



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Civil Application (CAT) No. 12 of 2023
in
Central Excise Appeal St. No. 4949 of 2023
with
Civil Application (CAT) No. 7 of 2023
in
Central Excise Appeal St. No. 4804 of 2023
with
Civil Application (CAT) No. 10 of 2023
in
Central Excise Appeal St. No. 4905 of 2023
with
Civil Application (CAT) No. 8 of 2023
in
Central Excise Appeal St. No. 4221 of 2023
with
Civil Application (CAT) No. 11 of 2023
in
Central Excise Appeal St. No. 4522 of 2023
with
Civil Application (CAT) No. 20 of 2023
in
Central Excise Appeal St. No. 4812 of 2023
with
Civil Application (CAT) No. 6 of 2023
in
Central Excise Appeal St. No. 4512 of 2023
with
Civil Application (CAT) No. 15 of 2023
in
Central Excise Appeal St. No. 4525 of 2023
with
Civil Application (CAT) No. 13 of 2023
in
Central Excise Appeal St. No. 4549 of 2023
with
Civil Application (CAT) No. 21 of 2023
in
Central Excise Appeal St. No. 4754 of 2023
with
Civil Application (CAT) No. 9 of 2023
in
Central Excise Appeal St. No. 4547 of 2023
with
Civil Application (CAT) No. 14 of 2023
in
Central Excise Appeal St. No. 4657 of 2023
with

Civil Application (CAT) No. 18 of 2023
in
Central Excise Appeal St. No. 4551 of 2023
with
Civil Application (CAT) No. 16 of 2023
in
Central Excise Appeal St. No. 4555 of 2023

[Sanvijay Rolling and Engineering Ltd., Hingna Road, Nagpur through its authorised signatory
vs. Commissioner of CGST and Central Excise, Nagpur -1]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Saurabh Malpani, Advocate instructed by Mr. Shreyas Agrawal,
Advocate for the applicant/appellant
Mrs. Ketki Jaltare Vaidya, Advocate for the respondent

CORAM: ANIL L. PANSARE AND
SIDDHESHWAR S. THOMBRE, JJ.

DATED : 12-09-2025.

In all these applications, a common question is involved, which is, whether the applicant has shown sufficient cause to condone delay, in filing appeal under Section 35-G(2)(a) of the Central Excise Act, 1944 (hereinafter referred to as 'the Act of 1944').

2. For the purpose of convenience, facts of Civil Application (CAT) No. 12/2023 are being considered.

3. Sub-section (2) of Section 35-G provides that the party aggrieved by an order passed by the appellate tribunal may file appeal to the High Court within a period of 180 days from the date on which the order appealed against is received by the aggrieved party. Sub-section (2a) provides that the High Court may admit the appeal after the expiry of 180 days, if it is satisfied that there was sufficient cause for not filing the same within that period.

4. Thus, the only question that requires answer is whether the applicant has shown sufficient cause for not filing appeal within 180 days from the date of receipt of the

impugned order. Admittedly, the appellate tribunal has passed order on 22-2-2022. The applicant claims that the order was received on 3-3-2022. According to the applicant, 180 days period was to expire on 30-8-2022. The appeal has been filed on or about 27-2-2023 and accordingly, delay of 184 days is sought to be condoned.

5. It appears that in the meantime i.e. on 7-5-2022, the applicant had filed application for rectification of mistake under Section 35-C(2) of the Act of 1944 before the appellate tribunal seeking rectification of the impugned order. The application was pending at the time of filing present appeal. According to the applicant, if appellate tribunal would have allowed the application for rectification of mistake, then the entire grievance does not survive. Accordingly, applicant awaited outcome of the said application. The appeal under question is being filed before disposal of the said application. Therefore, it is being filed within 180 days of receipt of the order that would be passed in rectification application. According to the applicant, there is thus no undue delay in filing present appeal, if the date of receipt of the order in rectification application is considered as relevant date. Accordingly, it is argued that there is no delay in filing appeal.

6. The respondent, through reply, submitted that rectification application was preferred on 17-5-2022 and, order thereon was passed on 11-8-2023 and, therefore, filing appeal in the intervening period i.e. in February, 2023 was not maintainable at all. Learned counsel for the respondent submits that the law is well settled on this point that the period of limitation for challenging the final order, in the present case, the order dated 22-2-2022 shall start from the date of rejection of rectification application i.e. from 11-8-2023. The counsel for respondent submitted that the appellant is well aware of the

said position of law and, therefore, has pleaded in paragraph no. 7 of the application that the date of order that will be passed in rectification application is a relevant date and, therefore, the appeal that is being filed prior to decision in rectification application will be within the prescribed period.

7. Thus, what transpires is that the applicant intends to avail two remedies simultaneously. One through application under Section 35-C(2) of the Act of 1944 seeking rectification in the impugned order and the other under Section 35-G(2) of the Act of 1944 by filing appeal. Such a course, as adopted by the applicant, in our view, is not permissible. The scope of Section 35-C(2) is altogether different than the scope of appeal under Section 35-G(2). Under Section 35-C(2), the appellate tribunal is empowered to rectify any mistake apparent from the record and accordingly amend any order passed by it under sub-section (1) of Section 35-C. As against, the appeal under Section 35-G is maintainable before the High Court, if it is satisfied that the case involves a substantial question of law. Thus, it is for the petitioner to make up mind whether there is mistake apparent on the face of the record or whether the challenge to impugned order involves substantial question of law which would require detailed hearing. Thus, the applicant cannot simultaneously urge that there is error apparent on the face of record in the order passed by appellate tribunal and at the same time, urge that there involves substantial question of law in a challenge against impugned order. In other words, if it was the case of the applicant that there occurred apparent error on the face of record, he could not have urged for detailed hearing and vice versa.

8. In the present case, the applicant filed application for rectification of mistake and pending it, he filed appeal under Section 35-G(2). Further, the applicant was aware that he

could have filed appeal only after the rectification application is rejected. In other words, he could not have filed appeal pending rectification application. It is so because the applicant himself has come up with a case that if rectification application is allowed, then nothing survives in the matter. Thus, unless the rectification application was decided, the applicant could not have filed appeal which if permitted will amount to allowing taking two contrary stands while challenging the same order. Further, such course, if permitted, may result in taking contrary views by two courts.

9. It is for this reason that on 8-8-2025, after having heard the matter for some time, we had indicated that the applicant is not entitled for any relief. The counsel, who argued the matter, however, sought time to have research on the point. He was put to notice that further wastage of time will attract costs. However, on the next date, Mr. V. Sridharan, learned Senior Counsel appeared for the applicant and argued the matter. According to him, the time spent before wrong forum should be excluded while condoning delay in terms of Section 14 of the Limitation Act, 1963. In support, he has relied upon as many as nine judgments enlisted below.

- (1) *M. P Steel Corporation Vs. Commission of Central Excise* [2015 (319) E.L.T. 373 (S.C.)],
- (2) *R. B. Ramlingam Vs. R. B. Bhvaneswari* [(2009) 2 SCC 689],
- (3) *Resorts Consortium India Limited Vs. ITAT, SMC-1 Delhi Bench and ors.* [High Court of Delhi] order dated 7-11-2023 in ITA 425/2023 & CM APPL. 45878/2023,
- (4) *Commissioner of Customs Vs. VVF (India) Ltd.* [2017 (348) E.L.T. 624 (Guj.)],
- (5) *Team Global Logistics Pvt. Ltd. Vs. Commissioner of S.T.-V* [2019 (22) G.S.T.L. 342 (Bom.)],

- (6) *Bhivchandra Shankar More Vs. Balu Gangaram More and ors.* [(2019) 6 SCC 387],
- (7) *N. S. Bohra Vs. Suresh Kumar Hawa and ors.* [2000 SCC OnLine Raj 401],
- (8) *H. L. Malhotra & Co. (P) Ltd. Vs. Deputy Commissioner of Income Tax* {[2021] 125 taxmann.com 70 (Delhi)},
- (9) *Tvl. SKL Exports Vs. Deputy Commissioner (ST) (GST) (Appeal), Erode & Salem* [Order of High Court at Madras dated 14-3-2024 in WP Nos. 6825,6828 & 6829 of 2024].

The law is well settled on this count. Section 14 of the Limitation Act carves out an exception excluding the period of limitation when the proceedings are being perceived with due diligence and good faith in a Court which from defect of jurisdiction or other cause of a like nature is unable to entertain it. This is what has been reiterated in above judgments.

10. We wonder why so many judgments are relied upon by the Senior Counsel, firstly, when a single judgment could have served the purpose so far as position of law is concerned. Secondly and most importantly, when it is not the case of the applicant, as cannot be, that proceedings under Section 35-C(2) were not maintainable before the appellate Court or that the applicant had perceived remedy before the wrong Court. That being so, the benefit under Section 14 of the Limitation Act is not available to the applicant. The judgments so relied, therefore, will be of no assistance.

11. Another limb of argument, at the hands of learned Senior Counsel is that liberal approach should be adopted while condoning delay. In support, he has relied upon following three judgments.

- (1) ***Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [1987 (28) E.L.T. 185 (S.C.)]***,
- (2) ***A. B. Govardhan Vs. P Ragothaman [(2024) 10 SCC 613]***
and
- (3) ***Suresh Kumar Vs. State of Haryana and ors. (Supreme Court) in Civil Appeal No. /2025 (arising out of SLP ©) NO. 670/2020) dated 23-4-2025.***

Again, the principle is well settled viz. the liberal approach should be adopted for condoning delay. Equally, well settled principle of law is that the delay could be condoned, by imposing any condition whatsoever.

12. The Supreme Court in the case of ***Basawaraj and another Vs. Special Land Acquisition Officer [(2013) 14 SCC 81]*** held thus :-

“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.”

Thus, the Supreme Court held that 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. Even otherwise, the issue of limitation would have arisen only after receiving order in the proceedings under Section 35-C(2). The applicant, however, filed appeal in the intervening period, that too, without seeking withdrawal of application filed under Section 35-C(2) of the Act of 1944. The judgments so cited, therefore, will be of no consequence.

13. What is most surprising is that the learned Senior Counsel has relied on as many as following five authorities wherein the Court held that time limit for filing appeal shall commence from the date of rectification/review order. Thus, the applicant is aware that the time to file appeal will not commence pending decision on rectification application.

- (1) *Hind Wire Industries Ltd. Vs. Commissioner of Income Tax* [1998 (99) E.L.T. 25 (S.C.)],
- (2) *International Cotton Corpn. (P) Ltd. Vs. Commercial Tax Officer, Hubli and others* [(1975) 3 SCC 585],
- (3) *Pankaj Gupta Vs. Commr. of Cus., C. Ex. & S.T., Indore* [2018 (15) G.S.T.L. 546 (M.P)],
- (4) *M/s. SPK and Co, represented by its Joint Managing Partner Vs. The State Tax Officer, Muthukulathur Assessment Circle (Madurai Bench of Madras High Court) in W.P (MD) Nos. 27787 and 27788 of 2024 dated 22-11-2024* and
- (5) *Sri Ramajeyan Engineering Industries, represented through its Managing Partner K. Latha Vs. The Deputy Commissioner (ST), Thanjavur (Madurai Bench of Madras High Court) in*

***W.P. (MD) Nos. 30452 of 2024 and 25590 & 25592 of 2024
dated 16-12-2024.***

The Court held that the period of limitation should be calculated from the date of the latest, or rectified, assessment order and not the original order. Thus, the applicant is aware that the period of limitation for challenging the order dated 22-6-2022 passed by the appellate tribunal in appeal under Section 35-G(2) shall start running from the date of rejection of rectification application. The rectification application, in the present case, having been not decided when the appeal was filed before this Court, there arises no question of arisen of cause to prefer appeal.

14. Learned Senior Counsel has also relied upon the judgment in the case of ***Vortex Engineering Works Vs. Union of India [2018 (362) E.L.T. 1029 (Bom.)]*** to contend that delay in filing appeal on account of pendency of rectification application is condonable. We have gone through the said judgment to find that the facts were altogether different. The argument before the High Court was that delay should be condoned considering the fact of pendency of rectification application. The Court, however, noted that the tribunal did not consider whether the principles of the Limitation Act could apply to condone delay and, therefore, the impugned order was set aside and the appeal was restored for fresh consideration on merit including the reason for delay. Thus, the High Court has not held that the delay could be condoned on account of pendency of rectification application.

15. We have earlier noted that to extend benefit under Section 14, the litigant should pursue cause before the Court, who had either no jurisdiction or had some disability to entertain the proceedings. We have also noted that it is not the case of the applicant that proceedings under Section 35-C(2) of

the Act of 1944 were not maintainable before the appellate tribunal, rather, the proceedings have been entertained and a decision taken by the appellate tribunal. That being so, there arises no question of exclusion of time in accordance with Section 14 of the Limitation Act. More so, when the applicant has challenged order dated 30-8-2022 passed by the appellate tribunal, rejecting the application for rectification of mistake. Writ Petition No. 5008/2024 to that effect is filed. Thus, the applicant is maintaining his stand that there occurred apparent error in the impugned order.

16. Put altogether, firstly, there was no reason for the applicant to have argued the matter twice, initially through Advocate Shri P. K. Mohta and thereafter by Shri V. Sridharan, learned Senior Counsel. Further, there appears no justification as to why should on one point, the applicant cite multiple judgments, that too, where the point involved has no connection with the judgments cited by the applicant. The applicant, therefore, carries a blame of consuming judicial time of the Court for no valid reason. The applications are accordingly rejected with costs of Rs. 5,000/- for each application.

17. The costs shall be deposited with this Court within 15 working days. The Registry shall pay the costs to the Uchha Nyayalay Chaturth Shreni Karmachari Sangh, Nagpur.

(S. S. THOMBRE, J.)

(A. L. PANSARE, J.)