IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2025

CORAM :

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A.No.2803 of 2021

G.Mohanakrishnan .. Appellant

vs

1 The Chairman
Central Board of Excise and Customs
North Block, New Delhi - 110 001.

2 The Member
Central Board of Excise and Customs
North Block, New Delhi - 110 001.

3 The Chief Commissioner of Central Excise
No.26/1, Mahatma Gandhi Road
Nungambakkam, Chennai - 34.

4 The Director General of Central Excise
Intelligence, West Block-VII
Wing-VI, First Floor, Section I,
R.K.Puram, New Delhi -110066.

5 The Commissioner of Central Excise
Chennai-IV, Commissionerate
MHU Complex, 682, Anna Salai
Nandanam, Chennai – 600 035.

6 The Additional Director General
Directorate General of Central Excise
Intelligence, Chennai Zonal Unit,
C-3, C Wing, 2nd floor, Rajaji Bhavan
Besant Nagar, Chennai – 600 090.

7 The Assistant Commissioner of Central Excise
Maduravoyal Division, Chennai-IV Commissionerate
C48, TNHB Complex, 2nd Avenue, Anna Nagar
Chennai – 600 040. .. Respondents

Prayer : Appeal under Clause 15 of the Letters Patent against the order passed by the learned Single Judge in W.P.No.18538 of 2015, dated 23.8.2021.

For Appellant : Mr.B.Satish Sundar

For Respondents : Mr.Rajendran Raghavan
Standing Counsel

JUDGMENT
(Delivered by the Hon'ble Chief Justice)

The writ petition was filed for issuance of a writ of mandamus to direct respondents to return the seized records, materials and an amount of

Rs.27,05,000/- collected as duty deposit along with interest at an appropriate rate. The petition was disposed of directing appellant to file an application in accordance with Section 11B of the Central Excise Act.

2. It is this order which is impugned in this appeal and counsel submitted that if appellant, namely, petitioner, files an application claiming refund under Section 11B of the Act, respondents would raise the issue of limitation.

3. We find from the documents annexed that way back on 14.10.2014 itself a refund application has been made by appellant, albeit not in the prescribed format. Therefore, it cannot be said that appellant was not diligent in pursuing the appellate remedy. We are of the view that cause for substantial justice deserves to be preferred, when pitted against technical considerations. The aforesaid view is fortified by a decision of the Apex Court in *Collector (LA) v. Katiji*[1] and the relevant observations are reproduced hereunder:

1 (1987) 2 SCC 107

"3. The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice — that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:

*1. **Ordinarily a litigant does not stand to benefit by lodging an appeal late.***

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

*4. **When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.***

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

> 6. ***It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.***"
>
> *[emphasis supplied]*

4. Therefore, without opining on the merits of the refund application, we direct seventh respondent to consider the refund application purely on merits, without raising the issue of limitation, and pass appropriate orders within six weeks of receiving the application.

5. Counsel for appellant states the application will now have to be made online and the portal has to be opened. Shri Raghavan states within three days of the order being uploaded, the portal will be opened and a link sent to appellant's advocate and appellant. Shri Raghavan further states that even if appellant files a physical application to seventh respondent, namely, the Assistant Commissioner of Central Excise, Maduravoyal Division, Chennai-IV Commissionerate, the application will be considered and processed in accordance with law. Statements are accepted as undertaking to this court.

6. If seventh respondent is not inclined to consider the application for refund favourably, in entirety or in part, then a personal hearing shall be given to appellant, notice whereof shall be communicated at least five working days in advance. If the officer concerned is going to rely on any judicial pronouncements of the High Court or Tribunal in support of the stand of the revenue, a list thereof shall be made available along with notice for personal hearing, so that appellant will be able to deal with the same or distinguish the same.

7. The appeal is disposed of accordingly. There shall be no order as to costs.

We clarify that we have not made any observation on the merits of the matter.

(K.R.SHRIRAM, C.J.) (MOHAMMED SHAFFIQ,J.)

18.02.2025

Index : Yes/No
NC : Yes/No
sasi

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