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

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Decided on: 25th October, 2021

+ LPA 386/2021

UNION OF INDIA AND ORS

..... Appellants

Through: Ms. Shiva Lakshmi, Central
Government Standing Counsel with Mr. Sri Ram,
Advocates

Versus

DR. REDDYS LABORATORIES LTD

..... Respondent

Through: Ms. Neelima Tripathi, Senior
Advocate with Mr. Apoorv P. Tripathi, Ms.
Gunjan Singh and Mr. Umang Kapoor, Advocates.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

: **D. N. PATEL, Chief Justice (Oral)**

Proceedings have been conducted through video conferencing.

CAV.No.44/2021

Since respondent has entered appearance, caveat stands discharged.

C.M.No.36995-96/2021 (exemptions)

Allowed, subject to all just exceptions.

Applications are disposed of.

**LPA 386/2021 & CM.Nos.36997/2021 (delay), 36998/2021 (stay),
36999/2021 (addl. docs)**

1. Present Letters Patent Appeal has been preferred by the Appellants
(Original Respondents) against the order dated 25.02.2019, passed by the

learned Single Judge in W.P.(C) No.1743/2019 (Annexure A-1 to the memo of this appeal). There is a delay of 921 days in preferring the appeal and, thus, C.M. No. 36997/2021 has been preferred seeking condonation of delay.

2. Learned counsel appearing for the Appellants submits that the delay of 921 days in preferring the appeal is mainly for the reason that in a similar matter related to Annual IEIS Scheme, the issue was already under litigation with regard to correct interpretation of Notification dated 25.09.2013 whereby amendments were made in the Foreign Trade Policy 2009-2014. The Division Bench of this Court had passed an order on 12.04.2018 in W.P.(C) 5082/2017 in the case of M/s. Welldone Exim and Respondents had thereafter filed SLP(C) No.012878/2019 in October, 2018 before the Hon'ble Supreme Court. The matter is still *subjudice* in the Hon'ble Supreme Court and a few other matters involving similar issues have been tagged with the said SLP. It is also submitted that in the Government, the files have to pass through several departments/officers dealing with the matter which is time consuming and the Directorate has also to take inputs from the concerned Regional Office of the DGFT and seek legal advice from the Department of Legal Affairs. The delay is unintentional and for reasons beyond the control of the Appellants. Learned counsel for the Appellants also submits that the delay is also caused on account of the Pandemic Covid-19 as initially there was a lockdown and thereafter, the functioning in the Government offices was restricted.

3. As far as the merits of the appeal are concerned, learned counsel appearing on behalf of the Appellants submits that the maximum limit for benefit of Duty Credit Scrip under the Incremental Export Incentivisation

Scheme (for short 'IEIS Scheme') is Rs.1 crore, as per Notification No.43 dated 25.09.2013 and, therefore, claim of the Respondent (original petitioner in W.P.(C) No.1743/2019) was rejected initially by the Additional Director General of Foreign Trade, Hyderabad vide order dated 30.01.2018 and thereafter, by Director General of Foreign Trade vide order dated 16.11.2018. Learned counsel submits that the Notification No.43 dated 25.09.2013 is explicitly clear and unambiguous and permits no flexibility in the grant of benefit beyond the maximum limit prescribed and the relevant clause of the Notification has been ignored by the learned Single Judge.

4. Learned Senior Counsel appearing on behalf of Respondents vehemently opposes the application seeking condonation of delay. It is submitted that even if it is assumed in favour of the Appellants, for the sake of argument, that there was a lockdown on account of Covid-19, followed by restricted functioning in the Government offices for some time, there is no explanation in the application for condonation of delay, by the Appellants for the period between the date of pronouncement of judgment by learned Single Judge i.e. 15.02.2019 to the date of declaration of Nationwide lockdown i.e. 25.03.2020. Thus, there is a clear delay of approximately 365 days even prior to the declaration of lockdown on 25.03.2020. The application is completely silent except for stating that the files have to move from one Department to the other in the Government and that the Appellants were awaiting the outcome of the litigation pending in Hon'ble Supreme Court. Appellants have failed to make out a sufficient cause and it is a settled law that in the absence of a sufficient cause, the delay should not be condoned by the Courts.

5. As far as the merits of the matter are concerned, it is submitted by learned Senior Counsel appearing on behalf of the Respondent that no doubt, under Clause 3(i) of the Notification No.43 dated 25.09.2021, the benefit of IEIS for the year 2013-2014 is limited to a scrip of a value not exceeding Rs.1 Crore per IEC, however, the Appellants are completely overlooking Clause 3(ii) which specifically provides that claims in excess of Rs.1 crore will be subjected to greater scrutiny by the Regional Authority. This clearly implies that claims in excess of Rs.1 Crore can be allowed and the only rider is that they shall be subjected to a stricter scrutiny. Learned Senior Counsel further submits that the issue involved in the present writ petition has already been decided by Division Bench of this Court in ***M/s Welldone Exim Private Ltd. vs. DGFT & Anr., W.P.(C) 5082/2017***, decided on 12.04.2018 and places reliance on para 12 thereof. It is contended that the learned Single Judge has passed the impugned order on the basis of the observations of the Division Bench in the aforesaid case and thereby directed the Appellants to re-examine the case of the Respondent for export incentives in terms of the decision of the Division Bench. The final decision has been left to be taken by the Appellants and, therefore, in any event, no prejudice is caused to the Appellants herein and it is open to them to pass a fresh order.

6. We have heard learned counsel appearing on behalf of the Appellants and learned Senior Counsel appearing on behalf of the Respondent and have looked into the facts and circumstances of the case.

7. It is an undisputed position that there is a delay of 921 days in filing the present appeal. The reasons/grounds set out in the application seeking condonation of delay are in paragraphs 2, 3 and 4 and are reproduced

hereunder:-

“2. That on passing of the impugned judgment and order dated 25.2.2019, there was deliberation in the department as to the next steps to be taken in the matter, in view of the fact that in the same matter related to Annual IEIS Scheme, the issue was already under litigation with regard to the correct interpretation of Notification No.43/RE-2013)/2009-14 dated 25.09.2013 by which amendments were made in the Foreign Trade Policy (FTP) 2009-14. The Division bench of the Delhi High Court had passed an order dated 12.04.2018 in WP 5082 of 2017 of M/s Welldone Exim and the respondents had also filed SLP(C) No. 012878 of 2019 - Diary No.41394 of 2018 in October 2018, seeking a review of the order dated 12.04.2018 in the Hon'ble Supreme Court. The matter was then subjudice in the Apex Court. It was expected then that the matter would soon be decided and there may not be any need for filing a review, since any order the SLP c no. 012878 of 20'19, would automatically have applied to the order in the matter 17 43 of 2019 also. However, since October 2018, it has been 3 years and the matter is still pending in the Supreme Court, although 10 cases of a similar nature were tagged to the original SLP (which includes cases decided by the Hon'ble Delhi High Court also as in Attire Designers (WP No.5091 /2017 - Annexure R 1 with the list of tagged cases may kindly be seen).

3. That the Respondent/ Applicant submits that under the Government of India (Allocation of Business) Rules 1963, the files/case papers are required to be passed through several departments/officers involved in the matter who are expected to examine matter and then opine as to on what sets of ground be taken up for filing LPA. The Directorate has to take inputs from the concerned Regional Office of DGFT, and also move the file to Department of Legal Affairs for necessary inputs and then have the LPA filed in consultation with the Government appointed counsel.

4. Therefore, there is a delay in filing the above LPA. It is respectfully submitted that the delay in filing above review petition which has been occasioned on account of unavoidable

circumstances beyond the control of Applicant Department as would be evident from the following reasons:

- 25.02.2019 *Final judgment and order was passed by this Hon'ble Court in W.P(C) No. 17 43/2019 on 25.2.2019.*
- 15.05.2019 *Department has filed an SLP covering the same core issue of interpretation of Notification no. 43 as in SLP(C) No. 012878 - / 2019 Registered on 15-05-2019, vide Diary no. 41394 of 2018 submitted in October 2018.*
- May 2019
to March 2020 - *The SLP 012878 of 2019 was listed in the Supreme Court on 06.09.2019 and was to be listed in any day after September 26, 2019.*
- 26.09.2019 *Matter was heard again in Supreme Court but was adjourned for listing after 2 weeks.*
- 25.03.2020 *National lockdown amid Covid-19 outbreak was imposed for 21 days, due to which the Departmental day to day working was at stand still.*
- 15.04.2020 *Lockdown was further extended for 19 days. The decision making and day to day working was at stand still.*
- 17.04.2020 *The Central Government Standing Counsel received communication from the Department that LPA has to be filed against the order dated 25.02.2019.*
- 04.05.2020 *Lockdown was further extended for 14 days.*
- 18.05.2020 *Lockdown was further extended for 14 days.*
- 01.06.2020 *Unlock 1 process was initiated in phased manner; however the Department could not function on its full capacity.*
- 11.06.2020 *The Supreme Court took notice and ordered that "Contempt Petition, if any, pending*

before the High Court shall remain stayed until further orders. (Annexure R 2 - order dated 11 June 2020 of the Apex Court). Thereby, the Supreme Court had observed that contempt, if any, pending shall remain stayed until further orders.

<i>01.07.2020</i>	<i>Unlock 2 was initiated in phased manner; however the Department could not function on its full capacity.</i>
<i>01.08.2020</i>	<i>Unlock 3 was initiated in phased manner; however the Department could not function on its full capacity.</i>
<i>11.08.2020</i>	<i>The Office of Central Government Standing Counsel received Comments/draft from the Department for preparing the LPA.</i>
<i>01.09.2020</i>	<i>Unlock 3 was initiated in phased manner; however the Department could not function on its full capacity.</i>
<i>18.11.2020</i>	<i>The draft LPA was sent to the Department for their approval.</i>
<i>25.11.2020</i>	<i>The Draft LPA was sent back by the Department after approval by the concerned section officer to the Counsel for taking necessary action.</i>
<i>December 2020 to April 2021</i>	<i>While the pandemic was going on, in the meantime the Officer dealing with the said matter was transferred, due to which there was lack of communication between the Standing Counsel's Office and the Department.</i>
<i>10.04.2021</i>	<i>Lockdown was imposed in Delhi amid Covid-19 outbreak with immediate effect till 30.04.2021.</i>

25.04.2021	<i>Lockdown was extended in Delhi till 03.05.2021 and the working of the counsel's office was disrupted.</i>
27.04.2021	<i>The counsel for the applicant and her family tested Covid positive and was under strict isolation and recovery.</i>
01.05.2021	<i>Lockdown was extended in Delhi till 10.05.2021.</i>
09.05.2021	<i>Lockdown was extended in Delhi till 17.05.2021.</i>
16.05.2021	<i>Lockdown was extended in Delhi till 24.05.2021.</i>
29.05.2021	<i>Lockdown was extended in Delhi till 07.06.2021.</i>
June-July 2021	<i>There have been various correspondence and conference between the Department and counsel for the applicant for structuring the LPA. It is also submitted that the department could not function on its full capacity during the period of lock down and Court matters which are dealt .in physical files could not be accessed either in the regional office or in the Headquarters of the respondents.</i>
14.09.2021	<i>The Standing Counsel received the approved copy of the LPA from the Department again for filing."</i>

8. Having perused the aforesaid paragraphs, we find merit in the contention of the Respondent that there is no explanation which can be called as a 'sufficient cause' for the delay between 25.02.2019 when the impugned judgment was pronounced and 25.03.2020 when the Nationwide lockdown was imposed. The timelines mentioned in the application are

primarily focussed on explaining the delay between 25.03.2020 till the filing of the appeal, for the period prior thereto the only explanation is the filing of the SLP in the case of *M/s. Welldone Exim (supra)*. Even if this Court was to exclude the period of lockdown, the benefit cannot inure to the advantage of the Appellants inasmuch as there is a delay of nearly one year prior to the imposition of lockdown. This Court also fails to understand how the filing or pendency of an SLP in another matter prevented the Appellants from filing an appeal against the judgment impugned in the present case. It is a settled law that an Appellant must make out a sufficient cause for delay, to enable the Court to condone the same. Parties who are not vigilant and diligent in prosecuting and agitating their rights and act as mere fence sitters, cannot be permitted to take advantage of their lethargy and laxity. It is evident that the Appellants slept over their rights from 25.02.2019 to 25.03.2020 and cannot take advantage of their own wrong and seek condonation of delay.

9. It has been held by the Hon'ble Supreme Court in *Postmaster General v. Living Media India Ltd.*, **(2012) 3 SCC 563** as under:-

“28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that

unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

30. *Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.”*
(emphasis supplied)

10. In ***Basawaraj v. Land Acquisition Officer, AIR 2014 SC 746***, the Hon’ble Supreme Court has held as under:-

*“12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. “A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.” The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means “the law is hard but it is the law”, stands attracted in such a situation. It has consistently been held that, “inconvenience is not” a decisive factor to be considered while interpreting a statute.*

13. *The statute of limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale. According to Halsbury's Laws of England, Vol. 28, p. 266:*

“605. Policy of the Limitation Acts.—The courts have expressed at least three differing reasons supporting the existence of statutes of limitations namely, (1) that long dormant claims have more of cruelty than justice in them,

(2) that a defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence.”

An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches. (See Popat and Kotecha Property v. SBI Staff Assn. [(2005) 7 SCC 510], Rajender Singh v. Santa Singh [(1973) 2 SCC 705 : AIR 1973SC 2537] and Pundlik Jalam Patil v. Jalgaon Medium Project [(2008) 17 SCC 448 : (2009) 5 SCC (Civ) 907])

14. xxx xxx xxx

15. *The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No*

court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”

(emphasis supplied)

11. In view of the aforesaid, in our view, the Appellants have not made out a sufficient cause for condonation of delay of 921 days and, therefore, the application deserves to be dismissed. Since we are not inclined to condone the enormous delay of 921 days, we do not intend to enter into the merits of the appeal. Be it only noted that Notification No.43 dated 25.09.2013 has already been interpreted by a Division Bench of this Court in ***M/s Welldone Pvt. Ltd. vs. DGFT & Anr., W.P.(C) 5082/2017***, decided on 12.04.2018, more particularly in paragraph 12, which reads as under:-

“12. In view of the aforesaid discussion, the present writ petitions are allowed with a direction to the Regional Authority to examine the case of the petitioner for grant of export incentive and pass a reasoned and speaking order. The application would not be rejected on the ground that total amount being claimed exceeded Rs. 1 crore during the financial year 2013-14. However, the greater scrutiny in terms of clause (ii) of paragraph 3.15.5 (c) read with paragraph 3.8.3 (e) (ii) would be undertaken. The aforesaid exercise would be completed within 10 weeks from the date copy of this order is served on the respondent. There would be no order as to costs.”

12. In view of the aforesaid facts, reasons and judicial pronouncements, we see no reason to condone the delay in filing this appeal. Therefore, C.M. APPL. No.36997/2021 is dismissed.

13. Accordingly, the Appeal along with other pending applications is also dismissed.

CHIEF JUSTICE

JYOTI SINGH, J

OCTOBER 25, 2021
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