
(2002) 05 CAL CK 0042
In the Calcutta High Court
Case No : Writ Petition No. 5432 (W) of 2002

Indian Oil Corporation Ltd.

APPELLANT

Vs

CEGAT and Others

RESPONDENT

Date of Decision : 06-05-2002

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2002) 104 ECR 609

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Judgement

D.K. Seth, J.—The petitioner preferred an appeal before the Customs, Excise & Gold (Control) Appellate Tribunal (hereinafter referred to as "CEGAT") together with an application for condonation of delay. The application for condonation of delay may be found at page 32, which is annexed to the Memorandum of Appeal. Subsequently, supplementary statements were filed in order to strengthen the application for condonation of delay. This was rejected by an order dated 16th January, 2002 passed in Miscellaneous Application No. 56 of 1999 in connection with appeal No. E/V-109/99. It is this order contained in annexure P-10, which is under challenge. The learned Counsel for the petitioner relying on the application for condonation of delay contends that there was sufficient explanation but the learned Tribunal had mechanically rejected the same. He had submitted that the order contained in annexure P-10 should be set aside. He had also relied on a decision in the case of N. Balakrishnan v. M. Krishnamurthy reported in (1998) 7 Supreme Court Cases 123 to support his contention.

2. Mr. Kalyan Kr. Bandopadhyay, learned Counsel appearing on behalf of the respondents, on the other hand, points that out since this is a question of fact this is determined by the learned Tribunal and as such, this Court, sitting in Writ Jurisdiction, cannot interfere with the same unless it is shown to be perverse. He points out that the explanation given can by no stretch of imagination can be said to be sufficient explanation at all. Respondents had admitted the

communication of the order and pleaded some internal arrangements for which respondents are in no way concerned. He also points out from the order contained in annexure P-10 that there is no infirmity in the order. The same is a well reasoned order and the reasons have been spelt out in the order itself. Therefore, the Court should not interfere with the same. The writ petition should, therefore, be dismissed.

3. Having heard the learned Counsel for the parties, it appears that from the dates disclosed in the application for condonation of delay, that after the hearing was over no order was passed and it was expected that the order would be passed and communicated to the petitioner. On the plea that no order has been passed and the matter is pending the respondents had taken steps under the Kar Vivad Samadhan Scheme, 1998, in which only the pending matters are covered. At the time of hearing the said application for condonation of delay it was disclosed that the Scheme does not apply in the case of the petitioner since matter is not pending, inasmuch as it was disposed of and order was communicated to the petitioner. Thereafter the petitioner applied for certified copy of the order. Having obtained the certified copy, the petitioner had preferred an appeal. It is further explained that the order was received in the office which is apparent from the Register of receipt of mails. It is pointed out that since it was not placed to any designated officer, therefore, the mail which was received was not forwarded to any officer and ultimately, it could not be traced. The xerox copy of the said Register has since been annexed, wherefrom it appears that the column of sending the mail receipt is lying blank, whereas in respect of other articles the same appears to have been sent to the respective designated officer as mentioned in the said Register. On this ground the delay has been asked to be condoned. It appears that the learned Tribunal had considered the same, and it came to a finding that it was received by the respondents and therefore, the explanation does not seem to be satisfactory and there was about 7 months delay.

4. The learned Tribunal did not consider this aspect that the petitioners were labouring under the plea that the matter was pending and had attempted to get the matter settled through the said Kar Vivad Samadhan Scheme. Therefore, it appears that the petitioners were under the bona fide belief that the matter was pending. As soon as it was communicated to them they had applied for certified copy and filed the appeal. It is contended that it was received but it was not placed before the appropriate officer. It could be an internal system of the administration, but it might be a reasonable explanation, having regard to the facts and circumstances of the case if it is shown that it was a genuine case and that there was no mala fide on the part of the petitioner or that there was no attempt to delay the process.

5. In the present case, it appears that the petitioner has not intended to delay the process. On the other hand having believed that the matter was pending, sought to settle the same through Kar Vivad Samadhan Scheme. When it was

proceeding to settle the matter through any other process with the belief that the matter is pending, it can be presumed that it was doing so on bona fide belief. In any event learned Tribunal has not found any mala fide against the petitioner.

6. Having regard to the facts and circumstances of the case, it appears that there was reason to justify the delay. In *N. Balakrishnan v. M. Krishnamurthy* (supra) the Apex Court had taken a practical view and had laid down that in such a case a pragmatic approach has to be taken by the Courts while dealing with the condonation of delay. We may derive support from the reasoning given in the said decision in paragraphs 9 to 13 of the said decision, as quoted below:

9. It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncontrollable due to want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior Court to come to its own finding even untrammelled by conclusion of the lower court.

10. The reason for such a different stance is that:

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a life span for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim "interest republican up sit finalities" (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must

be kept alive for a legislatively fixed period of time.

12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the Court is always deliberate. This Court has held that the words "sufficient cause" u/s 5 of the Limitation Act should receive a liberal constitution so as to advance substantial justice vide *Shakuntala Devi Jain v. Kuntal Kumari and State of W.B. v. Administrator, Howrah Municipality*.

13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the Court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the Court shall compensate the opposite party for his loss.

7. Having regard to the facts and circumstances and the ratio laid down in *Balakrishnan*, (supra) in my view, the facts disclosed therein are justifiable in attracting the ratio decided in the said decision.

8. In the circumstances, the delay is hereby condoned. Let the appeal be registered and be dealt with on merits by the Tribunal in accordance with law. It is expected that the learned Tribunal shall decide the question as early as possible, preferably within a period of three months from the date of communication of this order.

9. With these observations this writ petition is disposed of.

10. There will be no order as to costs.

11. Let xeroxed plain copies of this order, duly countersigned by the Assistant Registrar (Court), be supplied to the learned Counsel appearing on behalf of the parties.