

(1991) 03 GUJ CK 0022

In the Gujarat High Court

Case No : Special Civil Application No. 770 of 1991

Kishanlal Meghraj Soni

APPELLANT

Vs

Collector of Customs

RESPONDENT

Date of Decision : 25-03-1991

Acts Referred:

Citation : (1994) ECR 478 : (1992) 58 ELT 530

Hon'ble Judges : J.N. Bhatt, J;A.P. Ravani, J

Bench : Division Bench

Advocate : J.G. Shah, for the Appellant; B.B. Naik, for the Respondent

Judgement

Ravani, J.—Rule. Mr B.B. Naik waives service of rule on behalf of the respondents.

2. The petition is directed against the order of dismissal of the application for condonation of delay by CEGAT. The appeal was filed against the order dated August 9, 1989, passed by the Collector of Customs (Prevention), Ahmedabad. The order was received by the petitioner on August 13, 1989. The appeal should have been filed on or before November 13, 1989. However, the appeal was posted on December 25, 1989 and it was received by the registry of CEGAT on December 29, 1989. Thus there was a delay of about 45 days in filing the appeal. The petitioner submitted that he was suffering from various diseases like typhoid, diabetes, etc., and also submitted medical certificate in support of the contention that in fact he was suffering from the aforesaid diseases and was advised rest for about two months. However, the Tribunal has rejected the application on the ground that the petitioner should have been vigilant even during the earlier period of the limitation.

3. The Tribunal has lost sight of the decision of the Supreme Court in the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, . In para 3 of the judgment, the Supreme Court has laid down the principles which should be borne in mind by the Court while interpreting the phrase "sufficient cause". The principles laid down by the Supreme Court are as under :

- "1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. "Every day"s delay must be explained" does not mean that a pedantic approach should be made. Why not every hour"s delay, every second"s delay ? The doctrine must be applied in a rational common sense pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so".

If the aforesaid principles are applied, in our view, the delay ought to have been condoned.

4. In the result, the order Annexure "B" dated June 26, 1990, passed by the CEGAT, Bombay, rejecting the application for condonation of delay is quashed and set aside. CEGAT, Bombay is directed to consider the appeal as having been filed within time and if the appeal is otherwise in order the same shall be decided on merits.
5. Rule made absolute to the aforesaid extent with no order as to costs.