REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2009
(Arising out of S.L.P. (C) No. 14467 of 2007)

Commissioner of Customs &
Central Excise .... Appellant(s)

Versus

M/s Hongo India (P) Ltd. & Anr. .... Respondent(s)

WITH

CIVIL APPEAL NO. 2009
(Arising out of S.L.P. (C) No.18999 of 2007)

&

CIVIL APPEAL NO. 2009
(Arising out of S.L.P. (C) No.20703 of 2007)

J U D G M E N T

P. Sathasivam, J.

1) Leave granted.

2) In all these appeals, the question for consideration is whether the High Court has power to condone the delay in

presentation of the reference application under unamended Section 35 H(1) of the Central Excise Act, 1944 (hereinafter referred to as "the Act") beyond the prescribed period by applying Section 5 of the Limitation Act, 1963. When S.L.P.(c) No. 14467 of 2007 came up for hearing on 4.12.2008, a two-Judge Bench, after noticing the decision in **Commissioner of Customs, Central Excise, Noida** vs. **Punjab Fibres Ltd., Noida** (2008) 3 SCC 73, expressed doubt about the said judgment with regard to the jurisdiction of the High Court in the matter of condoning delay beyond the prescribed period under the Act. After finding that under Section 35H of the unamended Act (before enactment of Act 49/2005), with regard to application for reference, the High Court exercises its advisory jurisdiction in a case where the substantial question of law of public importance arise, the said Bench directed the matter to be heard by larger Bench. In this way, all the above mentioned matters arising from the judgments of the Allahabad High Court on identical issue posted before this Bench for determining the question, namely, **"whether the High Court in the reference application under Section 35H (1) of the unamended Act, has power under Section 5 of**

the Limitation Act, 1963 to condone the delay beyond the period prescribed under the main statute i.e., Central Excise Act."

3) In all these three matters, Commissioner of Customs & Central Excise approached the High Court of Allahabad by way of reference application under Section 35 H(1) of the unamended Act beyond the prescribed period as provided in the same. The High Court relied on earlier orders and finding that it has no power to condone the delay in filing the reference application under the said provision, dismissed the reference application as barred by limitation.

4) Chapter VI-A of the Act deals with Appeals. As per Section 35, any person aggrieved by any decision or order passed by a Central Excise Officer may file an appeal to the Commissioner of Central Excise (Appeals) within sixty days from the date of the communication to him of such decision or order. Proviso to sub-section (1) enables the Commissioner (Appeals), 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.

5) Section 35B speaks about appeals to the Appellate Tribunal. Any person aggrieved by certain decisions/orders passed by the Commissioner of Central Excise or Commissioner (Appeals), may prefer an appeal to the Appellate Tribunal within three months from the date on which the order sought to be appealed against is communicated to the officer concerned or the other party. Sub-section (5) enables the Appellate Tribunal to condone delay even beyond the prescribed period if there was sufficient cause for not presenting it within that period.

6) Section 35EE provides revision by Central Government. As per sub-section (2), an application under sub-section (1) shall be made within three months from the date of the communication. However, proviso to sub-section (2) enables the revisional authority to condone the delay for a further period of ninety days, if sufficient cause is shown.

7) Unamended Section 35G speaks about Appeal to the High Court. Sub-section 2(a) enables the aggrieved person to file an appeal to the High Court within 180 days from the date on which the order appealed against is received by the Commissioner of Central Excise or the other party. There is

no provision to condone the delay in filing appeal beyond the prescribed period of 180 days.

8) Unamended Section 35H speaks about reference application to the High Court. As per sub-section (1), the Commissioner of Central Excise or other party within a period of 180 days of the date upon which he is served with notice of an order under Section 35C direct the Tribunal to refer to the High Court any question of law arising from such order of the Tribunal. Here again as per sub-section (1), application for reference is to be made to the High Court within 180 days and there is 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.

9) In these three appeals, we are concerned with "reference application" made to the High Court under Section 35H (1) of the Act before amendment of Central Excise Act by Act 49/2005 (w.e.f. 28.12.2005) by which several provisions of the Act were omitted including Section 35H. However, in view of the reference made it is but proper to consider the question referred before us. Admittedly in all these matters, the Commissioner of Customs & Central Excise approached the

High Court by way of reference application beyond the prescribed period of 180 days. The High Court of Allahabad, with reference to the scheme of the Act and in the absence of specific provision for applying Section 5 of the Limitation Act, took note of other provisions i.e., Sections 35, 35B and 35EE, which enable the other authorities to condone the delay if sufficient cause was shown, accordingly, dismissed the reference application filed by the Commissioner of Central Excise on the ground of limitation.

10) Now let us consider whether Section 5 of the Limitation Act is applicable in respect of reference application filed in the High Court under Section 35H of the unamended Act.

11) Mr. Parag P. Tripathi, learned Additional Solicitor General, appearing for the appellant contended that in view of the fact that the High Court has all inherent and plenary power, is competent to consider the delay even after the prescribed period under the Act. He further contended that in the absence of specific prohibition in the Act for condoning delay particularly in Section 35H in lieu of Section 29(2) of the Limitation Act, Section 5 of the Limitation Act is applicable and the High Court ought to have exercised its power by

condoning the delay. He initially contended that since Section 35H speaks about the substantial question of public importance, even the delay, if any, has to be condoned. On the other hand, learned counsel appearing for the respondents supporting the stand taken by the High Court submitted that the Central Excise Act is a self-contained Act and a Code by itself and in the absence of specific provision enabling the High Court to exercise its power by condoning the delay, the High Court is justified in refusing to entertain the reference application of the Excise Department filed beyond the prescribed period. He also contended that in the light of the scheme of the Act and of the fact that sufficient period, i.e, 180 days, has been provided for the Commissioner as well as the other party for making reference to the High Court, the legislative intent has to be respected.

12) Article 214 of the Constitution of India makes it clear that there shall be a High Court for each State and Art. 215 states that every High Court shall be a court of record and shall have all the powers including the power to punish for contempt of itself. Though we have adverted to Section 35H in the earlier part of our order, it is better to extract sub-section

(1) which is relevant and we are concerned with in these appeals :

> "**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."

Except providing a period of 180 days for filing reference application to the High Court, there is no other clause for condoning the delay if reference is made beyond the said prescribed period. We have already pointed out that in the case of appeal to the Commissioner, Section 35 provides 60 days time and in addition to the same, Commissioner has power to condone the delay up to 30 days, if sufficient cause is shown. Likewise, Section 35B provides 90 days time for filing appeal to the Appellate Tribunal and sub-section (5) therein enables the Appellate Tribunal to condone the delay irrespective of the number of days, if sufficient cause is shown. Likewise, Section 35EE which provides 90 days time

for filing revision by the Central Government and, proviso to the same enables the revisional authority to condone the delay for a further period of 90 days, if sufficient cause is shown, whereas in the case of appeal to the High Court under Section 35G and reference to the High Court under Section 35H of the Act, total period of 180 days has been provided for availing the remedy of appeal and the reference. However, there is no further clause empowering the High Court to condone the delay after the period of 180 days.

13) Reliance was placed to Section 5 and Section 29(2) of the Limitation Act which read as under:

> **"5. Extension of prescribed period in certain cases. -** Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period."
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> "**29. Savings.-** (1) Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872 (9 of 1872).
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> (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."

14) In this background, let us examine the contentions raised by both sides. Learned Additional Solicitor General relying on the judgment of this Court in **Union of India** vs. **M/s Popular Construction Co.,** (2001) 8 SCC 470 contended that in the absence of specific exclusion of the Limitation Act in the Central Excise Act, in lieu of Section 29(2) of the Limitation Act, Section 5 of the same is applicable even in the case of reference application to the High Court. The said decision arose under the Arbitration and Conciliation Act, 1996. The question which arose for consideration in that case was whether provisions of Section 5 of the Limitation Act, 1963 are applicable to an application challenging an award under Section 34 of the Arbitration and Conciliation Act, 1996. In that case, award was filed by the appellant-Union of India in the Bombay High Court on 29.3.1999. The appellant filed an application challenging the award on 19.4.1999 under Section 30 read with Section 16 of the Arbitration Act, 1940. Subsequently, the application was amended by inserting the words "Arbitration and Conciliation Act, 1996" in place of "Arbitration Act, 1940". The application was dismissed by the

learned single Judge on 26.10.1999 on the ground that it was barred by limitation under Section 34 of the 1996 Act. The Division Bench rejected the appeal and upheld the findings of the learned single Judge. The said order was challenged in this Court. Though learned counsel for the appellant relied on the said decision in support of his claim, on perusal of the same, we are unable to concur with him. In paragraph 12, this Court held that as far as the language of Section 34 of the 1996 Act is concerned, the crucial words used in the proviso to sub-section (3) are "but not thereafter" and 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. Ultimately, this Court dismissed the appeal filed by the Union of India and confirmed the order of the High Court holding that the application filed to set aside the award is barred by limitation.

14) The next decision relied on by the learned ASG was in the case of **Sharda Devi** vs. **State of Bihar,** (2002) 3 SCC 705. This relates to an appeal before the Letters Patent Bench in the High Court against judgment of Single Judge. While considering Section 54 of the Land Acquisition Act, 1894, this Court held as under:

> **"9.** A Letters Patent is the charter under which the High Court is established. The powers given to a High Court under the Letters Patent are akin to the constitutional powers of a High Court. Thus when a Letters Patent grants to the High Court a power of appeal, against a judgment of a Single Judge, the right to entertain the appeal would not get excluded unless the statutory enactment concerned excludes an appeal under the Letters Patent.
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> **10.** The question which thus arises is whether Section 54 of the said Act excludes an appeal under the Letters Patent. Section 54 of the said Act reads as under:
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> > "54. *Appeals in proceedings before Court.*—Subject to the provisions of the Code of Civil Procedure, 1908, applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the award, or from any part of the award, of the Court and from any decree of the High Court passed on such appeal as aforesaid an appeal shall lie to the Supreme Court subject to the provisions contained in Section 110 of the Code of Civil Procedure, 1908, and in Order 45 thereof."

It was argued that Section 54 of the said Act contains a non-obstante clause containing the words "an appeal shall only lie". After finding that Letters Patent is not an enactment, it is the charter of the High Court, this Court found that a non-

obstante clause of this nature cannot cover the charter of the High Court. By pointing out Section 54 it was contended that the said Act provides for only one statutory appeal to the High Court and then a further appeal to this Court. In other words, it was submitted that on a plain reading of Section 54, it is clear that a Letters Patent Appeal would not lie against a judgment passed by a Single Judge of the High Court in an appeal under Section 54. On the other hand, counsel appearing for the other side submitted that a Letters Patent Appeal would lie. Accepting the said contention, this Court concluded that Section 26 of the said Act provides that every award shall be a decree and the statement of grounds of every award shall be a judgment. By virtue of the Letters Patent "an appeal" against the judgment of a Single Judge of a High Court would lie to a Division Bench. Section 54 of the said Act does not exclude an appeal under the Letters Patent. It was clarified that the word "only" occurring immediately after the non-obstante clause in Section 54 refers to the forum of appeal. In other words, it provides that the appeal will be to the High Court and not to any other court and the term "an appeal" does not restrict it to only one appeal in the High

Court. It was explained that the term "an appeal" would take within its sweep even a Letters Patent Appeal. Though learned ASG heavily relied on the above three-Judge Bench decision, we are of the view that the said decision deals with Letters Patent power of the High Court. There is no dispute that the powers given to a High Court under the Letters Patent are akin to the constitutional powers of the High Court. In such circumstances, when a Letters Patent grants to the High Court a power of appeal, against a judgment of a Single Judge, the right to entertain the appeal would not get excluded unless the statutory enactment concerned excludes an appeal under the Letters Patent. Inasmuch as the Letters Patent enables the High Court that the judgment of a Single Judge would lie to a Division Bench and of the fact that Section 54 of the Land Acquisition Act does not exclude an appeal under the Letters Patent, the said decision is right in holding that under Section 54 there is no bar as to the maintainability of a Letters Patent Appeal. While there is no dispute about the power of the High Court under the Letters Patent jurisdiction, we are of the view that the said analogy is not applicable to the cases on hand.

16) The other decision relied on by the counsel for the appellant is ***M.V. Elisabeth and Others*** vs. ***Harwan Investment and Trading Pvt. Ltd., Hanoekar House, Swatontapeth, Vasco-De-Gama, Goa***, 1993 Supp (2) SCC 433. The learned ASG heavily relied on the following observations:

> **"66.** The High Courts in India are superior courts of record. They have original and appellate jurisdiction. They have inherent and plenary powers. Unless expressly or impliedly barred, and subject to the appellate or discretionary jurisdiction of this Court, the High Courts have unlimited jurisdiction, including the jurisdiction to determine their own powers....."

Here again, there is no dispute about the above proposition. The High Courts in India are having inherent and plenary powers and as a Court of Record the High Courts have unlimited jurisdiction including the jurisdiction to determine their own powers. However, the said principle has to be decided with the specific provisions in the enactment and in the light of the scheme of the Act, particularly in this case, Sections 35, 35B, 35EE, 35G and 35H of the unamended Central Excise Act, it would not be possible to hold that in spite of the above-mentioned statutory provisions, the High

Court is free to entertain reference application even after expiry of the prescribed period of 180 days.

17) The other decision relied on is ***M.M. Thomas*** vs. ***State of Kerala and Another***, (2000) 1 SCC 666. This case arose out of the vesting of all private forests in the State of Kerala on the appointed day (10.05.1971) under the Kerala Private Forests (Vesting and Assignment) Act, 1971. It is true that in para 14 it was held that the High Court as a court of record, as envisaged in Article 215 of the Constitution, must have inherent powers to correct the records. A court of record envelops all such powers whose acts and proceedings are to be enrolled in a perpetual memorial and testimony. A court of record is undoubtedly a superior court which is itself competent to determine the scope of its jurisdiction. The High Court, as a court of record, has a duty to itself to keep all its records correctly and in accordance with law. Hence, the High Court has not only power, but a duty to correct any apparent error in respect of any order passed by it. This is the plenary power of the High Court. In para 17 of the abovementioned decision, it was held :

> "**17.** If such power of correcting its own record is denied to the High Court, when it notices the apparent errors its

> consequence is that the superior status of the High Court will dwindle down. Therefore, it is only proper to think that the plenary powers of the High Court would include the power of review relating to errors apparent on the face of the record."

There is no doubt that the High Court possess all powers in order to correct the errors apparent on the face of record. While accepting the above proposition, in the light of the scheme of the Act, we are of the view that the said decision is also not helpful to the stand taken by the appellant.

18) In the earlier part of our order, we have adverted to Chapter VIA of the Act which provides appeals and revisions to various authorities. Though the 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 Appellate Tribunal. Also an additional period of 90 days in the case of revision by Central Government has been provided. However, in the case of an appeal to the High Court under Section 35G and reference application to the High Court under Section 35H, the 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. In this regard, it is useful

to refer to a recent decision of this Court in ***Punjab Fibres Ltd., Noida (supra)***. Commissioner of Customs, Central Excise, Noida is 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 35H(1) of the Act, the two-Judge Bench taking note of the said provision and the other related provisions following ***Singh Enterprises*** vs. ***Commissioner of Central Excise, Jamshedpur and Others,*** **(2008) 3 SCC 70** concluded that "the High Court was justified in holding that there was no power for condonation of delay in filing reference application."

19) 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. 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.

20) 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 High Court. 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 here in this case is Central Excise Act. 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 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, 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. The scheme of the

Central Excise Act, 1944 support the conclusion that the time limit prescribed under Section 35H(1) to make a reference to High Court is absolute and unextendable by court under Section 5 of the Limitation Act. It is well settled law that it is the duty of the court to respect the legislative intent and by giving liberal interpretation, limitation cannot be extended by invoking the provisions of Section 5 of the Act.

21) In the light of the above discussion, we hold that the High Court has no power to condone the delay in filing the "reference application" filed by the Commissioner under unamended Section 35H(1) of the Central Excise Act, 1944 beyond the prescribed period of 180 days and rightly dismissed the reference on the ground of limitation.

22) In view of the above conclusion, we confirm the decision of the High Court. Hence, all the appeals are accordingly dismissed. No costs.

.....CJI.
(K.G. BALAKRISHNAN)

.....J.
(P. SATHASIVAM)

.....J.

(J.M. PANCHAL)

NEW DELHI;
MARCH 27, 2009.