



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

Date of decision: 18th OCTOBER, 2023

IN THE MATTER OF:

+ **W.P.(C) 12677/2023 & CM APPL. 49965/2023**

SUMAN KUMAR RANA -IN JAIL-

..... Petitioner

Through: Mr. Avinash Singh, Advocate.

versus

COMPETENT AUTHORITY AND ADMINISTRATOR & ANR.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. *Vide* the present Writ Petition the Petitioner seeks to challenge the Order dated 11.07.2023, passed by the Appellate Tribunal under SAFEMA, dismissing, by which the Appellate Tribunal has dismissed the appeal filed by the Petitioner herein against the Order dated 22.11.2022, passed by the competent Authority and Administrator, SAFEM(FOP)A, 1976 and NDPS Act, 1985, New Delhi, on the ground that the appeal is barred by limitation and there is no power with the Appellate Authority to condone the delay.

2. Facts, as stated in the present Writ Petition, are as under:

- a. That on 02.11.2020, 15 Kgs. of Opium was seized from a Hyundai I-20 car bearing registration No. UK-04N-2394 and an Innova Car bearing registration No. UP-16Y-6397 from five persons namely Veeresh S/o. Sh. Raj Pal, Umesh Pal Singh S/o. Sh. Charan Singh, Vijay Singh and Shyam Bihari and a case NCB Crime No.14/2020 (Special Case No.43/2020) was



registered against them under Sections 8(c), 20(b)(ii)(c), 29 of the NDPS Act, 1985. It is stated that the Petitioner herein was arrested on the basis of disclosure statement given by the abovementioned accused persons. It is stated that proceedings under Chapter V(A) of the NDPS Act for forfeiture of illegally occupied property was initiated against the Petitioner.

- b. The competent Authority passed an order dated 22.11.2022 under Section 68(F) of the NDPS Act forfeiting the property of the Petitioner herein.
 - c. An appeal was filed by the Petitioner herein against the Order dated 22.11.2022 along with an application for condonation of delay in filing the said appeal. The appellate authority vide the Order impugned herein has dismissed the said appeal on the ground that it had not power to condone the delay in view of the provisions contained under Section 68(O)(1) of the NDPS Act.
 - d. The Petitioner has, thereafter, approached this Court by filing the present Writ Petition.
3. Heard the Counsels and perused the material on record.
 4. Section 68-O of the NDPS Act, which deals with appeals filed under this Act, reads as under:

"68-O. Appeals.--

(1) [Any officer referred to in sub-section (1) of section 68E or any person aggrieved by an order of the competent authority] made under section 68F, section 68-I, sub-section (1) of section 68K or section 68L, may, within forty-five days from the date on which the order is served on him, prefer an appeal to the Appellate Tribunal:



Provided that the Appellate Tribunal may entertain an appeal after the said period of forty-five days, but not after sixty days, from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving an opportunity to the appellant to be heard, if he so desires, and after making such further inquiry as it deems fit, confirm, modify or set aside the order appealed against.

(3) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches consisting of three members and constituted by the Chairman of the Appellate Tribunal.

(4) Notwithstanding anything contained in sub-section (3), where the Chairman considers it necessary so to do for the expeditious disposal of appeals under this section, he may constitute a Bench of two members and a Bench so constituted may exercise and discharge the powers and functions of the Appellate Tribunal:

Provided that if the members of a Bench so constituted differ on any point or points, they shall state the point or points on which they differ and refer the same to a third member (to be specified by the Chairman) for hearing of such point or points and such point or points shall be decided according to the opinion of that member.

[Provided further that if the office of the Chairman is vacant by reason of his death, resignation or otherwise, or if the Chairman is unable to discharge his duties owing to absence, illness or any other cause, the Central Government may, by order, nominate any member to act as the Chairman until a new Chairman



is appointed and assumes charge or, as the case may be, resumes his duties.]

(5) The Appellate Tribunal may regulate its own procedure.

(6) On application to the Appellate Tribunal and on payment of the prescribed fee, the Tribunal may allow a party to any appeal or any person authorised in his behalf by such party to inspect at any time during office hours, any relevant records and registers of the Tribunal and obtain a certified copy of any part thereof.]"

5. The short question which arises for consideration is as to whether the Appellate Authority has the power to condone the delay in filing an appeal beyond the period prescribed in the statute. The relevant facts for the purpose of limitation are that the date of the order against which the appeal is filed is 22.11.2022 and the same was served on the Petitioner herein on 05.12.2022 and the appeal was filed on 01.05.2023.

6. If 05.12.2022 is taken as the day when the period of limitation starts then also the period of 45 days, as specified in Section 68-O (1) of the NDPS Act expires on 19.01.2023 and the 60 days period expires on 04.02.2023. In the present case the appeal was filed on 01.05.2023, i.e. with a delay of 178 days. As per Section 68-O of the NDPS Act, an Appeal has to be filed within 45 days from the date of service of the Order. Section 68-O of the NDPS Act further provides that the Appellate Tribunal may entertain an appeal after forty-five days, but not after sixty days, from the date of service of the order, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. There is no provision under the Act to entertain an appeal beyond the period of 60 days.



7. Section 29(2) of the Limitation Act, 1963 reads as under:

"29(2). Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law."

8. The question as to whether the Courts have the power to condone the delay in case of special Acts, which provides for a separate period of limitation, has been succinctly explained in a number of judgments. While considering an appeal which is filed beyond the period of limitation under Section 125 of the Electricity Act, 2003, the Apex Court in Chhattisgarh SEB v. Central Electricity Regulatory Commission, (2010) 5 SCC 23, has held as under:

" 25. Section 125 lays down that any person aggrieved by any decision or order of the Tribunal can file an appeal to this Court within 60 days from the date of communication of the decision or order of the Tribunal. Proviso to Section 125 empowers this Court to entertain an appeal filed within a further period of 60 days if it is satisfied that there was sufficient cause for not filing appeal within the initial period of 60 days. This shows that the period of limitation prescribed for filing appeals under Sections 111(2) and 125 is substantially different from the period prescribed under the Limitation Act for filing suits, etc. The use of the expression "within a further period of not exceeding 60 days" in the proviso to Section 125 makes it clear that the outer limit for filing an appeal is



120 days. There is no provision in the Act under which this Court can entertain an appeal filed against the decision or order of the Tribunal after more than 120 days.

26. The object underlying establishment of a special adjudicatory forum i.e. the Tribunal to deal with the grievance of any person who may be aggrieved by an order of an adjudicating officer or by an appropriate Commission with a provision for further appeal to this Court and prescription of special limitation for filing appeals under Sections 111 and 125 is to ensure that disputes emanating from the operation and implementation of different provisions of the Electricity Act are expeditiously decided by an expert body and no court, except this Court, may entertain challenge to the decision or order of the Tribunal. The exclusion of the jurisdiction of the civil courts (Section 145) qua an order made by an adjudicating officer is also a pointer in that direction.

27. It is thus evident that the Electricity Act is a special legislation within the meaning of Section 29(2) of the Limitation Act, which lays down that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the one prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and provisions contained in Sections 4 to 24 (inclusive) shall apply for the purpose of determining any period of limitation prescribed for any suit, appeal or application unless they are not expressly excluded by the special or local law.

28. In Hukumdev Narain Yadav v. Lalit Narain Mishra [(1974) 2 SCC 133] this Court interpreted Section 29(2) of the Limitation Act in the backdrop of the plea that the provisions of that Act are not applicable to the proceedings under the Representation of the People



Act, 1951. It was argued that the words “expressly excluded” appearing in Section 29(2) would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. While rejecting the argument, the three-Judge Bench observed: (SCC p. 146, para 17)

“17. ... what we have to see is whether the scheme of the special law, that is in this case the Act, and the nature of the remedy provided therein are such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our view, even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation.”

(emphasis supplied)

29. *Section 34(3) of the Arbitration and Conciliation Act, 1996, which is substantially similar to Section 125 of the Electricity Act came to be interpreted in Union of India v. Popular Construction Co. [(2001) 8 SCC 470] The precise question considered in that case was whether the provisions of Section 5 of the Limitation Act are applicable to an application challenging an award under Section 34 of the Arbitration and Conciliation Act, 1996. The two-Judge Bench referred to earlier decisions in Mangu Ram v. MCD [(1976) 1 SCC 392 : 1976 SCC (Cri) 10] , Vidyacharan Shukla v.*



Khubchand Baghel [AIR 1964 SC 1099] , Hukumdev Narain Yadav v. Lalit Narain Mishra [(1974) 2 SCC 133] , Patel Naranbhai Marghabhai v. Dhulabhai Galbabbhai [(1992) 4 SCC 264] and held: (Popular Construction Co. case [(2001) 8 SCC 470] , SCC pp. 474-76, paras 12 & 16)

“12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are ‘but not thereafter’ used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase ‘but not thereafter’ wholly otiose. No principle of interpretation would justify such a result.

16. Furthermore, Section 34(1) itself provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award ‘in accordance with’ sub-section (2) and sub-section (3). Sub-section (2) relates to grounds for setting aside an award and is not relevant for our purposes. But an application filed beyond the period mentioned in Section 34, sub-section (3) would not be an application ‘in accordance with’ that sub-section. Consequently by virtue of Section 34(1), recourse to the court against an arbitral award cannot be made beyond the period prescribed. The importance of the period fixed under Section 34 is emphasised by the provisions of Section 36 which provide that:



‘36. Enforcement.—Where the time for making an application to set aside the arbitral award under Section 34 has expired ... the award shall be enforced under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the court.’

This is a significant departure from the provisions of the Arbitration Act, 1940. Under the 1940 Act, after the time to set aside the award expired, the court was required to ‘proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow’ (Section 17). Now the consequence of the time expiring under Section 34 of the 1996 Act is that the award becomes immediately enforceable without any further act of the court. If there were any residual doubt on the interpretation of the language used in Section 34, the scheme of the 1996 Act would resolve the issue in favour of curtailment of the court's powers by the exclusion of the operation of Section 5 of the Limitation Act.”
(emphasis supplied)

30. *In Singh Enterprises v. CCE [(2008) 3 SCC 70] the Court interpreted Section 35 of the Central Excise Act, 1944 which is pari materia to Section 125 of the Electricity Act and observed: (SCC p. 72, para 8)*

“8. The Commissioner of Central Excise (Appeals) as also the tribunal being creatures of statute are not vested with jurisdiction to condone the delay beyond the permissible period provided under the statute. The period up to which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the 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 up to 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.*** (emphasis supplied)

The same view was reiterated in CCE and Customs v. Punjab Fibres Ltd. [(2008) 3 SCC 73]

31. *In CCE and Customs v. Hongo India (P) Ltd. [(2009) 5 SCC 791] a three-Judge Bench considered the scheme of the Central Excise Act, 1944 and held that the High Court has no power to condone delay beyond the period specified in Section 35-H thereof. The argument that Section 5 of the Limitation Act can be invoked for condonation of delay was rejected by the Court and observed: (SCC pp. 801-02, paras 30, 32 & 35)*



“30. In the earlier part of our order, we have adverted to Chapter VI-A of the Act which provides for appeals and revisions to various authorities. Though Parliament has specifically provided an additional period of 30 days in the case of appeal to the Commissioner, it is silent about the number of days if there is sufficient cause in the case of an appeal to the Appellate Tribunal. Also an additional period of 90 days in the case of revision by the Central Government has been provided. However, in the case of an appeal to the High Court under Section 35-G and reference application to the High Court under Section 35-H, Parliament has provided only 180 days and no further period for filing an appeal and making reference to the High Court is mentioned in the Act.

*32. As pointed out earlier, the language used in Sections 35, 35-B, 35-EE, 35-G and 35-H 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.***



35. It was contended before us that the words ‘expressly excluded’ would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. In this regard, we have to see the scheme of the special law which here in this case is the Central Excise Act. The nature of the remedy provided therein is such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If, on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our considered view, that even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. In other words, the applicability of the provisions of the Limitation Act, therefore, is to be judged not from the terms of the Limitation Act but by the provisions of the Central Excise Act relating to filing of reference application to the High Court.”

(emphasis supplied)

32. In view of the above discussion, we hold that Section 5 of the Limitation Act cannot be invoked by this Court for entertaining an appeal filed against the decision or order of the Tribunal beyond the period of 120 days specified in Section 125 of the Electricity Act and its proviso. Any interpretation of Section 125



of the Electricity Act which may attract the applicability of Section 5 of the Limitation Act read with Section 29(2) thereof will defeat the object of the legislation, namely, to provide special limitation for filing an appeal against the decision or order of the Tribunal and proviso to Section 125 will become nugatory." (emphasis supplied)

9. In Patel Bros. v. State of Assam, (2017) 2 SCC 350, wherein the Apex Court was considering the provision of Section 80 of the VAT Act, 2005 which states that "*Save as is provided in Chapter IX, no order passed or proceedings taken under this Act, the rules or notification by any authority appointed or constituted under this Act, shall be called in question in any Court, and save as is provided in the said Chapter, no appeal shall lie against any such order.*" has held as under:

"10. It was argued that in the absence of any provision expressly excluding the applicability of Sections 4 to 24 of the Limitation Act, 1963, those sections were applicable qua revision petitions filed under Section 81 of the VAT Act and, therefore, Section 5 of the Limitation Act, 1963 was also applicable to such proceedings. To placate his aforesaid submissions, the learned counsel relied upon the judgment of this Court in Mangu Ram v. MCD [Mangu Ram v. MCD, (1976) 1 SCC 392 : 1976 SCC (Cri) 10] . In that case, special leave petitions were filed against the condonation of delay to the application for grant of special leave under Section 417 CrPC, 1898 against acquittal of the petitioners by the trial court, in spite of the mandatory period of limitation provided in sub-section (4) of Section 417. Question arose whether in Kaushalya Rani v. Gopal Singh [Kaushalya Rani v. Gopal Singh, (1964) 4 SCR 982 : AIR 1964 SC 260 : (1964) 1 Cri LJ 152] , which held Section 417 CrPC, 1898 a special law and excluded application of Section 5 on a construction of Section 29(2)(b) of the old Act of 1908



applied under the corresponding provision of the Limitation Act, 1963 which governed the case. The Court held that since the case was governed by the Limitation Act, 1963, the judgment in Kaushalya Rani [Kaushalya Rani v. Gopal Singh, (1964) 4 SCR 982 : AIR 1964 SC 260 : (1964) 1 Cri LJ 152] case did not apply. For applicability of the Limitation Act, 1963 to such proceedings, the Court referred to Section 29(2) of the Limitation Act, 1963 holding that there is an important departure made by the Limitation Act, 1963 insofar as the provision contained in Section 29 sub-section (2), is concerned. Under the Limitation Act, 1908, clause (b) to sub-section (2) of Section 29 provided that for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law the application of Section 5 was in clear and specific terms excluded. But under Section 29(2) of Act, the provisions of Section 5 shall apply in case of special or local law to the extent to which they are not expressly excluded by such special or local law. Since under the Limitation Act, 1963, Section 5 is specifically made applicable by Section 29(2), it is only if the special or local law expressly excludes the applicability of Section 5 that it would stand displaced. The Court held that there is nothing in Section 417(4) CrPC, which excludes the application of Section 5 of the Limitation Act, 1963.

11. *The learned counsel for the appellant also referred to State of M.P. v. Anshuman Shukla [State of M.P. v. Anshuman Shukla, (2014) 10 SCC 814] . In that case, question of applicability of Section 5 of the Limitation Act arose in relation to the revision petition that can be preferred under Section 19 of the M.P. Madhyasthan Adhikaran Adhiniyam, 1983 (as it stood prior to its amendment in 2005). The Court held that since unamended Section 19 did not contain any express rider on power of the High Court to entertain applications for revision after expiry of prescribed*



limitation thereunder, the provisions of the Limitation Act, 1963 would become applicable vide Section 29(2) thereof. It further held that as the High Court was conferred with suo motu power under Section 19 of the 1983 Adhiniyam to call for record of an award at any time, there was no legislative intent to exclude the applicability of Section 5 of the Limitation Act, 1963.

*12 [Ed.: Para 12 corrected vide Official Corrigendum No. F.3/Ed.B.J./1/2017 dated 13-1-2017.] . Mr Nalin Kohli, learned Senior Standing Counsel appearing for the respondents, on the other hand, submitted that the High Court had exhaustively dealt with the issue and rightly found that since Section 84 of the VAT Act confined the applicability of the Limitation Act only in respect of Sections 4 and 12 thereof to the proceedings under the said Chapter, by necessary implication the other provisions of the Limitation Act, 1963 including Section 5 thereof stood excluded. He submitted that for the purpose of finding whether other provisions are excluded or not, the focus should be on the scheme of the special law as laid down in *Hukumdev Narain Yadav v. Lalit Narain Mishra* [*Hukumdev Narain Yadav v. Lalit Narain Mishra*, (1974) 2 SCC 133] wherein it was held that even if there exists no express exclusion in the special law, the Court has right to examine the provisions of the special law to arrive at a conclusion as to whether the legislative intent was to exclude the operation of the Limitation Act. According to him, Section 84 of the VAT Act clearly depicted such a legislative intent.*

13. After examining the matter in the light of law laid down in various judgments cited by both the parties, we are of the view that the High Court has given correct interpretation to the provisions of Section 81 of the VAT Act, when this provision is read along with Section 84 thereof.



14. In Commr. of Customs and Central Excise v. Hongo India (P) Ltd. [Commr. of Customs and Central Excise v. Hongo India (P) Ltd., (2009) 5 SCC 791] , the question that fell for determination was that as to whether the High Court had power to condone the delay in presentation of the reference application under the unamended Section 35-H(1) of the Central Excise Act, 1944 beyond the period prescribed by applying Section 5 of the Limitation Act. The unamended Section 35-H dealt with reference application to the High Court. Under sub-section (1) thereof, such reference application could be preferred within a period of 180 days of the date upon which the aggrieved party is served with notice of an order under Section 35-C of the Central Excise Act. There was no provision to extend the period of limitation for filing the application to the High Court beyond the said period and to condone the delay. Pertinently, under the scheme of the Central Excise Act as well, in case of appeal to the Commissioner under Section 35 of the Act, which should be filed within 60 days, there was a specific provision for condonation of delay up to 30 days if sufficient cause is shown. Likewise, appeal to the Appellate Tribunal could be filed within 90 days under Section 35-B thereof and sub-section (5) of Section 35-B gave power to the Appellate Tribunal to condone the delay irrespective of the number of days, if sufficient cause is shown. Further, Section 35-EE provided 90 days' time for filing revision by the Central Government and proviso thereto empowers the revisional authority to condone the delay for a further period of 90 days. However, when it came to making reference to the High Court under Section 35-G of the Act, the provision only prescribed the limitation period of 180 days with no further clause empowering the High Court to condone the delay beyond the said period of 180 days. It was, thus, in almost similar circumstances, the judgment was rendered by this Court.



15. The categorical opinion of the Court in Hongo India (P) Ltd. case [Commr. of Customs and Central Excise v. Hongo India (P) Ltd., (2009) 5 SCC 791] was that in the absence of any such power, the High Court did not have power to condone the delay. In that case also, the provisions of Section 29(2) of the Limitation Act, 1963 were pressed into service. But this argument was rejected in the following manner: (SCC p. 801, paras 30-33)

“30. In the earlier part of our order, we have adverted to Chapter VI-A of the Act which provides for appeals and revisions to various authorities. Though Parliament has specifically provided an additional period of 30 days in the case of appeal to the Commissioner, it is silent about the number of days if there is sufficient cause in the case of an appeal to the Appellate Tribunal. Also an additional period of 90 days in the case of revision by the Central Government has been provided. However, in the case of an appeal to the High Court under Section 35-G and reference application to the High Court under Section 35-H, Parliament has provided only 180 days and no further period for filing an appeal and making reference to the High Court is mentioned in the Act.

31. In this regard, it is useful to refer to a recent decision of this Court in Punjab Fibres Ltd. [Commr. of Customs and Central Excise v. Punjab Fibres Ltd., (2008) 3 SCC 73] The Commissioner of Customs, Central Excise, Noida was the appellant in this case. While considering the very same question, namely, whether the High Court has power to condone the delay in presentation of the reference under Section 35-H(1) of the Act, the two-Judge Bench taking note



of the said provision and the other related provisions following Singh Enterprises v. CCE [Singh Enterprises v. CCE, (2008) 3 SCC 70] concluded that: (Punjab Fibres Ltd. case [Commr. of Customs and Central Excise v. Punjab Fibres Ltd., (2008) 3 SCC 73] , SCC p. 75, para 8)

‘8. ... the High Court was justified in holding that there was no power for condonation of delay in filing reference application.’

32. As pointed out earlier, the language used in Sections 35, 35-B, 35-EE, 35-G and 35-H 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.”

16. *In the process, the Court also explained the expression “expressly excluded” appearing in Section 29(2) of the Limitation Act, 1963 in the following manner: [Hongo India (P) Ltd. case [Commr. of Customs and Central Excise v. Hongo India (P) Ltd., (2009) 5 SCC 791] , SCC p. 802, paras 34-35]*

“34. Though, an argument was raised based on Section 29 of the Limitation Act, even assuming that Section 29(2) would be attracted, what we have to determine is whether the provisions of this section are expressly excluded in the case of reference to the High Court.

35. It was contended before us that the words “expressly excluded” would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. In this regard, we have to see the scheme of the special law which here in this case is the Central Excise Act. The nature of the remedy provided therein is such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If, on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our considered view, that even in a case where the special law does not



exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. In other words, the applicability of the provisions of the Limitation Act, therefore, is to be judged not from the terms of the Limitation Act but by the provisions of the Central Excise Act relating to filing of reference application to the High Court.”

17. The aforesaid judgment in Hongo India (P) Ltd. case [Commr. of Customs and Central Excise v. Hongo India (P) Ltd., (2009) 5 SCC 791] is a complete answer to the arguments of the appellant.

18. It may be relevant to mention here that after the judgment in Hongo India (P) Ltd. [Commr. of Customs and Central Excise v. Hongo India (P) Ltd., (2009) 5 SCC 791] , Section 35-H of the Central Excise Act, 1944 was amended by Parliament by Act 32 of 2003 with effect from 14-5-2003 giving power to the High Court to condone the delay by inserting sub-section (2-A). It is, therefore, for the legislature to set right the deficiency, if it intends to give power to the High Court to condone the delay in filing revision petition under Section 81 of the VAT Act.

19. The argument predicated on “no express exclusion” loses its force having regard to the principle of law enshrined in Hukumdev Narain Yadav [Hukumdev Narain Yadav v. Lalit Narain Mishra, (1974) 2 SCC 133] . Therein, the Court made following observations while examining whether the Limitation Act would be applicable to the provisions of the Representation of the People Act or not: (SCC p. 146, para 17)



“17. ... but what we have to see is whether the scheme of the special law, that is in this case the Act, and the nature of the remedy provided therein are such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our view, even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation.”

20. Thus, the approach which is to be adopted by the Court in such cases is to examine the provisions of the special law to arrive at a conclusion as to whether there was legislative intent to exclude the operation of the Limitation Act. In the instant case, we find that Section 84 of the VAT Act made only Sections 4 and 12 of the Limitation Act applicable to the proceedings under the VAT Act. The apparent legislative intent, which can be clearly evinced, is to exclude other provisions, including Section 5 of the Limitation Act. Section 29(2) stipulates that in the absence of any express provision in a special law, provisions of Sections 4 to 24 of the Limitation Act would apply. If the intention of the legislature was to make Section 5, or for that matter, other provisions of the Limitation Act applicable to the proceedings under the VAT Act, there was no necessity to make specific provision like Section 84 thereby making only Sections 4 and 12 of the Limitation Act applicable to such proceedings, inasmuch as these two sections would also have



become applicable by virtue of Section 29(2) of the Limitation Act. It is, thus, clear that the legislature intended only Sections 4 and 12 of the Limitation Act, out of Sections 4 to 24 of the said Act, applicable under the VAT Act thereby excluding the applicability of the other provisions.

21. The judgment in Mangu Ram [Mangu Ram v. MCD, (1976) 1 SCC 392 : 1976 SCC (Cri) 10] would not come to the aid of the appellant as the Court found that there was no provision under CrPC from which legislative intent to exclude Section 5 of the Limitation Act could be discerned and, therefore, Section 29(2) of the Limitation Act was taken aid of. Similar situation prevailed in Anshuman Shukla case [State of M.P. v. Anshuman Shukla, (2014) 10 SCC 814] . On the contrary, in the instant case, a scrutiny of the scheme of the VAT Act goes to show that it is a complete code not only laying down the forum but also prescribing the time-limit within which each forum would be competent to entertain the appeal or revision. The underlying object of the Act appears to be not only to shorten the length of the proceedings initiated under the different provisions contained therein, but also to ensure finality of the decision made thereunder. The fact that the period of limitation described therein has been equally made applicable to the assessee as well as the Revenue lends ample credence to such a conclusion. We, therefore, unhesitatingly hold that the application of Section 5 of the Limitation Act, 1963 to a proceeding under Section 81(1) of the VAT Act stands excluded by necessary implication, by virtue of the language employed in Section 84.

22. The High Court has rightly pointed out the well-settled principle of law that: (Patel Bros. case [Patel Bros. v. State of Assam, 2016 SCC OnLine Gau 124] , SCC OnLine Gau para 19)



“19. ... ‘the courts cannot interpret a statute the way they have developed the common law “which in a constitutional sense means judicially developed equity”. In abrogating or modifying a rule of the common law the courts exercise “the same power of creation that built up the common law through its existence by the Judges of the past”. The court can exercise no such power in respect of statutes. Therefore, in the task of interpreting and applying a statute, Judges have to be conscious that in the end the statute is the master not the servant of the judgment and no Judge has a choice between implementing the law and disobeying it.’ [Ed.: See Principles of Statutory Interpretation, 14th Edn., p. 26 by Justice G.P. Singh.] ”

What, therefore, follows is that the court cannot interpret the law in such a manner so as to read into the Act an inherent power of condoning the delay by invoking Section 5 of the Limitation Act, 1963 so as to supplement the provisions of the VAT Act which excludes the operation of Section 5 by necessary implication." (emphasis supplied)

10. Recently, the Apex Court in V. Nagarajan v. SKS Ispat & Power Ltd., (2022) 2 SCC 244, while considering the provision of limitation before filing an appeal before the NCLAT under Section 61 of the IBC which states that "(1) Notwithstanding anything to the contrary contained under the Companies Act, 2013, any person aggrieved by the order of the adjudicating authority under this part may prefer an appeal to the National Company Law Appellate Tribunal; and that (2) Every appeal under sub-section (1) shall be filed within thirty days before the National Company Law Appellate Tribunal: Provided that the National Company Law Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of thirty days if



it is satisfied that there was sufficient cause for not filing the appeal but such period shall not exceed fifteen days." has held as under:

" 24. IBC is a complete code in itself and overrides any inconsistencies that may arise in the application of other laws. Section 61 IBC, begins with a non obstante provision— “notwithstanding anything to the contrary contained under the Companies Act, 2013” when prescribing the right of an aggrieved party to file an appeal before Nclat along within the stipulated period of limitation. The notable difference between Section 421(3) of the Companies Act and Section 61(2) IBC is in the absence of the words “from the date on which a copy of the order of the Tribunal is made available to the person aggrieved” in the latter. The absence of these words cannot be construed as a mere omission which can be supplemented with a right to a free copy under Section 420(3) of the Companies Act read with Rule 50 of the NCLT Rules for the purposes of reckoning limitation. This would ignore the context of IBC's provisions and the purpose of the legislation.

*25. The law on limitation with respect to IBC is settled and emphatic in its denunciation of delays [Essar Steel (India) Ltd. (CoC) v. Satish Kumar Gupta, (2020) 8 SCC 531, paras 119-123, 127 : (2021) 2 SCC (Civ) 443; Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407, para 13 : (2018) 1 SCC (Civ) 356; Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta, (2021) 7 SCC 209, para 69 : (2021) 4 SCC (Civ) 1] . **The power to condone delay is tightly circumscribed and conditional upon showing sufficient cause, even within the period of delay which is capable of being condoned. IBC is a watershed legislation which seeks to overhaul the previous bankruptcy regime which was afflicted by delays and indefinite legal proceedings. IBC sought to structure and streamline the entire process of insolvency, right from the initiation of insolvency to liquidation, as a one-stop***



mechanism. Section 12(3) IBC prescribes a strict timeline for the completion of the corporate insolvency resolution process of one hundred and eighty days which is extendable by ninety days. The proviso to Section 12(3) imposes an outer limit of three hundred and thirty days, including time taken in legal proceedings. While a three-Judge Bench of this Court in Essar Steel (India) Ltd. (CoC) v. Satish Kumar Gupta [Essar Steel India Ltd. (CoC) v. Satish Kumar Gupta, (2020) 8 SCC 531 : (2021) 2 SCC (Civ) 443] held such a time-limit on court proceedings as violative of Article 14, only the word “mandatorily” was struck down and a narrowly defined extension to the outer limit was allowed in exceptional circumstances if the process is at a near conclusion and serves the ends of IBC. Regulation 40-A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides for a detailed model timeline for the corporate insolvency resolution process, including extensions that are granted as discretionary powers under the procedural eventualities of IBC framework. The resolution professional is responsible for ensuring the timelines of the process and has to file several forms, as detailed under Regulation 40-B, and explain all delays that occur in the intervening period, when filing the final Form H [Regulation 39(4)(b), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016] upon submitting a successful resolution plan under Section 30 IBC. Notably, Section 64 [“64. Expeditious disposal of applications.—(1) Where an application is not disposed of or an order is not passed within the period specified in this Code, the National Company Law Tribunal or the National Company Law Appellate Tribunal, as the case may be, shall record the reasons for not doing so within the period so specified; and the President of the National Company Law Tribunal or the Chairperson of the



National Company Law Appellate Tribunal, as the case may be, may, after taking into account the reasons so recorded, extend the period specified in the Act but not exceeding ten days.(2) No injunction shall be granted by any court, tribunal or authority in respect of any action taken, or to be taken, in pursuance of any power conferred on the National Company Law Tribunal or the National Company Law Appellate Tribunal under this Code.”] IBC imposes an obligation on NCLT and Nclat to expeditiously dispose of applications pending before it, along with recording of reasons for any delay from the prescribed limit to the President of NCLT/Nclat, who can then extend the period, not exceeding ten days.

28. In this background, when timelines are placed even on legal proceedings, reading in the requirement of an “order being made available” under a general enactment (Companies Act) would do violence to the special provisions enacted under IBC where timing is critical for the workability of the mechanism, health of the economy, recovery rate of lenders and valuation of the corporate debtor. IBC, as a prescriptive mechanism, affecting rights of stakeholders who are not necessarily parties to the proceedings, mandates diligence on the part of applicants who are aggrieved by the outcome of their litigation. An appeal, if considered necessary and expedient by an aggrieved party, is expected to be filed forthwith without awaiting a free copy which may be received at an indefinite stage. Hence, the omission of the words “from the date on which the order is made available” for the purposes of computation of limitation in Section 61(2) IBC, is a consistent signal of the intention of the legislature to nudge the parties to be proactive and facilitate timely resolution.”
(emphasis supplied)



11. A perusal of the abovementioned judgments show that if a special Act provides for any limitation then Sections 4 to 28 of the Limitation Act cannot be made applicable and, therefore, there is no power in the Appellate Authority to condone the delay.

12. In the present case, the competent Authority passed the Order on 22.11.2022. Certified copy of the said order was served on the Petitioner herein on 05.12.2022 reckoning the period for filing an appeal as 05.12.2022. The appeal ought to have been filed on or before 45 days from the receipt of the order and the said time limit expired on 19.01.2023. Section 68-O (1) of the NDPS Act gives the Tribunal the discretion to entertain the appeal with a delay of a maximum of 15 days if sufficient cause is shown as to why the appeal was not filed within the stipulated 45 days. The said period expired on 04.02.2023 and no appeal could have been entertained beyond that period. Since the present appeal was filed on 01.05.2023, there is a delay of about 174 days in filing the appeal which could not have been condoned by the Appellate Authority. This Court, therefore, does not find any reason to interfere with the Order dated 11.07.2023, passed by the Appellate Tribunal, refusing to entertain the appeal filed by the Petitioner herein beyond the prescribed period. The fact that the Petitioner was in jail cannot be a reason to condone the delay in light of the various judicial pronouncements of the Apex Court.

13. In view of the above, the Writ Petition is dismissed. Pending applications, if any, also stands dismissed.

SUBRAMONIUM PRASAD, J

OCTOBER 18, 2023

Rahul