

CASE NO.:
Appeal (civil) 4647 of 2007

PETITIONER:
Commnr. of Customs, Central Excise, Noida

RESPONDENT:
M/s Punjab Fibres Ltd., Noida

DATE OF JUDGMENT: 14/02/2008

BENCH:
Dr. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 4647 OF 2007
(With Civil Appeal Nos. 4677, 4678 and 5261 of 2007)

Dr. ARIJIT PASAYAT, J.

1. In all these appeals the question that falls for consideration is whether the High Court has power to condone the delay in presentation of the reference under Section 35-H(1) of the Central Excise Act, 1944 (in short the 'Act').

2. Undisputedly, in all these cases the reference applications were filed beyond the period provided for filing an application seeking reference. Section 35-H of the Act reads as follows:

"35-H. 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 35-C passed on or after the 1st day of July, 1999 (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 purpose 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."

3. Section 35-H was substituted by Section 128 of the Finance Act, 1999. The High Court dismissed the reference application holding that it had no power to condone the delay in making the application for reference. It was noted that there was no provision permitting condonation of delay.

4. Learned counsel for the appellant submitted that even if the Act does not provide for any condonation of delay, there is a provision under the Limitation Act, 1963.

5. Learned counsel for the respondent on the other hand supported the view given by the High Court.

6. At this juncture, it would be appropriate to take note of Section 35-G which provides for an appeal to the Appellate Tribunal which specifically says that it has to be within three months from the date on which the impugned order is communicated. But proviso to Section 35-G permits the Appellate Tribunal to allow the appeal even after the aforesaid limitation prescribed in clause 1 is expired if the Tribunal is satisfied that there was sufficient cause for not filing the appeal within the prescribed time. No such provision for condonation of delay exist in Section 35-H. In other words, the legislative intent is clear that the Parliament never intended that delay in filing the reference application under Section 35-H could be condoned.

7. It is also to be noted that under Section 35-E(3) provision for limitation has been provided. Here again, the outer limit for condonation has been indicated.

8. Recently in M/s Singh Enterprises v. Commissioner of Central Excise, Jamshedpur and Ors. (2007 (14) SCALE 610) the scope for condonation of delay beyond the prescribed period was considered. It was inter-alia noted as follows:

"6. At this juncture, it is relevant to take note of Section 35 of the Act which reads as follows:

"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 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.

7. It is to be noted that the periods "sixty days" and "thirty days" have been substituted for "within three months" and "three months" by Act 14 of 2001, with effect from 11.5.2001.

8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of Statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the Statute. The period upto which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Indian 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 upto 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. Above being the position, the High Court was justified in holding that there was no power for condonation of delay in filing reference application.

10. In Vinod Gurudas Raikar v. National Insurance Co. Ltd. And Ors. (1991 (4) SCC 333) this Court considered the question regarding condonation of delay.

"6. Even independent of the General Clauses Act, it is firmly established that unless a new statute expressly or by necessary implication says so, it will not be presumed that it deprives a person of an accrued right. On the other hand, a law which is procedural in nature, and does not affect the rights, has to be held to be retrospectively applicable. The question is whether the appellant has been deprived of an accrued right or privilege in the present case. 7. It is true that the appellant earlier could file an application even more than six months after the expiry of the period of limitation, but can this be treated to be a right which the appellant had acquired. The answer is in the negative. The claim to compensation which the appellant was entitled to, by reason of the accident was certainly enforceable as a right. So far the period of limitation for commencing a legal proceeding is concerned, it is adjectival in nature, and has to be governed by the new Act \027 subject to two conditions. If under the repealing Act the remedy suddenly stands barred as a result of a shorter period of limitation, the same cannot be held to govern the case, otherwise the result will be to deprive

the suitor of an accrued right. The second exception is where the new enactment leaves the claimant with such a short period for commencing the legal proceeding so as to make it impractical for him to avail of the remedy. This principle has been followed by this Court in many cases and by way of illustration we would like to mention New India Insurance Co. Ltd. v. Smt Shanti Misra (1975 (2) SCC 840). The husband of the respondent in that case died in an accident in 1966. A period of two years was available to the respondent for instituting a suit for recovery of damages. In March, 1967 the Claims Tribunal under Section 110 of the Motor Vehicles Act, 1939 was constituted, barring the jurisdiction of the civil court and prescribed 60 days as the period of limitation. The respondent filed the application in July, 1967. It was held that not having filed a suit before March, 1967 the only remedy of the respondent was by way of an application before the Tribunal. So far the period of limitation was concerned, it was observed that a new law of limitation providing for a shorter period cannot certainly extinguish a vested right of action. In view of the change of the law it was held that the application could be filed within a reasonable time after the constitution of the Tribunal; and, that the time of about four months taken by the respondent in approaching the Tribunal after its constitution, could be held to be either reasonable time or the delay of about two months could be condoned under the proviso to Section 110-A(3).

8. The learned counsel strenuously contended that the present case must be considered as one where an accrued right has been affected, because the option to move an application for condonation of delay belatedly filed should be treated as a right. This cannot be accepted. There is a vital difference between an application claiming compensation and a prayer to condone the delay in filing such an application. Liberty to apply for a right is not in itself an accrued right or privilege. To illustrate the point, we may refer to some cases.

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13. In the case before us the period of limitation for lodging the claim under the old as well as the new Act was same six months which expired three weeks after coming in force of the new Act. It was open to the appellant to file his claim within this period or even later by July 22, 1989 with a prayer to condone the delay. His right to claim compensation was not affected at all by the substitution of one Act with another. Since the period of limitation remained the same there was no question of the appellant being taken by surprise. So far the question of condonation of six months delay was concerned, there was

no change in the position under the new Act. In this background the appellant's further default has to be considered. If in a given case the accident had taken place more than a year before the new Act coming in force and the claimant had actually filed his petition while the old Act was in force but after a period of one year, the position could be different. Having actually initiated the proceeding when the old Act covered the field a claimant could say that his right which had accrued on filing of the petition could not be taken away. The present case is different. The right or privilege to claim benefit of a provision for condonation of delay can be governed only by the law in force at the time of delay. Even the hope or expectation of getting the benefit of an enactment presupposes applicability of the enactment when the need arises to take its benefit. In the present case the occasion to take the benefit of the provision for condonation of delay in filing the claim arose only after repeal of the old law. Obviously the ground for condonation set up as 'sufficient cause' also relates to the time after the repeal. The benefit of the repealed law could not, therefore, be available simply because the cause of action for the claim arose before repeal. 'Sufficient cause' as a ground of condonation of delay in filing the claim is distinct from 'cause of action' for the claim itself. The question of condonation of delay must, therefore, be governed by the new law. We accordingly hold that the High Court was right in its view that the case was covered by the new Act, and delay for a longer period than six months could not be condoned. The appeal is dismissed, but in the circumstances, without costs."

11. Above being the position, the appeals are dismissed without any order as to costs.