**(1993) 12 BOM CK 0034**

**In the Bombay High Court**

**Case No :** Writ Petition No. 1975 of 1984

Ambalal Sarabhai Enterprises Ltd. APPELLANT

Vs

Union of India RESPONDENT

**Date of Decision :** 08-12-1993

**Acts Referred:**
Constitution of India, 1950 — Article 226

**Citation :** (1994) 69 ELT 649

**Hon'ble Judges :** S.P. Kurdukar, J;S.M. Jhunjhunwala, J

**Bench :** Division Bench

**Advocate :** Shri H.C. Daruwala, instructed by Crawfored Bayley, for the Appellant; Shri K.R. Bulchandani, for the Respondent

## Judgement

Kurdukar, J.—This Writ Petition under Article 226 of the Constitution of India is filed by the petitioners challenging the legality and correctness of the order dated August 18, 1984 passed by Joint Chief Controller of Imports and Exports (Exhibit P). The challenge in this writ petition relates to clause 8 of Imports (Control) Order, 1955.

2. It appears that in the year 1984 certain writ petitions were filed challenging the constitutional validity of clause 8 of the said Imports (Control) Order, 1955, and such petition were admitted. This petition also stood admitted accordingly.

3. Now it is transpired that it may not be necessary for the petitioners to challenge the constitutional validity at this stage and we reserve the said right of the petitioners.

4. Mr. Bulchandani, learned advocate for the respondents took an exception to the maintainability of the writ petition contending that against the impugned order, appeal lies to the Additional Chief Controller of Imports and Exports having his office at New Delhi. He drew our attention to section 4(M)(1)(b) of the Imports & Exports (Control) Act, 1947. In view of this statutory provision, Mr. Bulchandani urged that having regard to several facts involved in this petition the

 

petitioners must exhaust the alternate remedy of appeal provided u/s 4(M)(1)(b) of the said Imports & Exports (Control) Act, 1947.

5. After hearing counsel for the parties and on perusal of the record, we are satisfied that the petitioners should be directed to file appeal to the Additional Chief Controller, New Delhi u/s 4(M)(1)(b) of Imports & Exports (Control) Act, 1947. Under the said provision period of limitation to file an appeal is 45 days. Obviously as of today the appeal would be time-barred.

6. In the event if petitioners file an appeal to the Additional Chief Controller of Imports and Exports within four weeks and also file an application for condonation of delay, the same will be considered on merits but we have no manner of doubt that the Additional Chief Controller will condone the delay by invoking the provisions of Indian Limitation Act.

7. Proviso to the said provisions of Indian Limitation Act also empowers the Additional Chief Controller to condone the delay if he is satisfied with the bona fides of the petitioners as regard the delay.

8. As regards the stay granted by this Court in terms of prayer (c) vide order dated 19th September, 1984 the said interim order to continue for a period of 8 weeks. We hope the Additional Chief Controller would dispose of the stay application within 8 weeks from the date of filing of the same. In the event if the stay application is decided against the petitioners, the same may not be given effect to for a period of four weeks from the date of service of the said order on the petitioners.

9. Rule to stand disposed of in the above terms. In the circumstances there will be no order as to costs.