205 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-11681-2023 (O&M)
Date of Decision : 01-07-2025

THE PUNJAB STATE CO-OP. SUPPLY AND MARKETING FED. LTD.

........Petitioner(s)

VERSUS

K.K. SAREEN AND ORS.

........Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vinod Polist, Advocate
for the petitioner.

None for the respondents.

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<u>HARSIMRAN SINGH SETHI, J. (Oral)</u>

1. In the present petition, challenge is to the order passed by the respondents dated 09.01.2020, copy of which has been appended as Annexure P-4 by which, appeal filed by the petitioners against the order dated 03.07.2018 (Annexure P-2) passed by the controlling authority as envisaged under the Payment of Gratuity Act, 1972 has been dismissed on the ground of limitation.

2. It may be noticed that the respondent had approached the controlling authority for the payment of gratuity admissible to him under the Payment of Gratuity Act, 1972 and the controlling authority passed an order on 03.07.2018 accepting the claim of the respondent No.1.

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3. As per the Payment of Gratuity Act, 1972, the appeal can be filed before the appellate authority against the order passed by the controlling authority within a period of 60 days and the appellate authority has the power to condone the delay by another 60 days, beyond which, there is no jurisdiction with the Appellate Authority to condone the delay so as to entertain the appeal on merits.

4. The order passed by the controlling authority dated 03.07.2018 was challenged by the petitioner on 06.06.2019, which was beyond 120 days and keeping in view the provisions of Section 7 of the 1972 Act which allows the filing of an appeal within a period of 60 days and condonation of delay of another 60 days, the appellate authority rejected the appeal being time barred, the said order dated 09.01.2020 (Annexure P-4) is under challenge in the present petition.

5. Learned counsel for the petitioner argues that once, an application was filed for condonation of delay of 296 days to file the appeal against the order of the controlling authority dated 03.07.2018, same should have been entertained by the appellate authority and the order passed by the appellate authority dismissing the appeal as time barred dated 09.01.2020 is liable to be set aside.

6. I have heard learned counsel for the petitioner and have gone through the records of the present case with his able assistance.

7. It is conceded fact that as per the Payment of Gratuity Act, 1972, the right to appeal has been given against the order passed by the controlling authority. The said appeal can be preferred within a period of 60 days of the passing of the order passed by the controlling authority. In case, there is a delay, the appellate authority has been given the power to condone

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the delay of another 60 days after which, there is no jurisdiction with the appellate authority to condone the delay. It is a conceded fact that the appeal preferred by the petitioner was filed after 289 days delay which was beyond 120 days, which could have been condoned by the Appellate Authority.

8. Further, the same question of law has already been decided by the Hon'ble Supreme Court of India in ***Civil Appeal No.8276-2019 titled as Superintending Engineer/Dehar Power House Circle, Bhakra Beas Management Board vs. Excise and Taxation Officer, Sunder Nagar,*** decided on 25.10.2019, wherein, it has been held that there is no power with the appellate authority to condone the delay beyond 120 days keeping in view the provisions of the 1972 Act and any appeal filed thereafter, cannot be entertained and decided on merits. The relevant paragraph of the said judgment is as under:-

> *"19. In Commissioner of Customs, Central Excise, Noida v. Punjab Fibres Ltd., Noida, (2008) 3 SCC 73, a question arose of condonation of delay in filing reference application to the High Court. It has been held that section 5 is not applicable. In the said case, the court has followed the decision in Singh Enterprises v. Commissioner of Central Excise, Jamshedpur & Ors., (2008) 3 SCC 70. In Singh Enterprises (supra), it has been held:*
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> *"6. At this juncture, it is relevant to take note of Section 35 of the Act which reads as follows:*
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> *"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*

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*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." ** ** ***

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 subsection (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."

9. It may be noticed that by placing reliance upon the judgment passed in ***Civil Appeal No.8276 of 2019 (supra),*** this Court has also decided the same question of law in CWP No.1121 of 2025 titled ***"Bank of Baroda Vs. Union of India and ors."*** dated ***17.02.2025,*** that no appeal can be entertained after expiry of maximum period of limitation period under the 1972 Act hence, the claim of the petitioner is contrary to the settled principle

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of law noticed hereinbefore as concededly the appeal was filed after a delay of 289 days hence, the appellate authority could not have condoned the same and has rightly dismissed the appeal.

10. No ground is made out for any interference by this Court in the facts and circumstances of the present case.

11. Present petition is dismissed.

12. Pending application, if any, also stands disposed of.

01-07-2025
Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE

NOTE: Whether speaking: YES
Whether reportable: NO

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