

(2014) 04 P&H CK 0006
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1085 of 2013

Bharat Sanchar Nigam Ltd.

APPELLANT

Vs

Customs, Excise and Service Tax Appellate Tribunal and
Others

RESPONDENT

Date of Decision : 07-04-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Limitation Act, 1963 — Section 5

Citation : (2015) 30 GSTR 434

Hon'ble Judges : Jaspal Singh, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Arvind Rajotia, Advocates for the Appellant; Sunish Bindlish,
Advocates for the Respondent

Judgement

Ajay Kumar Mittal, J.—In this writ petition filed under article 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the order dated August 9, 2010 (annexure P-3) passed by respondent No. 2 and the order dated September 19, 2012 (annexure P-4) passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (in short "the Tribunal") whereby the appeal filed by the petitioner has been dismissed. Briefly stated, the facts necessary for adjudication of the instant writ petition as narrated therein may be noticed. The petitioner took Cenvat credit of Rs. 1,99,398 on the cost of the mobile towers and Rs. 4,48,566 of service tax paid on civil construction work and soil testing during the period April, 2006 to March, 2008. The Joint Commissioner (P & V) issued a notice dated October 14, 2008 (annexure P-1) to the petitioner to show cause as to why the Cenvat credit granted to it be not disallowed. The petitioner submitted the reply dated January 2, 2009 (annexure P-2) to the said notice pleading that there was no misutilisation of Cenvat credit amounting to Rs. 7,05,761. The adjudicating authority disallowed the Cenvat credit of Rs. 7,05,761 and imposed equal penalty. Feeling aggrieved, the petitioner filed an appeal before respondent No. 2

who vide order dated August 9, 2010 (annexure P-3) while disposing of the appeal reduced the penalty from Rs. 2,57,195 to Rs. 1,99,398 imposed under rule 15 of the Cenvat Credit Rules, 2004. It further held the adjudicating authority to allow Cenvat credit to the extent availed of on construction work of office only and disallow the credit availed of on civil construction work of residential premises. Still dissatisfied, the petitioner filed an appeal along with an application for condonation of delay before the Tribunal. The Tribunal vide order dated September 19, 2012 (annexure P-4) dismissed the application as well as the appeal holding that the application was blank about the days of delay and also was not properly verified. Hence, the present writ petition.

2. We have heard learned counsel for the parties.

3. The solitary question that arises for consideration in this petition is whether there was sufficient cause for condonation of delay of about one and a half year in filing the appeal before the Tribunal.

4. Examining the legal position relating to condonation of delay under section 5 of the Limitation Act, 1963 (in short, the "1963 Act") it may be observed that the hon"ble Supreme Court in *Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation and Another*, laying down the broad principles for adjudicating the issue of condonation of delay, in paragraphs 14 and 15 observed as under:

"14. We have considered the respective submissions. The law of limitation is founded on public policy. The Legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the Legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed of for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time.

The expression "sufficient cause" employed in section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate-- *Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others*, , *N. Balakrishnan Vs. M. Krishnamurthy*, and *Vedabai @ Vijayanatabai Baburao Pateil Vs. Shantaram Baburao Patil and Others*, ."

5. It was further noticed by the hon"ble apex court in *R.B. Ramlingam Vs. R.B. Bhvaneswari*, as under:

". . . It is not necessary at this stage to discuss each and every judgment cited

before us for the simple reason that section 5 of the Limitation Act, 1963 does not lay down any standard or objective test. The test of "sufficient cause" is purely an individualistic test. It is not an objective test. Therefore, no two cases can be treated alike. The statute of limitation has left the concept of "sufficient cause" delightfully undefined, thereby leaving to the court a well-intentioned discretion to decide the individual cases whether circumstances exist establishing sufficient cause. There are no categories of sufficient cause. The categories of sufficient cause are never exhausted. Each case spells out a unique experience to be dealt with by the court as such."

It was also recorded that:

"For the aforesaid reasons, we hold that in each and every case the court has to examine whether delay in filing the special leave petition stands properly explained. This is the basic test which needs to be applied. The true guide is whether the petitioner has acted with reasonable diligence in the prosecution of his appeal/petition..."

6. From the above, it emerges that the law of limitation has been enacted which is based on public policy so as to prescribe time limit for availing of legal remedy for redressal of the injury caused. The purpose behind enacting law of limitation is not to destroy the rights of the parties but to see that the uncertainty should not prevail for unlimited period. Under section 5 of the 1963 Act, the courts are empowered to condone the delay where a party approaching the court belatedly shows sufficient cause for not availing the remedy within the prescribed period. The meaning to be assigned to the expression "sufficient cause" occurring in section 5 of the 1963 Act should be such so as to do substantial justice between the parties. The existence of sufficient cause depends upon facts of each case and no hard and fast rule can be applied in deciding such cases.

7. The hon'ble apex court in *Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation and Another*, and *R.B. Ramlingam Vs. R.B. Bhvaneswari*, noticed that the courts should adopt liberal approach where delay is of short-period whereas the proof required should be strict where the delay is inordinate. Further, it was also observed that judgments dealing with the condonation of delay may not lay down any standard or objective test but is purely an individualistic test. The court is required to examine while adjudicating the matter relating to condonation of delay on exercising judicial discretion on individual facts involved therein. There does not exist any exhaustive list constituting sufficient cause. The applicant/petitioner is required to establish that in spite of acting with due care and caution, the delay had occurred due to circumstances beyond his control and was inevitable.

8. Examining the facts in the present case, no ground for condonation of colossal delay of about one and a half year in filing the appeal before the Tribunal has been made out. Even the Tribunal while dismissing the application for condonation of delay filed along with the appeal against the order dated August

9, 2010 (annexure P-3) passed by the Commissioner (Appeals), noticed that the application was blank as number of days of delay in filing the appeal had not been mentioned therein and also the verification date was blank. It was one Bindu Gupta, DE (Legal) office of GMT, Patiala who had verified such application by an affidavit. The Tribunal had observed as under:

"The application for condonation of delay registered as ST/COD/183/2012 is blank about the days of delay and also the verification date is blank. It is strange that one Bindu Gupta, DE (Legal) Office of GMT, Patiala has also verified the application by an affidavit. It is not known how such a blank application was verified by responsible officer of BSNL. Looking to the pitiable condition in the application, MA(COD) is rejected. Consequently, the other application and appeal stands dismissed."

9. In the absence of definite averments and substantive proof with material to substantiate the reasons for condonation of delay, no justification for condonation of exorbitant delay of about one and a half year in filing the appeal before the Tribunal arises. In view of the above, no ground for entertaining the writ petition is made out. Accordingly, the writ petition is dismissed.