

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CUSAP No.69 of 2018(O&M)

Date of Decision:-10.12.2019

Deepak Bhandari.

.....Appellant.

Versus

**Commissioner of Customs, In Land Container Depot, GRFL, Sahnewal,
Ludhiana, Punjab.**

.....Respondent.

**CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH**

Present:- Mr. Jagmohan Bansal, Advocate for the Appellant.

JASWANT SINGH, J.

1. The Appellant through instant appeal under Section 130 of Customs Act, 1962 is seeking quashing of final order dated 11.5.2017 (**Annexure A-5**) whereby CESTAT, Chandigarh has dismissed appeal of the Appellant on the ground of delay of 721 days. Present appeal is also accompanied with an application seeking condonation of delay of 249 days.

2. Mr. Bansal, counsel for the Appellant contended that Appellant on receipt of recovery notice from Respondent contacted his advocate to ascertain status of appeal and came to know that no appeal has been filed as there was no instruction to file appeal. The Appellant on 03.08.2018 approached his counsel and requested him to file appeal before this Court.

Ld. Tribunal has allowed appeal of co-noticee by way of demand, thus it is

hyper technical and unreasonable to dismiss appeal of the Appellant on the

ground of limitation.

3. Concededly there was delay of 721 days in filing appeal before CESTAT and there is delay of 249 days in filing appeal before this Court. As per Appellant, delay before Tribunal/CESTAT took place because copy of impugned order was not received on account of closure of their unit in 2008. The Appellant received copy of order passed by First Appellate Authority when recovery notice was received in 2016 and thereafter appeal was filed before CESTAT/Tribunal. The reason of delay before this Court is that Appellant was under impression that appeal has already been filed.

4. No doubt, it is trite law that no appeal or petition should be thwarted at the threshold of limitation and courts should not adopt pedantic approach while deciding application seeking condonation of delay, length of delay is immaterial and Applicant is not required to explain delay of each day, however it is equally settled in law that Courts cannot come to the rescue of fence sitters or negligent persons who treat the provisions of Limitation Act in a casual, taken for granted and at their convenience manner.

5. In the present case, we find that Tribunal/CESTAT has dismissed appeal on the ground of delay. There was long delay of 721 days in filing appeal before Tribunal. Appeal was dismissed because reason of delay furnished by Appellant was not found convincing. The Appellant for filing appeal before Tribunal as well this Court woke up when recovery notice was received. After dismissal of appeal by Tribunal, the Appellant could file appeal within 180 days before this Court. Period of 180 days is not a small period still Appellant, who delayed in filing appeal before Tribunal, thought it fit to wait till recovery notice and did not think it

appropriate to take immediate remedial steps when appeal was dismissed by Tribunal thereby causing delay of 249 days in filing the present appeal. This reflects the attitude and seriousness of Appellant to pursue his cause. Had Appellant been serious in filing appeal, the Appellant after dismissal of appeal by Tribunal must have acted promptly and filed appeal without waiting for lapsing of prescribed period. There seems a total slackness and culpable negligence on the part of Appellant, thus we do not find any reason to condone delay. Accordingly, appeal is **dismissed** on the ground of delay.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

December 10, 2019
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>