would be quite appropriate that a list of dates and events in a tabulated form be reproduced to understand the delay and laches which are as under:-

List of dates and events in SERTA No. 10/2018

15.10.2004	A Show Cause Notice was issued to Appellant proposing to recover service tax amounting to Rs. 8,62,924/- alleging that Appellant provided the taxable service of cargo handling to Bhilai Steel Plant, Steel Authority of India (SAIL).
30.11.2006	The Ld. Additional Commissioner of Customs & Central Excise, Raipur, vide Order-In-Original confirmed the demand proposed in the SCN along with interest and penalties.
28.06.2007	The appeal filed by Appellant against the Order in Original dated 30.11.2006, was dismissed by the Ld. Commissioner (Appeals), Central Excise, Raipur-II vide Order in Appeal dated 28.06.2007.
28.01.2008	In the appeal filed by Appellant against the OIA dated 28.06.2007 before the Tribunal, a stay order was passed directing the Appellant deposit 50% of the tax demand within the period of 8 weeks.
10.07.2008	Delhi High Court dismisses Applicant's Writ Petition filed against the Stay Order dated 28.01.2008 passed by the Tribunal.
09.09.2008	Delhi High Court grants further extension of 6 weeks to Applicant to make the pre-deposit.
24.11.2008	In the modification application filed by the Appellant due to change in legal position, the Delhi High Court orally directed the Appellant to move to the Tribunal.

17.03.2009	The Tribunal dismissed Appellant's application praying modification of the Stay Order dated 28.01.2008
06.05.2009	Appellant moves to the Supreme Court against Tribunal's order dated 17.03.2009
08.05.2009	Pending the appeal before Supreme Court, the Tribunal dismisses Appellant's appeal for failing to comply with its earlier stay order dated 28.01.2008.
13.07.2009	Appellant's appeal before the Supreme Court dismissed in default.
20.03.2015	Appellant deposits an amount of Rs. 8,62,924/- vide Challan dated 20.03.2015.
July 2016	Appellant moves an application before the Tribunal requesting the to recall its Final Order dated 08.05.2009
11.04.2017	The Tribunal vide the impugned Misc. Order No.MO/50172-50173/2017-CU[DB] dismisses Appellant's application and refused to restore the appeal.
August 2017	Against the said order dated 11.04.2017 passed the Tribunal, Appellant preferred an appeal before the High Court of Chhattisgarh, Bilaspur.
09.01.2018	The High Court of Chhattisgarh, Bilaspur permitted Appellant to withdraw the appeals with liberty to approach this Court and passed the following order in Tax Case No.138-139/2017: *"2. Particularly in view of the fact that on an earlier occasion the matter was agitated before the Delhi High Court but the same withdrawn, however, the Delhi Court allowed 8 weeks time to make the required pre-deposit which was later on extended by further 6 weeks but the deposit of entire principle amount together with the part interest was made only on 20th March,*

	2015, we permit withdrawal of the appeals with liberty to agitate the matter appropriately."
13.03.2018	Hence, the present appeal.

List of dates and events in SERTA No. 11/2018

29.08.2005	A Show Cause Notice was issued to Appellant proposing to recover service tax amounting to Rs. 4,66,953/- alleging that Appellant provided the taxable service of cargo handling to Bhilai Steel Plant, Steel Authority of India (SAIL).
21.02.2007	The Ld. Additional Commissioner of Customs & Central Excise, Raipur, vide Order-In-Original confirmed the demand proposed in the SCN along with interest and penalties.
17.07.2007	The appeal filed by Appellant against the Order in Original dated 21.02.2007, was dismissed by the Ld. Commissioner(Appeals), Central Excise, Raipur-II vide Order in Appeal dated 17.07.2007
28.01.2008	In the appeal filed by Appellant against the OIA dated 17.07.2007 before the Tribunal, a stay order was passed directing the Appellant deposit 50% of the tax demand within the period of 8 weeks.
10.07.2008	Delhi High Court dismisses Applicant's Writ Petition filed against the Stay Order dated 28.01.2008 passed by the Tribunal
09.09.2008	Delhi High Court grants further extension of 6 weeks to Applicant to make the pre-deposit
24.11.2008	In the modification application filed by the Appellant due to change in legal position, the Delhi High Court orally directed the Appellant to move to the Tribunal
17.03.2009	The Tribunal dismissed Appellant's application praying modification of the Stay Order dated 28.01.2008.

06.05.2009	Appellant moves to the Supreme Court against Tribunal's order dated 17.03.2009
08.05.2009	Pending the appeal before Supreme Court, the Tribunal dismisses Appellant's appeal for failing to comply with its earlier stay order dated 28.01.2008.
13.07.2009	Appellant's appeal before the Supreme Court dismissed in default.
20.03.2015	Appellant deposits an amount of Rs. 4,66,953/- vide Challan dated 20.03.2015.
July 2016	Appellant moves an application before the Tribunal requesting the to recall its Final Order dated 08.05.2009
11.04.2017	The Tribunal vide the impugned Misc. Order No. MO/50172-50173/2017-CU[DB] dismisses Appellant's application and refused to restore the appeal
August 2017	Against the said order dated 11.04.2017 passed the Tribunal, Appellant preferred an appeal before the High Court of Chhattisgarh, Bilaspur.
09.01.2018	The High Court of Chhattisgarh, Bilaspur permitted Appellant to withdraw the appeals with liberty to approach this Court and passed the following order in Tax Case No.138-139/2017: *"2. Particularly in view of the fact that on an earlier occasion the matter was agitated before the Delhi High Court but the same withdrawn, however, the Delhi Court allowed 8 weeks time to make the required pre-deposit which was later on extended by further 6 weeks but the deposit of entire principle amount together with the part interest was made only on 20th March, 2015, we permit withdrawal of the appeals with liberty to agitate the matter appropriately."*
13.03.2018	Hence, the present appeal.

12. The aforesaid lists of dates and events clearly demonstrate that show cause notices were issued to the appellant on 15.10.2004 and 29.08.2005 proposing to recover the service tax amounting to Rs.*8,62,924/-* in SERTA No. 10/2018 and Rs. 4,66,953/- in SERTA No.11/2018. Thereafter, the Additional Commissioner of Central Excise, Raipur vide Order-in-Original confirmed the demand proposed in the show cause notices on 30.11.2006 and 21.02.2007 respectively. The aforesaid two orders were challenged by the appellant in appeals which were also dismissed by the Commissioner (Appeals), Central Excise, Raipur-II vide orders dated 28.06.2007 and 17.07.2007. Thereafter, the appellant filed the appeals against the Orders-in-Appeal before the Tribunal and a stay order dated 28.01.2008 was passed directing the appellant to deposit 50% of the tax demand within a period of eight weeks. Thereafter, the appellant against the aforesaid order dated 28.01.2008 filed a writ petition before this Court which was dismissed as withdrawn vide order dated 10.07.2008, granting 08 weeks time from that date to make the pre-deposit. This Court vide order dated 09.09.2008 further granted an extension of 06 weeks for making the payment in compliance of the order dated 28.01.2008 of the Tribunal.

On 24.11.2008, in view of the modification application filed by the appellant, this Court orally directed the appellant to move the Tribunal. Thereafter, the Tribuna1 dismissed the application filed by the appellant praying for the modification of the stay order dated 28.01.2008. The Tribunal during the pendency of the appeal before the Supreme Court vide order dated 08.05.2009 dismissed the appeal of the appellant for failing to comply with the its earlier order dated 28.01.2008. The appeal of the appellant, that was then pending before the Supreme Court was dismissed in default vide order dated 13.07.2009. Clearly, the orders had attained finality.

13. The aforesaid list of dates clearly demonstrate that the appellant after a gap of almost 5 ½ years deposited part of the demand amounting to Rs. 8,62,924/- (in SERTA 10/2018) and Rs.4,66,953/- (in SERTA 11/2018) vide challans dated 20.03.2015 and thereafter, the appellant in July, 2016 moved an application requesting the Tribunal to recall its final order dated 08.05.2009. However, the Tribunal vide orders dated 11.04.2017 dismissed the applications of the appellant and refused to restore the appeals. The appellant, thereafter, preferred an appeal in August, 2017 before the High Court of Chhattisgarh, Bilaspur against the order dated 11.04.2017. The appellant, thereafter, withdrew the appeal from the High Court of Chhattisgarh on 09.01.2018 with liberty to approach this Court.

14. Learned counsel for the appellant submitted that they have a good case on merits and the Order-in-Original dated 30.11.2006 as well as the order passed by the Commissioner (Appeals), Central Excise, Raipur-II vide Order-in-Appeal dated 28.06.2007 are likely to be set aside.

15. The similar question arose in the matter of CEAC 12/2018, ***Golden Tobacco Limited v. Customs Excise Service Tax Appellate Tribunal& Anr.,*** which was decided by this Bench itself, vide judgment dated 23.03.2018, wherein it was held as follows:-

> *"11. The appellant had challenged the pre-deposit order before the High Court and the Supreme Court, with alternative prayer for extension of time for compliance. Extension of time was granted and terms were also modified. However, the terms imposed were not adhered to and complied as only part payments were made. Non-compliance is admitted.*
>
> *12. The Tribunal on 7th February, 1996 dismissed the appeals for failure of the appellant to make the pre-deposits. The order of dismissal and non-compliance was made nearly three and a half years after the Order in Original dated 10th July, 1992 and the order of the Tribunal directing pre-deposit dated 19th January, 1993. Thus, sufficient time and opportunity was granted.*
>
> *13. The order of dismissal of the appeal dated 7th February, 1996 was not challenged for 22 years. In 2017, the appellant woke from slumber and moved a miscellaneous application for restoration of the appeal primarily on the pretext that disputed tax had been paid. This delay of 22 years cannot be condoned on vague assertions and general statements that law of condonation of delay is liberal and justice would prevail if the appeals are heard on merits for payments have been made. Such pleas are specious and deserve rejection.*
>
> *14. As noticed above, show cause notice for clandestine manufacture/sale etc. was issued on 25th*

March, 1988. The Order in Original was passed on 10th July, 1992. Recoveries obviously had to be made, especially once the Order in Original had become final. Mere recoveries or even payment after years cannot result in restoration of the appeals or justify condonation of delay in moving the restoration application.

15. Appellant states that, pursuant to the orders passed in October, 2010 in cases of independent companies, in December, 2010, Vice-President (Law) was asked to file restoration application in the appeals before the Tribunal. The plea is not substantiated. It is accepted that no restoration application was filed. Contention that the appellant company was not aware of default by the Vice-President (Law) and had assumed that the restoration application had been filed, is moonshine, doctored and apparently false for it is accepted that till 2017 no attempt was made to ascertain and verify whether the application was listed and the order passed. Copy of the application is not on record and could never be located.

16. Contention that proceedings were pending before BIFR and therefore, restoration application could not be filed, is again not the true reason and cause for not filing restoration application. Tribunal had dismissed the appeals for non-payment of the pre-deposit on 7th February, 1996, a year before the appellant was declared as sick company by BIFR vide order dated 3rd April, 1997. Exact date when the reference application was filed before the BIFR is not indicated. Reference application before the BIFR was registered as Case No.17/97. A scheme was approved and sanctioned on 16th December, 2002. As per the appellant, BIFR had directed refund/ withdrawal of pre-deposit and had directed non imposition of pre deposit during the rehabilitation period. No *application was filed before the Tribunal for revival of the appeals. Net worth of the appellant turned positive during the financial year ending 31st March, 2007 and the BIFR vide order dated 29th June, 2007 had discharged the appellant from purview of the enactment relating to sick companies, though as per the appellant direction to implement provisions of the scheme and monitoring before the BIFR had continued. Even thereafter, no application was filed before the Tribunal for ten years, till 2017. The appellant clearly accepted the order of the Tribunal and did not seek revival of the appeals and hearing on merits.*

17. In view of the aforesaid discussion, we do not find any valid ground or reason to interfere with the impugned order. The appellant has been grossly negligent and derelict. Their inaction reflects acceptance and abandonment. The appellants have failed to show good cause and justification. On the other hand, their conduct lacks bona fide and manifests recklessness. This careless attitude and indifference is unacceptable.

18. There is no doubt that liberal construction of the words 'sufficient cause' can be put when there is neither negligence nor inaction nor want of bona-fides imputable to the applicant. However, in this case, there is not only negligence, but also inaction as well as the petition lacks bona-fides. There is virtually no explanation for a substantial portion of period spanning over 22 years. The list of dates and events itself demonstrate that for years, the appellant was inactive and in a state of acceptance and a vague description of events is submitted, which only demonstrates their lack of bona fide and gross negligence. Hence, we do not find any flaw or infirmity in the order of the Tribunal, rejecting the application for condonation of delay in filing the restoration *application and accordingly dismissing the application for restoration. Judgments relied by the appellant are based on facts, hence, are not of any help, in view of the facts of the present appeal, which are glaring and deserve no indulgence and leniency.*

19. In view of the aforesaid discussion, we do not find any ground to issue notice in the present appeal impugning the order dated 21.2.2018, dismissing the application for condonation and to direct restoration of Excise Appeal No.5237/1992 to hear the same on merits. As the appeal is dismissed without issue of notice, we do not impose costs. All the pending applications are also dismissed."

16. In the present case also, the order dated 28.01.2008 was passed directing the appellant to deposit 50% of the tax demand. Compliance was mandatory. Against the stay order dated 28.01.2008, the appellant filed writ petition No. 3673/2008 before this Court and the same was dismissed on 10.07.2008 while granting further 08 weeks' time to make the pre-deposit as directed by the Tribunal and they were granted further extension of time of six weeks vide order dated 09.09.2008 to make the pre-deposit. However, the appellant did not deposit the amount, rather it moved a modification application before this Court which was dismissed as withdrawn vide order dated 24.11.2008. Thereafter, the appellant moved the modification application before the Tribunal which was dismissed on 17.03.2009. Against the said order, the appellant filed an appeal on 06.05.2009 before the Supreme Court.

During the pendency of the appeal before the Supreme Court, the Tribunal vide order dated 8.5.2009 dismissed the appeals of the appellant for failing to comply with its order dated 28.01.2008. After that, the appeal before the Supreme Court was dismissed in default on 13.07.2009, in consequence whereof, the aforesaid orders had somewhat merged into the order of the Supreme Court.

17. As discussed hereinabove, the appellant woke up from its slumber after 5½ years and deposited the amount on 20.03.2015 in both the cases and moved applications in July, 2016 before the Tribunal to recall its dismissal in default's order dated 08.05.2009.

18. There is virtually no explanation or sufficient cause for not complying with the orders dated 08.05.2009, 28.01.2008 and during the extended period granted vide order dated 09.09.2008, for almost 6 years. The conduct of the appellant again demonstrates lack of *bona fides* on their part. Delay in deposit of 5 ½ years is substantial. Thereafter, they did not move any application for almost 16 months to recall the final order dated 08.05.2009 of Tribunal after the deposit of the part of the amount on 20.3.2015. There has been unexplained delay in depositing the amount and not moving the applications within the stipulated time. The delay of almost 06 years in depositing the amount and thereafter, delay of 16 months of moving an application before the Tribunal cannot be condoned on vague assertions. In case we accept the plea and condone protracted

and unexplained delays, the appellate proceedings would become seemingly endless, that could be revived on payment at the option of the appellant-assessee.

19. Learned counsel for the appellant has as discussed hereinabove, vehemently submitted that the appellant has a very good case on merits. However, in view of the facts, whether the appellant has a very good case or not, mere recoveries/ deposit of amount after years cannot allow a party to move an application for the restoration of the appeal. Such a conduct cannot be permitted for maintaining the judicial discipline. The delay is condonable when sufficient cause is shown. Explanation should be from the last day of limitation. Appellant must show diligence and bona fides and not inaction or negligence. Condoning such delays would make the proceedings interminable and would legalize injustice. Compliance of orders and time limit is the norm and mandate. If a party comes with a plea which shows its inaction, casual approach as well as its lack of bona fide, then its claim must be rejected.

20. Mere payment cannot result in restoration of appeal by moving an application where there has been an unexplained delay. The appellant has failed to disclose good cause and justification. The case in hand entirely manifests recklessness, demonstrates lack of *bona fides* and shows the careless attitude of the appellant. Such a careless attitude and indifference on the part of the appellant in the absence of sufficient explanation and

cause for not making payment for over 5 years and then in moving an application together is not acceptable, rather this court is of the opinion that if the courts are going to accept the contention of the appellant and condone the delay and allow recall, when the applications do not disclose any cause or ground, it will defeat the ends of justice. As held in ***Golden Tobacco Limited*** (supra), liberal construction of the words 'sufficient cause' can be put when there is neither negligence nor inaction nor want of bona-fides imputable to the applicant.

21. Hence, in view of the aforesaid circumstances and in view of the inaction on the part of the appellant which clearly shows abandonment of the cause and their conduct clearly demonstrates reckless and careless attitude which cannot be accepted at any point of time by the Courts. There is gross negligence on the part of the appellant and cause submitted in the application demonstrates that appellant lacks bona fides.

22. The appeals of the appellant were dismissed on 13.07.2009 before the Supreme Court. The order of the Tribunal attained finality. The appellant after nearly 6 years cannot be allowed to unturn and seek recall of orders passed. Hence, we do not find any reason to interfere with the orders of the Tribunal dated 11.04.2017 dismissing the applications of the appellant to restore the appeals.

23. The appellant relied upon various judgments, ***Lords Chloro Alkali Ltd. v. Commissioner of C.Ex., Jaipur-I,*** 2015 (326) ELT 490 (Raj.), ***Priya Dyers v. Commissioner of Central***

Excise, 2014 (305) ELT 504 (Guj.), ***Kisaan Gramodyog Sansthan v. CCE, Kanpur***, 2017 (50) S.T. R. 103 (S.C.), ***Avtar & Company v. UOI***, 2016 (43) STR 61 (M.P.) and ***Rathi Ispat Ltd. v. CCE***, 2015 (317) ELT 449 (All.). However, the judgments relied upon by the appellant are based on different and distinct facts, hence, the same are not helpful to the case of the appellant, more so in view of the judgment in ***Golden Tobacco Limited*** **(supra)** and the fact that that the order dated 08.05.2009 of the Tribunal had attained finality. The reliance of the appellants on the aforesaid judgments is misplaced. As held above, there should be finality and appeals cannot be revived at anytime on making payment, for this would make the litigation vexing, uncertain and never ending.

24. In view of the aforesaid discussions, we do not find flaw or infirmity in the order dated 11.04.2017 of the Tribunal dismissing the applications of the appellant refusing the restoration of the appeals. Accordingly, the appeals filed by the appellant are dismissed. Parties are, however, left to bear their own costs.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

MAY 15, 2018
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