

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No. 306 of 2020 (O&M)

Date of Decision: 29.10.2022

**The Punjab State Cooperative Supply and Marketing Federation
Limited (Markfed)**

...Appellant

Versus

Appellate Authority and others

....Respondents

**Coram : HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present : Mr. Tushar Sharma, Advocate, for the appellant

JAGMOHAN BANSAL, J.

CM No. 822-LPA of 2020

Application is for condonation of delay of 59 days in filing the appeal.

Keeping in view the averments made in the application supported by affidavit of Gurbhajnik Singh, Law Officer, The Punjab State Cooperative Supply and Marketing Federation Limited and in view of the nominal delay of 59 days in filing the appeal is hereby condoned.

Application stands disposed of.

LPA No. 306 of 2020

1. The appellant through instant appeal under Clause X of Letters Patent of this Court is seeking setting aside of order dated 23.9.2019 passed by learned Single Judge in CWP No. 23364 of 2019 whereby learned Single Judge has dismissed writ petition of the appellant on the sole ground that

appellate authority constituted under Payment of Gratuity Act, 1972 (for short “1972 Act”) has no power to condone delay beyond 60 days whereas appellant filed appeal before appellate authority alongwith an application seeking condonation of delay of 87 days.

Brief Facts:

2. The brief facts emerging from record and arguments of Learned counsel for the appellant are that appellant filed appeal against decision of controlling authority under 1972 Act before appellate authority which came to be dismissed on the ground of delay. The appeal was filed after 147 days from the date of receipt of order passed by controlling authority. The controlling authority passed order on 11.1.2018 directing the appellant to pay Rs. 1,78,195/- plus simple interest @ 10% per annum from 28.2.2009 and appellant received its copy on 15.1.2018. The appellant filed an appeal before appellate authority along with an application seeking condonation of delay. The appellate authority vide order dated 29.10.2018 dismissed the same on the ground that under no circumstance the appellate authority can entertain appeal beyond 120 days from the date of receipt of copy of the order whereas appeal has been filed after 147 days from the receipt of copy of order.

The appellant preferred CWP No. 23364 of 2019 before this Court which came up for consideration before learned Single Judge who vide impugned order dated 23.9.2019 dismissed the same. Learned Single Judge has held that as per Section 7 (7) of 1972 Act, the appellate authority cannot condone the delay beyond 60 days whereas there was delay of 147 days, thus, the appellate authority has rightly dismissed appeal of the

appellant-writ petitioner.

Contention of the appellant:

3. Learned counsel for the appellant vehemently contended that Section 7(7) of the 1972 Act provides that appeal should be filed within 60 days from the date of receipt of the order and as per proviso to Section 7(7) of the 1972 Act, the appellate authority can condone delay up to 60 days. The proviso to Section 7(7) provides that appellate authority can condone delay up to 60 days, however, it does not exclude applicability of Section 5 of Limitation Act and in the absence of exclusion of applicability of Section 5 of Limitation Act, the appellate authority can condone delay even beyond 60 days as appellant had plausible reason for delay. In support of his contention, learned counsel relied upon a three Judge Bench judgment of the Hon'ble Supreme Court in **Superintending Engineer/Dehar Power House Circle Bhakra Beas Management Board (PW) Slapper and another vs. Excise and Taxation Officer, Sunder Nagar (2020) 17 SCC 692** wherein Hon'ble Court has held that Section 5 of Limitation Act is applicable to a revision filed under Section 48 of the Himachal Pradesh Value Added Tax, 2005 (for short "H.P.VAT Tax Act").

Learned counsel contended that ratio of judgment of Hon'ble Supreme Court in **Superintending Engineer (supra)** is squarely applicable to the case in hand because there is no specific exclusion of Limitation Act in 1972 Act. Thus, appellate authority as well as writ court has wrongly dismissed appeal/petition of the appellant on the ground of limitation. The findings of Hon'ble Supreme Court read as:-

"28. In the light of the decisions as mentioned earlier,

when we examine the scheme of the Act of 2005, the provisions contained in section 45 provides for an appeal from every original order passed under the Act or the Rules made thereunder. Subsection (4) of section 45 provides appeal to be filed within 60 days, or such more extended period as the appellate authority may allow, for reasons to be recorded in writing. Thus, because of the provisions contained in section 45(4), the principles of Section 5 would apply to an appeal before the appellate authority, which otherwise in the absence of specific provision would not have applied to authority. The revision is provided to the Commissioner suo motu under the provisions of Section 46(1), and the period provided is 5 years for suo motu exercise of revisional power. However, the tribunal has the power to entertain application within 60 days from the date of communication of the order. When we consider the provisions of Section 48, revision is provided to the High Court, and an aggrieved person may within 90 days of the communication of such order, file a revision. Section 48(1) nowhere expressly excludes the applicability of provisions of the Limitation Act. The provisions of Section 5 are applicable to Section 48 as they are not expressly excluded by the provisions under the Act of 2005. More so, in view of the provisions in Section 45(4), which makes provisions to condone the delay like the Limitation Act, conferring power upon an authority also to condone delay. Further, suo motu revision has also been provided under Section 46. In Section 48, there is no express exclusion. Because of the scheme of the Act, it cannot be inferred that by implication, the provisions of Section 5 of the Limitation Act are excluded. Provisions contained in Section 29(2) of the Limitation Act would be attracted as there is no express exclusion or by

implication, in view of the provisions of the Act of 2005. We hold that by virtue of the provisions contained in Section 29(2), provisions of Section 5 of the Limitation Act would apply to proceedings under Section 48 of the Act of 2005.

29. *The High Court has relied upon the decision of this Court in Patel Brothers vs. State of Assam (2017) 2 SCC 350 in the context of the Assam VAT Act in which the abovementioned provision of Section 84 made the difference, which makes specific provision that only Sections 4 and 12 of the Limitation Act are applicable. Consequently, it follows that other provisions are not applicable. The decision in Hongo India Private Limited (supra) also turned on the scheme of the Excise Act. The scheme of the Excise Act is materially different than that of the Himachal Pradesh VAT Act. Thus, the decision in Hongo India Private Limited (supra) also cannot be said to be applicable to interpret the Himachal Pradesh VAT Act. As the revision under the Act of 2005 lies to the High Court, the provisions of Section 5 of the Limitation Act are applicable, and there is no express exclusion of the provisions of Section 5 and as per Section 29(2), unless a special law expressly excludes the provision, Sections 4 to 24 of the Limitation Act are applicable. When we consider the scheme of the Himachal Pradesh VAT Act, 2005, it is apparent that its scheme is not ousting the provisions of the Limitation Act from its ken which makes principles of Section 5 applicable even to an authority in the matter of filing an appeal but for the said provision the authority would not have the power to condone the delay. By implication also, it is apparent that the provisions of Section 5 of the Limitation Act have not been ousted; they have the play for condoning the limitation under Section 48 of the Act of 2005. Suo*

motu provision of revisional power is also provided to the Commissioner within 5 years. Thus, the intendment is not to exclude the [Limitation Act](#). We condone the delay in filing of revision.”

Discussion and findings:

4. We have scrutinized the record and heard arguments of counsel for the appellant. We find that the present appeal is bereft of merit and deserves to be dismissed for the reasons assigned hereinafter.

5. Before advertizing with the contentions of the appellant, it would be appropriate to look at Sections 7(7) of 1972 Act and 48 of H.P.VAT Act. Relevant extracts of Section 7 of 1972 Act and 48 of H.P.VAT Act read as:-

Section 7(7) of Payment of Gratuity Act, 1972

Any person aggrieved by an order under sub-section (4) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days:

Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under sub-section (4), or deposits with the appellate authority such amount.

Section 48 of Himachal Pradesh Value Added Tax Act, 2005

Revision to High Court.- (1)Any person aggrieved by an order made by the tribunal under sub-section (2) of section 45 or under sub-section (3) of section 46, may, within 90 days of the communication of such order, apply to the High Court of Himachal Pradesh for revision of such order if it involves any question of law arising out of erroneous decision of law or failure to decide a question of law.

From the perusal of above quoted Sections, it is quite evident that proviso to Section 7(7) of 1972 Act categorically provides that appellate authority can condone delay up to 60 days means an aggrieved person can prefer appeal at the most within 120 days from the date of receipt of order. Section 48 of H.P.VAT Act provides that revision against order of Tribunal may be filed within 90 days from the date of receipt of order before High Court. There is no proviso under Section 48(1) of H.P.VAT Act which circumscribes the power of High Court to condone the delay.

6. The issue in hand has come up for consideration time and again before the Hon'ble Supreme Court. A two Judge Bench of Hon'ble Supreme Court in **Assistant Commissioner (CT) LTU, Kakinada and others vs. M/s Glaxo Smith Kline Consumer Health Care Limited** 2020(19) SCC 681 while dealing with power of High Court to condone delay where an assessee could not file appeal within 60 days from the date of receipt of the order, has held that there is a statutory command by the legislation as regards limitation and it is postulated that delay can be condoned for a further period not exceeding 60 days, needless to say, it is based on certain

underlined, fundamental, general issues of public policy. When the statute commands that court may condone further delay not exceeding 60 days, it would come within the ambit and sweep of the provisions and policy of legislation. It is equivalent to Section 3 of the Limitation Act. Therefore, it is uncondonable and it cannot be condoned taking recourse to Article 142 of the Constitution of India. It is unfathomable as to how the High Court can take a different approach in reference to Article 226 of the Constitution.

In the case of **M/s Glaxo Smith Kline Consumer Health Care Limited (Supra)**, Section 31 of Andhra Pradesh Value Added Tax Act, 2005 was in question. Section 31(1) of AP VAT Act, 2005 provides that an aggrieved person may file appeal within 30 days from the date on which order is served upon him. Proviso to Section 31(1) provides that appellate authority may condone delay up to 30 days. There was delay in filing the appeal before appellate authority and delay was of more than 30 days. The appellate authority dismissed appeal on the ground of limitation. The assessee filed writ petition before High Court seeking setting aside of assessment order. A Division Bench of High Court directed the assessee to pay an additional amount equivalent to 12.5% of the disputed amount and further allowed the writ petition. The order passed by assessing authority was set aside and assessee was relegated before Assistant Commissioner-assessing authority for reconsideration of the matter.

7. The provisions of Section 7(7) of 1972 Act are similar to provisions in different statutes like Arbitration and Conciliation Act, 1996; Central Excise Act, 1944; Customs Act, 1962 etc. Hon'ble Supreme Court in **Union of India vs. Popular Construction Company (2001) 8 SCC 470**

considered the question of applicability of provisions contained in Section 5 of Limitation Act to the proceedings under Section 34(3) of Arbitration and Conciliation Act, 1996.

Similarly, in **Consolidated Engineering Enterprises vs. Principal Secretary, Irrigation Department and others (2008) 7 SCC 169**, the Hon'ble Supreme Court considered the question of applicability of Sections 14 and 5 of Limitation Act to proceedings under Section 34 of Arbitration and Conciliation Act, 1996. Hon'ble Supreme Court held that Section 14 of Limitation Act is not excluded, however, applicability of Section 5 of Limitation Act stands excluded from limitation prescribed under Section 34 (3) of Arbitration and Conciliation Act, 1996. The relevant paragraphs read as:

“53. Sub-section (3) of Section 34 of the AC Act prescribes the period of limitation for filing an application for setting aside an award as three months from the date on which the applicant has received the arbitral award. The proviso thereto vests in the court discretion to extend the period of limitation by a further period not exceeding thirty days if the court is satisfied that the applicant was prevented by sufficient cause for not making the application within three months. The use of the words "but not thereafter" in the proviso makes it clear that even if a sufficient cause is made out for a longer extension, the extension cannot be beyond thirty days. The purpose of proviso to Section 34(3) of the AC Act is similar to that of [Section 5](#) of the Limitation Act, which also relates to extension of the period of limitation prescribed for any application or appeal. It vests a discretion in a court to extend the prescribed period of limitation if the applicant satisfies the court that he had sufficient cause for not making the application within the prescribed period. [Section 5](#) of the Limitation Act does not

place any outer limit in regard to the period of extension, whereas the proviso to subsection (3) of Section 34 of the AC Act places a limit on the period of extension of the period of limitation. Thus the proviso to Section 34(3) of the AC Act is also a provision relating to extension of period of limitation, but differs from Section 5 of the Limitation Act, in regard to period of extension, and has the effect of excluding Section 5 alone of the Limitation Act.

54. On the other hand, Section 14 contained in Part III of the Limitation Act does not relate to extension of the period of limitation but relates to exclusion of certain period while computing the period of limitation. Neither subsection (3) of Section 34 of the AC Act nor any other provision of the AC Act exclude the applicability of Section 14 of the Limitation Act to applications under Section 34(1) of the AC Act. Nor will the proviso to Section 34(3) exclude the application of Section 14, as Section 14 is not a provision for extension of period of limitation, but for exclusion of certain period while computing the period of limitation. Having regard to Section 29(2) of the Limitation Act, Section 14 of that Act will be applicable to an application under Section 34(1) of the AC Act. Even when there is cause to apply Section 14, the limitation period continues to be three months and not more, but in computing the limitation period of three months for the application under Section 34(1) of the AC Act, the time during which the applicant was prosecuting such application before the wrong court is excluded, provided the proceeding in the wrong court was prosecuted bona fide, with due diligence. State of Goa vs. Western Builders (2006) 6 SCC 239, therefore, lays down the correct legal position."

8. **In Singh Enterprises vs. Commissioner of Central Excise, Jamshedpur and others (2008) 3 SCC 70** while dealing with the scope of applicability of Section 5 of Limitation Act to appeals filed under Section

35 of Central Excise Act, 1944, Hon'ble Supreme Court has held:-

“6. At this juncture, it is relevant to take note of [Section 35](#) of the Act which reads as follows:

35. APPEALS TO COMMISSIONER (APPEALS). (1) Any person aggrieved by any decision or order passed under this Act by a Central Excise Officer, lower in rank than a Commissioner of Central Excise, may appeal to the Commissioner of Central Excise (Appeals) [hereafter in this Chapter referred to as the Commissioner (Appeals)] within sixty days from the date of the communication to him of such decision or order :

Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.

(2) Every appeal under this section shall be in the prescribed form and shall be verified in the prescribed manner.

7. It is to be noted that the periods sixty days and thirty days have been substituted for within three months and three months by Act 14 of 2001, with effect from 11.5.2001.

8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of Statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the Statute. The period upto which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of [Section 5](#) of the Indian Limitation Act, 1963 (in short the '[Limitation Act](#)') can be availed for condonation of delay. The first proviso to [Section 35](#) makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60

days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of [Section 35](#) makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of [Section 5](#) of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period.”

9. As noted above, in the case of **Superintending Engineer (supra)**, Apex Court was dealing with a provision which was silent about jurisdiction of Court to condone delay. Similar provision was Section 35H in Central Excise Act, 1944. The Hon'ble Supreme Court in **Commissioner of Custom and Central Excise vs. Hongo India Private Limited and another** (2009) 5 SCC 791 considered the question of power of High Court to condone delay beyond the period prescribed under Section 35-H of Central Excise Act, 1944. Section 35H of the Central Excise Act enjoined that reference shall be filed within 180 days from the date of communication of the decision or order. The Hon'ble Supreme Court held that Central Excise Act is a complete Code in itself and Section 5 of Limitation Act cannot be imported into Section 35H of the Central Excise Act. The Hon'ble Supreme Court held:-

“32. As pointed out earlier, the language used in Sections 35, 35B, 35EE, 35G, and 35H makes the position clear that an appeal and reference to the High Court should be made within 180 days only from the date of communication of the decision or order. In other words, the language used in other provisions makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning the delay only up to 30 days after expiry of 60 days, which is the preliminary limitation period for preferring an appeal. In the absence of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. The High Court was, therefore, justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days.

33. Even otherwise, for filing an appeal to the Commissioner, and to the Appellate Tribunal as well as revision to the Central Government, the legislature has provided 60 days and 90 days respectively, on the other hand, for filing an appeal and reference to the High Court larger period of 180 days has been provided with to enable the Commissioner and the other party to avail the same. We are of the view that the legislature provided sufficient time, namely, 180 days for filing reference to the High Court, which is more than the period prescribed for an appeal and revision.”

Under Central Excise Act, 1944, prior to 14.5.2003, there was provision of reference to High Court against an order passed by Tribunal and there was no provision of appeal to High Court. Section 35-H of Central Excise Act provided that an application for reference shall be filed within 180 days from the date upon which an order is served upon the aggrieved person. There was no provision for condonation of delay. With effect from 14.5.2003, Section 35G was inserted wherein provision of

appeal was inserted and it was mandated that appeal can be filed within 180 days from the date on which order appealed is received by aggrieved party. Under Section 35G, there was no provision for condonation of delay beyond 180 days, however, the Union Legislator inserted sub section (2A) in Section 35G whereby it was provided that High Court may admit an appeal after the expiry of limitation period of 180 days from the date of receipt of order. Relevant extracts of Sections 35G and 35H of the Central Excise Act are reproduced as below:-

35G. Appeal to High Court-(1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after the 1st day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for the purposes of assessment), if the High Court is satisfied that the case involves a substantial question of law.

(2) The Commissioner of Central Excise or the other party aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under that sub-section shall be -

(a) filed within one hundred and eighty days from the date on which the order appealed against is received by the Commissioner of Central Excise or the other party;

(b) accompanied by a fee of two hundred rupees where such appeal is filed by the other party;

(c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

(2A) The High Court may admit an appeal after the expiry of the period of one hundred and eighty days referred to in clause (a) of sub-section (2), if it is satisfied that there was sufficient cause for not filing the same within that period.

35H. Application to High Court.-(1) The Commissioner of

Central Excise or the other party may, within one hundred and eighty days of the date upon which he is served with notice of an order under section 35C passed before the 1st day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment), by application in the prescribed form, accompanied, where the application is made by the other party, by a fee of two hundred rupees, apply to the High Court to direct the Appellate Tribunal to refer to the High Court any question of law arising from such order of the Tribunal.”

Sub-section (2A) was inserted in Section 35G by Finance Act, 2009, however, amendment was made with retrospective effect i.e. w.e.f. 1.7.2003. The amendment was carried out to overcome the judgment of Hon'ble Supreme Court in **Hongo India Private Limited (supra)** and **Commissioner of Customs, Central Excise, Noida vs. Punjab Fibres Limited (2008) 3 SCC 73** wherein Hon'ble Supreme Court had held that High Court cannot condone delay beyond the limitation period prescribed under Central Excise Act, 1944.

From the reading of judgment cited by learned counsel for the appellant and enunciation of law in **Hongo India (supra)** and **Punjab Fibres (Supra)**, it is quite evident that the Apex Court has held where no outer limit for condonation of delay was postulated by examining the entire scheme of appeal, provisions and accordingly laid down the law. In the case of HP VAT Act, 2005, the scheme of Appeal/Revision provisions was such that it was not excluding applicability of Section 5 of Limitation Act whereas in the case of Central Excise Act, 1944, the scheme of the Act was excluding applicability of Section 5 of the Limitation Act. Considering the

scheme of the Acts, the Apex Court in **Superintending Engineer (Supra)** has held that Section 5 of the Limitation Act would be applicable to revision before High Court whereas in **Hongo India (supra)** and **Punjab Fibres (Supra)**, it has been enunciated that Section 5 of Limitation Act stands excluded to reference/appeal before High Court.

11. From the reading of Section 7(7) of 1972 Act, the appeal provisions of Central Excise Act, Arbitration and Conciliation Act, 1996 and VAT Acts of different States as well judgments of Hon'ble Supreme Court, it is quite evident that where it is specifically provided that appellate authority can condone delay up to a particular period, there is no question of condonation of delay beyond the said period. The judgment cited by learned counsel for the appellant is applicable where limitation period is prescribed to file appeal, however, no outer limit is prescribed for condonation of delay and in such a case, having regard to the scheme of the Act, the provisions of Section 5 of Limitation Act may be applicable. In the case in hand, there is specific provision in the form of proviso to Section 7(7) of 1972 Act which categorically prescribes outer limit for condonation of delay i.e. 60 days. As Section 7(7) of 1972 Act is specifically providing outer limit for condonation of delay, then the appellate authority constituted under 1972 Act had no power to condone delay beyond 60 days whereas in the case in hand, there was delay of 87 days. Thus, the appellate authority has rightly dismissed the appeal of the appellant.

12. In view of the above findings, there is no ground to interfere in the judgment passed by learned Single Judge in CWP No. 23364 of 2019.

The appeal being bereft of merit deserves to be dismissed and is accordingly

dismissed.

Pending miscellaneous applications, if any, shall stand disposed
of.

(G.S.SANDHAWALIA)
JUDGE

(JAGMOHAN BANSAL)
JUDGE

29.10.2022

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes