

(2005) 07 DEL CK 0059

In the Delhi High Court

Case No : Writ Petition (C) 4544 of 1999 and 16324 of 2004

Assistant Regional Provident Fund Commissioner APPELLANT

Vs

Employees Provident Fund Appellate Tribunal and Others RESPONDENT

 Shree Shyamkamal Industries Pvt. Ltd. Vs Union of
India (UOI) and Another

Date of Decision : 27-07-2005

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34
Central Excises and Salt Act, 1944 — Section 35
Central Sales Tax Act, 1956 — Section 13(1), 8(1), 8(4)
Constitution of India, 1950 — Article 19, 226, 227, 28, 55
Customs Act, 1962 — Section 128
Employees Provident Fund Appellate Tribunal (Procedure) Rules, 1997 — Rule 7, 7(2)
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 16(1),
18, 20, 21, 21(1)
Evidence Act, 1872 — Section 3
Limitation Act, 1963 — Section 10, 11, 12, 13, 14
Motor Vehicles Act, 1939 — Section 58(2), 58(3)

Citation : (2005) 122 DLT 502 : (2005) 83 DRJ 647 : (2006) 108 FLR 35 :
(2006) 2 LLJ 388

Hon'ble Judges : B.C. Patel, C.J.;Sanjay Kishan Kaul, J

Bench : Division Bench

Advocate : S.K. Taneja, A.P. Dhamija and T.K. Tiwari, for the Appellant; Kailash Ghambir, for R.1 and R.C. Chawla, for R.2, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Patel, C.J.—Assistant Regional Provident Fund Commissioner, Meerut has filed writ petition No. 4544 of 1999 under Articles 226/227 of the Constitution of India, inter alia, praying for issuance of writ of certiorari or mandamus or any other order or direction, quashing the order dated 4.6.1999 made by Employees Provident Fund Appellate Tribunal on 10.7.1998 u/s 7A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act").

2. Shree Shyamkamal Industries Pvt. Ltd. (hereinafter referred to as "the Company") has filed Civil Writ No. 16324 of 2004, inter alias , praying to declare the provisions contained in Rule 7(2) of the Employees Provident Fund Appellate Tribunal (Procudure) Rules, 1977 (hereinafter referred to as "the Rules") as ultra virus being in contravention of the provision contained in Section 7-I(2) of the Act and to hold that the provision contained in Section 5 of the Limitation Act is applicable to the Tribunal for the purpose of condensation of delay.

3. In the petition filed by the Assistant Regional Provident Fund Commissioner, respondent No. 3 is the petitioner in writ petition No. 16324 of 2004 and both the petitioners are arising out of the same order and hence the petitions are heard and disposed together.

4. Writ Petition No. 4544 of 1999 was placed for hearing before the learned Single Judge and on 31.8.2004, the learned Single Judge was of the opinion that the decision rendered by learned Single Judge of this Court in U.P. State Road Transport Corporation. Regional Provident Fund Commissioner in CWP No. 1381/1988 decided on 27.9.2001 wherein the view is taken that the appeal can be filed only within a period of 120 days and if the appeal is filed beyond the period of 120 days, the delay in filing the appeal cannot be condoned, requires reconsideration and, Therefore, the matter was listed before the Division Bench. At the initial stage, when the matter was being heard, respondent No. 3 in the writ petition No. 4544/1999 contended that the rule is ultra virus the provisions of the Act and the law of limitation would be applicable. Thereafter, for issuance of an appropriate writ petition was filed by the employer being writ petition No. 16324/2004 The relevant facts are as under.

5. The petitioner, Shree Shyamkamal Industries Pvt. Ltd. having its registered office at Delhi was incorporated under the Companies Act, 1956 on 8.5.1974. It started operating its unit near Bombay in the year 1981. The second unit commenced operations a NOIDA in March, 1990 and was brought under the purview of the Act by the Regional Provident Fund Commissioner, Meerut from the very date of set up i.e. 30.3.1990. The Company having its first unit which was set up in 1981 was already covered under the Provisions of the Act and was under the jurisdiction of Regional Provident Fund Commissioner, Maharashtra. However, it failed to report compliance of the Act and the schemes framed there under in respect of its second unit. It is under these circumstances ,the proceedings were initiated.

6. The contention raised before the Assistant Regional Provident Fund Commissioner, Meerut is that the company's office at NOIDA is not a branch of their Company at Bombay. The Company situated at NOIDA is distinct and separate and there is no functional integrity between the NOIDA and Bombay company.

7. It was contended that NOIDA factory manufactures liquid inks which are used for packaging industries whereas the company's factory at New Bombay

manufactures paste ink used in newspaper industries. It was further contended that the factory at NOIDA is registered under the Factories Act and has its own distinct and separate staff. The terms and conditions of service of the staff at NOIDA are totally distinct and separate from those applicable to the workmen in Bombay factory. The NOIDA unit had taken loan from State Bank of Bombay. It has been separately registered under the Employees State Insurance Act, Sales Tax Act, Income Tax Act, Excise and Salt Act and the company at NOIDA maintains its separate profit and loss account. However, it is to be noted that they have consolidated balance sheet of the Company. The contention was also raised about absence of geographical proximity between the two units as also the staff between the two units was not inter-transferable and working conditions were also different. It was also contended that the quality control of both the units being independent and manage by their respective managers as also the provisions contained in Section 16(1)(d) being available for infancy protection of 5 years is applicable with effect from 1.4.1993.

8. On appreciation of the material placed before the Assistant Provident Fund Commissioner and hearing the representatives of the company as well as the department, the Assistant Provident Fund Commissioner held that unit at NOIDA which commenced its production 30.3.1999 shall not be entitled to a fresh infancy benefits for three years, such a benefit having already availed by the Company in respect of its Bombay factory. The Company was directed to produce all relevant records, as indicated in the notice u/s 7A of the Act.

9. It is thereafter proceedings were held u/s 7A of the Act for determination of the dues payable by the Company and after hearing the Company the different amounts were determined as due and payable totalling to Rs. 1,31,411/- for the period from 30.3.1990 to 31.3.1993.

10. It is against this order the Company preferred an appeal before the Employees Provident Fund Appellate Tribunal, New Delhi (hereinafter referred as "the Tribunal"). On behalf of the Assistant Provident Fund Commissioner before the Tribunal, a preliminary objection was raised to the effect that the appeal is barred by time. The appeal was preferred after more than 160 days and the Tribunal had no jurisdiction to condone the delay beyond 60 days. The appeal was presented on 11.1.1999 though the order dated 10.7.1998 was received by the appellant on 20.7.1998. Thus it took 165 days in preferring the appeal. In view of the provisions contained in Section 7-I(2) of the Act read with Rule 7(2) of the Rules, the appeal was required to be preferred within 60 days to the Tribunal. It was submitted that the Tribunal on being satisfied that the appellant was prevented by sufficient cause in preferring the appeal within the prescribed period of 60 days, may extend the said period by a further period of 60 days and thus in all the appeal was required to be preferred maximum within a period of 120 days and not beyond that. Section 7(1)(2) of the Act reads as under:-

"An appeal under sub-section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed."

11. Rule making authority u/s 21 is entitled to make rules to carry out the provisions of this Act by issuing a notification in the Official Gazette. Sub-clause (b) of sub-section (2) of Section 21 reads as under:-

"the form and the manner in which, and the time within which, an appeal shall be filed before a Tribunal and the fees payable for filing such appeal".

12. Rule 7(2) reads as under:-

"Any person aggrieved by a notification issued by the Central Government or an order passed by the Central Government or any other authority under the Act, may within 60 days from the date of issue of the notification/order prefer an appeal to the Tribunal :

Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the prescribed period, extend the said period by a further period of 60 days."

13. It is in view of the aforesaid provisions, it was contended that the appeal was hopelessly time barred and after the period of 60 days granted for preferring an appeal, if there is a delay of 60 days then such delay can be condoned and no further.

14. The Tribunal expressed an opinion that the power of the Tribunal to condone the delay u/s 5 of the Indian Limitation Act, 1963, is not curtailed by the Legislature. It is done by rule making authority, which has been authorised to prescribe only limit action for filing an appeal. Therefore, the provisions under the Employees' Provident Funds Appellate Tribunal (Procedure) Rules, 1997, only to condone a delay of 60 days is ultra virus and is void. Therefore, it held that the Tribunal has jurisdiction to condone any delay, if it is satisfactorily explained. Even on merits, the Tribunal held:-

"It is quite clear that only ownership is common and that way control of the Directors will also be common but local management and supervisory control and other things necessary for running the factory at Noida are quite distinct and different. Taking of the loan by the employer to set up this factory does not support that the loan has been taken by factory at Bombay. The subsequent borrowing of loans by the appellant has been done against assets of factory at Noida. The borrowing also does not make financial integrality between the two factories. Thus, the factory of independence is confirmed by evidence in this case. Therefore, the factory at Noida cannot be held to be a branch or department of the factory at Bombay and allowed the appeal."

15. Learned counsel for the Company submitted that sub-clause (b) of sub-section (1) of Section 21 provides the rule making authority to prescribe time limit within which an appeal shall be filed before the Tribunal. Legislature only authorized the rule making authority to make a provision for prescribing a period for preferring an appeal, however, the rule also provided a further period of 60 days by proviso to sub-rule (2) of Rule 7 of the Rules. In view of this, it was

contended that proviso is ultra virus the provisions contained in the Act. It was further submitted that if the proviso is ultra virus the provisions contained in the Act, then the Limitation Act, 1963 will apply. In the submission of learned counsel for the Company, the Tribunal has rightly held that the law of limitation is applicable. It was submitted that Section 7-I of the Act, if read it becomes very clear that sub-section (2) of Section 7-I also refers such time within which the appeal is to be filed.

16. The Act is a labour legislation wherein provision is made for provident funds to be deposited by the employer. Section 7D to 7H provide for the Appellate Tribunal, the term of the office of the Presiding Officer of Tribunal, salary, allowances and other terms and conditions of Presiding Officer and the staff of the Tribunal. Section 7-I provides for appeals to the Tribunal. The Chapter further provides procedure before the Tribunal, assistance of a legal practitioner, right of hearing or rectification of an order, finality of orders of the Tribunal, deposit of amount due on filing an appeal, transfer of cases, the manner of recovery, recovery certificate, validity of the certificate and such other things. It provides penalties, offences by companies, enhanced punishment in certain cases and offences under the Act to be cognizable. It also provides the Court which shall try the offences. Thus a special mechanism is indicated in the Act itself.

17. With a view to see that the proceedings are disposed of as early as possible, it was left by the legislature to fix "such time" for preferring an appeal. Section 21(2)(b) refers to the time within which an appeal shall be filed and in view of this it was submitted that in absence of any power, it was not open to prescribe a specific period for condensation of delay in sub-rule (2) of Rule 7 of the Act in exercise of the powers conferred under sub-section (1) of Section 21 of the Act.

18. The Legislature left it open to the rule making authority to prescribe time for preferring an appeal. However, at the same time the rule making authority while prescribing the period of limitation for preferring an appeal also provided a period during which if there is a delay, the same can be condoned if the Tribunal is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the prescribed period. However, the limitation was placed that that can be done if there is a delay of a further period of 60 days.

19. In our opinion, it cannot be said that the rule making authority has exceeded its limit while prescribing the period of limitation. Like the provisions in other statutes for condoning the delay, the rule making authority thought it fit to provide same period if there is a sufficient cause and the Tribunal is satisfied that the applicant was prevented from preferring the appeal on such cause to extend the period of limitation. This provision is an enabling provision. It does not take away the right of a person of preferring an appeal but on the contrary it enables a party who could not prefer an appeal within the prescribed period for sufficient reasons. However, at the same time, keeping in mind that that provision is made for a weaker section, disputes must be resolved at the earliest, Therefore, restricted the period. i.e. that if the delay is of 60 days then to that extent delay

can be condoned. Therefore, in our opinion, the provision cannot be said to be ultra virus of the provisions of the Act as the provision for condensation of delay is made to help the litigant who might be facing genuine difficulties. It is difficult to say that the proviso to sub-rule (2) of Rule 7 is bad. If that is declared as bad or ultra virus Section 7-I or Section 21(1)(b) of the Act, it can be said that the period of limitation prescribed is bad for want of not providing extended period in case of difficulty.

20. It is required to be noted that in case of *Delta Impex v. Commissioner of Customs* Customs AC No. 9/2003, decided on 13.2.2004, this Court had an occasion to examine the question raised by the applicant which reads as under:-

"Whether the provision of Section 128 of the Customs Act, 1962 completely bars the Commissioner (Appeals) from condoning the delay beyond the period of 30 days even in a deserving case and that despite the order made by the Commissioner (Appeals) is it incumbent upon the Tribunal to consider the appeal on merits?"

21. There also it was submitted that considering the provisions contained in Section 29(2) of the Indian Limitation Act, 1963 (hereinafter referred to as "the Limitation Act") read with Section 5 thereof, irrespective of the fact that the matter was under the Customs Act, the appellate authority ought to have condoned the delay, examined the matter on merits and it could not have dismissed the appeal on the ground that the Commissioner (Appeals) can only condone the delay, if an appeal is presented within a period of 30 days after the statutory period of 60 days in view of Section 128 of the Act.

22. In case of *Collector of Central Excise, Chandigarh Vs. Doaba Co-operative Sugar Mills Ltd., Jalandhar*, , Supreme Court pointed out that the authorities functioning under the Act are bound by the provision of the Act. If the proceedings are taken under the Act by the Department, the provisions of limitation prescribed in the Act will prevail. In the case of *Mills India Limited v. Assistant Collector of Customs* 1987(3) ELT 641 (SC), the Court observed that the Customs Authorities acting under the Act were no justified in disallowing the claim as they were bound by the period of limitation provided there in the relevant provisions of the Customs Act, 1962.

23. The Court in the aforesaid case pointed out that the period of limitation prescribed by the Act for filing an application being different from the period prescribed under the Limitation Act, by virtue of Section 29(2) of the said Act, it shall be deemed as if the period prescribed by the different Act is the period prescribed by the schedule to the Limitation Act. However, it would be difficult to say that Section 5 of the Limitation Act is intended to be made applicable in view of the proviso to Section 128 of the Customs Act.

24. The Court is required to examine the scheme of the special law, and the nature of the remedy provided therein. Considering these aspects, the Court will have to find out whether the Legislature intended to provide a complete code by

itself which along should govern the matters provided by it. On examination of the relevant provisions, if it becomes clear that the provisions of Section 5 of the Limitation Act are necessarily excluded, then the said provisions cannot be called in aid to supplement the provisions of the Act. It is open to the Court to examine whether and to what extent the nature of the provisions contained in the Limitation Act in comparison with the scheme of the special law are excluded from operation. When a specific period is provided and a further period of 60 days by way of extended period only then that much period can be condoned.

25. In the instant case, a separate period of limitation is provided, as also the period for which delay can be condoned. The Legislature was aware about the provisions contained in Section 5 of the Limitation Act, yet with an intention to curb the delay in labour matters, legislature left it to the Rule making authority to make a provision for limitation. Rule making authority under the Statute has specifically provided that after the statutory period, if there is delay of 60 days, on showing sufficient grounds for delay of 60 days, that can be condoned. Thus applicability of Section 5 of the Limitation Act is specifically excluded.

26. The expression "expressly excluded" in sub-section (2) of Section 29 of the Limitation Act means an exclusion by express words, i.e. by express reference and not exclusion as a result of logical process of reasoning. In the instant case, there is no question of implied exclusion but, it specifically provides a different period of limitation, as also the period during which, if delay has occurred, it could be condoned.

27. With regard to the applicability of sections 4 to 24 of the Limitation Act (inclusive) one will have to refer to sub-section (2) of Section 29 of the Limitation Act, 1963. It specifically states that these provisions shall apply only so far as and to the extent to which, they are not expressly excluded by special or local law. Reading the language of Rule 7 of the Rules and Section 5 of the Limitation Act, it is very clear that extension of time for a period 60 days only can be condoned subject to satisfaction and not beyond that. From an examination of Rule 7 of the Rules, it is very clear that Section 5 of the Limitation Act is expressly excluded as a specific provision is made in Rule 7.

28. The Division Bench in the case of Delta Impex (supra) considered the case of Mohd. Ashfaq Vs. State Transport Appellate Tribunal, Uttar Pradesh and Others, wherein the Apex Court had an occasion to examine Section 58(2) of the Motor Vehicles Act, 1939, its proviso and sub-section (3) for renewal of permits and pointed out as under:-

"This clearly means that if the application for renewal is beyond time by more than 15 days, the Regional Transport Authority shall not be entitled to entertain it, or in other words, it shall have no power to condone the delay. There is thus an express provision in sub-section (3) that delay in making an application for renewal shall be condonable only if it is of not more than 15 days and that expressly excludes the applicability of Section 5 in cases where an application for

renewal is delayed by ore than 15 days."

29. In the case of The Commissioner of Sales Tax, U.P., Lucknow Vs. Parson Tools and Plants, Kanpur, , the Apex Court pointed out as under:-

"Thus the principle that emerges is that if the legislature in a special statute prescribes a certain period of limitation for filing a particular application there under and provides in clear terms that such period on sufficient cause being shown, may be extended, in the maximum, only up to a specified time limit and no further, then the tribunal concerned has no jurisdiction to treat within limitation, an application filed before it beyond such maximum time limit specified in the statute, by excluding the time spent in prosecuting in good faith and due diligence any prior proceeding on the analogy of Section 14(2) of the Limitation Act."

30. A Division Bench of this Court in the case of M.R. Tobacco Pvt. Limited v. Union of India and Ors. 111(2004) DLT 212 had an occasion to examine the provisions of appeals to Commissioner (Appeals) u/s 35 of the Central Excise Act, 1994.

31. Learned counsel in the instant case submitted that the Tribunal could have condoned the delay u/s 5 of the Limitation Act read with Section 29(2) thereof. The said section reads as under:-

"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."

32. Section 5 of the Limitation Act is also required to be perused. It reads as under:-

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.

Explanation:- The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this Section."

33. What the Court is required to examine is that the period during which delay can be condoned is specifically prescribed, and it has not left open to extend further, then by an express exclusion of Section 5 of the Limitation Act beyond

the period prescribed under a different statute cannot be applied.

34. Our attention was drawn by learned counsel appearing for the Company to the decision of Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker, . The said decision was considered by this Court in M.R. Tobacco Pvt. Ltd.'s case (supra). In paras 12 and 13, the Court pointed out as under:-

"18. Appeal. (1)(a) The Government may, by general or special order notified in the Gazette, confer on such officers and authorities not below the rank of a Subordinate Judge the powers of appellate authorities for the purposes of this Act in such areas or in such classes of cases as may be specified in the order.

(b) Any person aggrieved by an order passed by the Rent Control Court may, within thirty days from the date of such order, prefer an appeal in writing to the appellate authority having jurisdiction. In computing the thirty days aforesaid, the time taken to obtain a certified copy of the order appealed against shall be excluded.

(2) On such appeal being preferred, the appellate authority may order stay of further proceedings in the matter pending decision on the appeal.

(3) The appellate authority shall send for the records of the case from the Rent Control Court and after giving the parties an opportunity of being heard and, if necessary, after making such further inquiry as it thinks fit either directly or through the Rent Control Court, shall decide the appeal.

Explanation. The appellate authority may, while confirming the order of eviction passed by the Rent Control Court, grant an extension of time to the tenant for putting the landlord in possession of the building.

(4) The appellate authority shall have all the powers of the Rent Control Court including the fixing of arrears of rent.

(5) The decision of the appellate authority, and subject to such decision, an order of the Rent Control Court shall be final and shall not be liable to be called in question in any court of law, except as provided in Section 20."

The Supreme Court in paragraph 22 of the said judgment, held as under:-

"As a result of the aforesaid discussion it must be held that appellate authority constituted u/s 18 of the Kerala Rent Act, 1965 functions as a court and the period of limitation prescribed therein u/s 18 governing appeals by aggrieved parties will be computed keeping in view the provisions of Sections 4 to 24 of the Limitation Act, 1963. Such proceedings will attract Section 29(2) of the Limitation Act and consequently Section 5 of the Limitation Act would also be applicable to such proceedings. Appellate authority will have ample jurisdiction to consider the question whether delay in filing such appeals could be condoned on sufficient cause being made out by the applicant concerned for the delay in filing such appeals."

In coming to the conclusion, the Supreme Court, with regard to the provisions of Section 29(2) of the Limitation Act, observed as under:-

"A mere look at the aforesaid provision shows for its applicability to the facts of a given case and for importing the machinery of the provisions containing Sections 4 to 24 of the Limitation Act the following two requirements have to be satisfied by the authority invoking the said provision:

(i) There must be a provision for period of limitation under any special or local law in connection with any suit, appeal or application.

(ii) The said prescription of period of limitation under such special or local law should be different from the period prescribed by the Schedule to the Limitation Act."

The Division Bench held that:-

"In the facts of that case, the Supreme Court held that there was no dispute that the Kerala Rent Act was a special Act or a local law. It was not disputed that it prescribes, for an appeal u/s 18, a period of limitation, which is different from the period prescribed by the Schedule to the Limitation Act. The Court further observed that once the aforesaid two conditions were satisfied, Section 29(2) on its own force would get attracted to appeals filed before the appellate authority u/s 18 of the Limitation Act and that when Section 29(2) applied to appeals u/s 18 of the Limitation Act, for computing the period of limitation prescribed for appeals under that section, all the provisions of sections 4 to 24 of the Limitation Act would apply. Section 5 being one of them would, Therefore, also get attracted. The Supreme Court categorically observed as under:-

"it was obvious that there is no express exclusion anywhere in the Rent Act taking out the applicability of Section 5 of the Limitation Act to appeals filed before the appellate authority u/s 18 of the Act. Consequently, all the legal requirements for applicability of Section 5 of the Limitation Act to such appeals in the light of Section 29(2) of the Limitation Act can be said to have been satisfied."

Clearly, Section 5 of the Limitation Act, 1963 was held to be applicable as there was no express exclusion in the Rent Act. But, this is not the case in the present writ petition. We have already indicated that there is an express exclusion in Section 35 of the said Act. We have also indicated the extent of the exclusion. The decision of the Supreme Court in Mukri Gopalan's case (supra) does not in any way come to the aid of the petitioner in the present case."

35. In the case of M.R. Tobacco Pvt. Ltd.'s case (supra), the Court also examined the decision of the Apex Court in Union of India Vs. M/s Popular Construction Co., wherein an application was made challenging the award u/s 34 of the Arbitration and Conciliation Act 1996. The issue was with respect to language used in Section 29(2) of the Limitation Act and Section 34 of the Arbitration and Conciliation Act, 1996. The Division Bench considered the decision of the Apex Court in Mangu Ram Vs. Municipal Corporation of Delhi, . The Division Bench also

considered the decision in the case of India House Vs. Kishan N. Lalwani, wherein similar provisions of Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 came to be considered. Sub-section (2) of Section 25 thereof provides that every application to the High Court for the exercise of its revisional power shall be preferred within one month from the date on which the impugned order is communicated to the applicant. However, proviso prescribed that the extended period of one month during which on being satisfied that the applicant had sufficient cause for not preferring the application, the Court may allow further time and condone the delay. The Apex Court in paragraph 11 pointed out as under:-

"So far as the applicability of Section 5 of the Limitation Act is concerned, the power of the Court to extend the prescribed period of limitation on the ground of availability of sufficient cause for not preferring the appeal within the prescribed period, within the meaning of Section 5 of the Limitation Act, stands circumscribed by the limitation imposed on the power of the High Court by the proviso to sub-section (2) of Section 25 of the Act. The discretionary power to condone the delay in filing the revision can be exercised for condoning any delay which does not exceed one month over and above the period liable to be excluded from computing the period of limitation by reference to Sections 4 to 24 of the Limitation Act."

36. Learned counsel for the Company invited our attention to the decision of the Apex Court in the case of Sales Tax Officer, Ponkunnam and Ors. v. K.I. Abraham AIR 1967 S.C.1823 to contend that the Legislature authorised the rule making authority to prescribe rule within which an appeal shall be filed. In the aforesaid case, the assessed did not file declaration forms on or before the prescribed date, i.e. February 16, 1961 but he actually filed the declaration forms on March 8, 1961 before the order of assessment was made. The delay was explained i.e. due to late receipt of declaration forms from the purchaser in Madras. Sub-section (4) of Section 8 was indicating that the provisions of sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce, unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration form duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority; or if the goods are sold to the Government, not being a registered dealer, a certificate in the prescribed form duly filled and signed by a duly authorised officer of the Government. Thus if one complied with sub-section (4) then in that case one would not be held liable to pay tax as indicated in Section 8(1) of the Central Sales Tax Act. In sub-section (4) no limitation was prescribed during which form was to be submitted. However, Rule 6 of the Central Sales Tax (Kerala) Rules, 1957 provided the last date of filing returns by adding 3rd proviso to the effect that all declarations forms pending submission by the dealers on 2.5.1960 shall be submitted not later than 18.2.1961. To contend that the authority was entitled to prescribe the limitation, sub-clause (g) of sub-section (1) of Section 13 was relied upon which

reads as under:-

"the time within which, the manner in which and the authorities to whom any change in the ownership of any business or in the name, place or nature of any business carried on by any dealer shall be furnished."

37. The Court pointed out that the Legislature was conscious of the fact that the expression "in the manner" would denote only a mode in which an act was to be done and if any time limit was to be prescribed for the doing of the act, specific words such as "the time within which" were also necessary to be put in the statute. In Stroud's Judicial Dictionary, it is said that the words "manner and form" refer only "to the mode in which the thing is to be done, and do not introduce anything from the Act referred to as to the thing which is to be done or the time for doing it". Thus sub-section (4) of Section 8 directed the dealer to submit the form in prescribed manner but the time was not indicated as to within which period the form is to be filed. At the same time, it is required to be noted that the proviso to Rule 6 of the aforesaid Rules reads as under:-

"Every dealer registered u/s 7 of the Act and every dealer liable to pay under the Act shall submit a return of all his transactions including those in the course of export of the goods out of the territory of India in Form II together with connected declaration forms so as to reach the assessing authority on or before the 20th of each month showing the turnover for the preceding month and the amount or amounts collected by way of tax together with proof for the payment of tax due thereon under the Act:

Provided that in cases of delayed receipt of declaration forms, the dealer may submit the declaration forms at any time before the assessment is made:

Provided further that the delay in submitting the declaration forms shall not exceed three months from the date of sale in question:

Provided also that all declarations forms pending submission by dealers on 2nd May, 1960 shall be submitted not later than 16th February, 1961."

38. The Apex Court pointed out that in the absence of any such time limit, it was the duty of the assessed to furnish the declarations in form C within a reasonable time, and it was the admitted position that the assessed furnished the declarations on 8.3.1961 before the order of assessment was made by the Sales Tax Officer.

39. Contention raised is that the rule making authority in Rule 6 could not have restricted the time and similarly in the instant case it was not open to fix extended period. In the instant case time within which appeal shall be filed is fixed for which dispute is raised. What is contended is that the extended period being not referred, it was not open for the authority to fix time. Before the Apex Court in the case of Commissioner of Sales Tax (supra) u/s 8 time was not indicated. In the instant case, reading Sections 7(1)(2) and 21(1)(b) of the Act, it is clear that provision of Rule 7 is in conformity.

40. In the instant case, there is clear intention of the Legislature for asking the rule making authority to prescribe the time during which an appeal shall be filed. When the time is to be prescribed, it is open for the rule making authority to prescribe extended period also. If the extended period is provided, the provisions would not become bad or ultra virus the provisions contained in the Act, as it is only an enabling provision.

41. It is also clear that an opinion was expressed before the Legislature, that in the opinion of the Government the provision should be made for granting provident fund facilities not only to the employees in industrial establishments, but also to the employees in commercial and other undertakings. An assurance was given that the Government would take appropriate measures. It is thereafter the Act came to be enacted. Reading the provisions contained in the Act, it covers large number of employees. employer, as indicated in the Act, has to make contributions to the fund in the manner indicated in Section 6. Section 7A of the Act empowers the authority to decide a dispute about the applicability of the Act if raised and to determine the amount due from any employer, as indicated in sub-clause (b) of sub-section (1) of Section 7A of the Act. The officer empower to conduct an inquiry under sub-section (2) of Section 7A of the Act in this behalf having the powers as are vested in Code under the Civil Procedure Code, 1908 for trying a suit in respect of the matters indicated therein. How the order is to be reviewed is indicated u/s 7B. Section 7C refers to determination of escaped amount. An order made by authority was challenged before the Appellate Tribunal known as "Employees Provident Funds Appellate Tribunal". Thus it is a special statute to determine the liability of employer to make his contribution and to pass further orders by the authorities which are to be examined by the Tribunal in case of an appeal. It is in this back ground the provisions of the Act are to be examined.

42. Considering the language of the Act and the rules, the Scheme, which is meant for weaker section and from the intention of the Legislature, it is clear that the Legislature left it to the Rule making authority to prescribe the time by specifically referring that an appeal under sub-section (1) shall be filed within such time as also specifically referring in Section 21 about the form and the time within which an appeal shall be filed. It is clear that the legislature left it to the Rule Making Authority to prescribe total period during which an appeal can be filed, which includes extended period. This being an enabling provision and in consonance with the provision contained in the Act cannot be said to be ultra virus the provisions contained in the Act.

43. Our attention was drawn by learned counsel for the Provident Fund Commissioner to the decision of the Apex Court in L.S. Synthetics Ltd. v. Fair Growth Financial Services Ltd. (2004) S.C.C.456. This is a case where a special forum is created and a special Tribunal is provided to hear further grievances. How the matter is to be viewed is indicated. The Court pointed out as under:-

"38. A special Court having regard to its nature and functions may be a court

within the meaning of Section 3 of the Indian Evidence Act, 1872 or Section 3 of the Limitation Act, 1963 but having regard to its scope and object and in particular the fact that it is a complete code in itself, in our opinion, the period of limitation provided in Schedule appended to the Limitation Act, 1963, will have no application. For the applicability of Section 29(2) of the Limitation Act, the following requirements just be satisfied by the court invoking the said provision:

(1) There must be a provision for period of limitation under any special or local law in connection with any suit, appeal or application.

(2) Such prescription of the period of limitation under such special or local law should be different from the period of limitation prescribed by the Schedule to the Limitation Act, 1963.

39. In terms of the provisions of the said Act, no period of limitation is prescribed, evidently because Parliament thought it to be wholly unnecessary. Once the statutory operation relating to the attachment of the property belonging to a notified person comes into being, the duties and functions of the Special Court start. In relation to the duties and functions required to be performed by a court of law, no period of limitation need be prescribed. Furthermore, Section 13 of the said Act provides for a non obstante clause when has been used as a device to modify the ambit of the provisions of law mentioned therein or to override the same in the specified circumstances. [See T.R. Thandur v. Union of India (1996) 9 SCC 690] The said Act does not provide for any period of limitation, the reasons wherefore have been noticed hereinbefore and in that view of the matter, in our considered opinion, Articles 19, 28 and 55 providing for period of limitation prescribed would have no application. Section 13 of the said Act provides for a non obstante clause which is of wide amplitude. In a case of conflict between the said Act and any other Act, the provisions of the former shall prevail.

XXX XXX XXX 41. A statute of limitation bars a remedy and not a right. Although a remedy is barred, a defense can be raised. In construing a special statute providing for limitation, consideration of plea of hardship is irrelevant. A special statute providing for special or no period of limitation must receive a liberal and broader construction and not a rigid or a narrow one. The intent and purport of Parliament enacting the said Act furthermore must be given its full effect. We are, Therefore, of the opinion that the provisions of the Limitation Act have no application, so far as directions required to be issued by the Special Court relating to the disposal of attached property, are concerned."

44. Learned counsel appearing for the Provident Fund Authorities submitted that in view of the aforesaid decision when a special statute has provided special period of limitation as also a specified period, as extended period, it must receive a liberal and broader construction and not a rigid and a narrow one. It was submitted at the cost of repetition that the legislation being for the benefit of a working class to avoid delay at the instance of employer, the Legislature has

permitted restriction in tie for preferring an appeal by prescribing separate period of limitation, which includes condensation of delay. In our opinion, it requires no interference.

45. The petition preferred by the employer is dismissed, the petition filed by the Assistant Regional Provident Fund Commissioner is allowed and the order passed by the Tribunal is quashed.