

(1999) 01 MAD CK 0011

In the Madras High Court

Case No : Writ Petition No's. 19162, 19322 and 19323 of 1998

Leo Oils and Lubricants

APPELLANT

Vs

Commissioner of C. Ex. (Appeals)

RESPONDENT

Date of Decision : 05-01-1999

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35(1)

Citation : (1999) 65 ECC 388 : (1999) 111 ELT 700

Hon'ble Judges : S. Jagadeesan, J

Bench : Single Bench

Advocate : K. Jayachandran, for the Appellant; Sethuraman, A.C.G.S.C., for the Respondent

Judgement

S. Jagadeesan, J.—In all these writ petitions the parties are same. The petitioner has filed these writ petitions challenging the order of the first

respondent dismissing the application of the petitioners for condoning the delay in filing the appeal against the orders of the second respondent.

2. Since the question involved in these writ petitions is whether the first respondent has exercised his discretionary power in a judicious manner in

rejecting the application for condoning the delay. I am of the view that there is no need to discuss the facts elaborately.

3. The petitioner has received the orders of the second respondent on 29-3-1998, 15-4-1998 and 17-4-1998, respectively. Against which, the

appeals were preferred before the first respondent with a delay of 91 days, 83 days and 81 days, respectively. The petitioner also has filed an

application for condoning the delay as per Section 35(1) of the Central Excise Act, 1944. The reason given by the petitioner for the delay is that

the unit was closed since October, 1997 when the Managing Director faced family

problems who forced to go to his native place during the period

of second week of March to second week of June, 1998 and after returning from his native place the Managing Director was admitted in Vijaya

Health Centre as he was suffering from jaundice. Again he was forced to go to his native place due to domestic problem and on account of his

sister's death in an accident in August, 1998. Hence, he could not file the appeals within the period of limitation of 90 days prescribed u/s 35(1) of

the said Act. Hence, he filed the appeals with the application for condoning the delay.

4. The first respondent under the impugned proceedings has passed common order dismissing all the three applications on the ground that even

during the lockout period, the factory will have barest minimum staff such as security to receive the letters and hence, the plea of the petitioner is

not acceptable. The delay in respect of sickness for all the period has not been explained. Hence, the plea that the appeals were filed as soon as

the watchman handed over the post, cannot also be accepted.

5. It is the contention of the learned Counsel for the petitioner that the first respondent has rejected the applications for condoning the delay on

technical grounds. When the factory is under lockout, the security are engaged only on daily basis from some security services and as such they

cannot be expected to discharge the regular administration work. So far as the family problem and the sister's death is concerned, the first

respondent has totally failed to take into consideration of the same. As the appeals have been filed within the period condonable by the first

respondent as per the proviso to Section 35(1) of the said Act, the first respondent ought to have entertained the appeal by condoning the delay.

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6. On the contrary, learned Counsel for the first respondent contended that the first respondent has disposed of the application for condoning the

delay, properly. Though the petitioner has pleaded that he was suffering from jaundice, no material has been placed before the first respondent with

regard to his sickness and as such the first respondent has rightly rejected the plea of the petitioners. Even with regard to the lockout of the factory,

when admittedly the postal covers have been received by his staff, it is the duty of the said staff to hand over the same to the petitioner or the

petitioners counsel immediately on receipt of the same. Since the explanation submitted by the petitioner is not an acceptable one, the first respondent has rightly dismissed the petitions.

7. I carefully considered the contentions of the both the counsel.

8. Section 35(1) of the said Act, contemplates that the appeal period is within three months from the date of communication of the order. The

proviso to Section 35(1) of the said Act, empowers the appellate authority to extend the period of limitation for a further period of three months. If

the appellant was prevented by sufficient cause from presenting the appeal within the period prescribed u/s 35(1) of the said Act.

9. Admittedly in this case, the appeal was not filed within three months as contemplated u/s 35(1) of the said Act. But, however, the appeals were

presented within three months time prescribed under the proviso to Section 35(1) of the said Act. Hence, the short question is whether the

petitioner was prevented by sufficient cause in presenting the appeal before the first respondent within the period prescribed u/s 35(1) of the said

Act. Hence, the petitioner has to explain the sufficient cause only for the period of three months prescribed u/s 35(1) of the said Act and not for the

period beyond to that.

10. There is no dispute that the factory was under lockout from October, 1997 to September, 1998. Hence, there is no regular staff of the factory

or the administration office is working. More over the petitioner has also stated that there was some family problem and he had been to his native

place and was suffering from jaundice. Considering the fact that the appeals have been filed within the period specified under the proviso to

Section 35(1) of the Act, I am of the view that the first respondent could have exercised his discretion in a lenient manner, especially, when a ruling

of the supreme Court is to the effect that the provisions of the Limitation Act has to be considered liberally in an even-handed manner to give

benefits to the litigants too much of strictness is not necessary since justice will be the end. Considering all the matters, I am of the view that the

petitioner may be given a opportunity by condoning the delay in filing the appeal by imposing some conditions. Accordingly, the impugned

proceedings are set aside and the delay in filing the appeal before the first respondent is condoned and the writ petitions are allowed on condition

the petitioner pays a sum of Rs. 1,000/- (Rupees one thousand only) by way of cost in each writ petition to the counsel for the respondents herein

within three weeks from today, failing which the order of the first respondent shall stand confirmed. Post the matters on 28-1-1999 for reporting

the payment of the costs.