

(2014) 09 P&H CK 0194
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. No. 377 of 2012 (OandM)

State of Haryana

APPELLANT

Vs

Hindustan Machine Tools Limited

RESPONDENT

Date of Decision : 30-09-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 17, 34, 34(1), 34(3), 36
Central Excises and Salt Act, 1944 — Section 35, 35B, 35EE, 35G, 35H
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 21
Constitution of India, 1950 — Article 226, 227, 32, 323A, 323B
Contract Act, 1872 — Section 25
Customs Tariff Act, 1975 — Section 9(C)
Electricity Act, 2003 — Section 111, 111(2), 125, 145
Evidence Act, 1872 — Section 125
Finance Act, 1994 — Section 85(3)
Foreign Exchange Management Act, 1999 — Section 35
Limitation Act, 1963 — Section 10, 11, 12, 12, 13
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 18(4), 25, 25(1), 3(1)(o)

Citation : AIR 2015 PH 45 : (2015) 3 BC 134 : (2015) 2 ESC 664 : (2015) 178 PLR 1 : (2014) 4 RCR(Civil) 1040

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

Bench : Full Bench

Advocate : Tanisha Peshawaria, D.A.G, Advocate for the Appellant; Avneesh Jhingan, Advocate for the Respondent

Judgement

Ajay Kumar Mittal, J.—The matter has been placed before this Bench in pursuance of reference made by a Division Bench of this Court vide order dated 1.10.2013 to the following effect:-

"The present appeal seeks to raise a question of legality of the order of the learned Single Judge dated 29.8.2011 affirming the view taken by the AAIFR that the appeal filed by the appellant was barred by time and even beyond the extended period permissible and thus, it could not have examined the merits of controversy.

Learned counsel for the appellant has, however, relied upon the Division bench judgment of this Court in CWP No. 7965 of 2008 titled as State of Haryana v. Appellate Authority for Industrial and Financial Reconstruction and others, decided on 25.11.2008 (2009 (22) VST 2010) to contend that in a similar factual matrix where the issue was of the BIFR to decide the jurisdiction to waive off the interest on sales tax, it was deemed appropriate to examine the merits of the controversy by seeking to condone the delay.

On the other hand, learned counsel for the respondents has referred to certain issues expressed by the Delhi High Court, Madras High Court as well as the Hon"ble Supreme Court of India. In the context of the same enactment in Writ Petition (Civil) No. 2728 of 2012 titled as M/s. Agarpara Jute Mills Limited v. Board for Industrial and Financial Reconstruction and others, decided on 8.5.2012, it was held that there could not be any condonation of delay relying upon the judgment of the Supreme court in Union of India Vs. M/s Popular Construction Co., . The Special Leave Petition against this judgment bearing No. 18296 of 2012 was dismissed on 30.11.2012. Reference has also been made to the judgments of the Supreme Court in Chhattisgarh State Electricity Board Vs. Central Electricity Regulatory Commission and Others, where in the context of delay under section 125 of the Electricity Act, 2003, it has been observed that the delay cannot be condoned and Section 5 of the Limitation Act, 1963 cannot be invoked. The relevant provision is stated to be similar to the one in question in the present case. Reference has also been made to the views expressed by the Supreme Court in Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur and Others, in the context of Section 35 of the Central Excise Act, 1954 as the specific provision providing for limitation would be rendered otiose. This principle has been followed by the Madras High Court in the The Commissioner, Udumalaipet Municipality Vs. Rajammal and Others , M. Unnikrishnan Vs. Deputy Commissioner of Labour (Appeal), The Management, Aeroflot, Russian International Airlines and Aeroflot Russian International Airlines, and by the Kerala High Court in Thomas Thomas and Another Vs. The Kottayam Municipality and Another, . It appears that the aforesaid judgments were either not brought to the notice of the Division Bench of this Court or some of the pronouncements have come later. We find some merit in the plea of the appellant that there should be consistent judicial view on this issue and thus, we are of the view that it would be more appropriate to refer this issue to a larger Bench for consideration.

The question, which would thus arise, would be whether under Section 25 of the Sick Industrial Companies (Special Provisions) Act, 1985, it would be permissible for the AAIFR to condone delay beyond the period of 45 days plus 60 days and whether if it is not so, can the High Court exercise the power under Article 226 of the Constitution of India to condone the delay and remit the matter for decision on merits by the AAIFR.

The papers be accordingly placed before the Full bench so constituted."

Before delving into the issue involved herein, a few facts may first be noticed to put the controversy in its true perspective. Respondent No. 1 is a company incorporated on 1.4.2000 and is having five factories located at Bangalore, Pinjore, Ernakulam, Hyderabad and Ajmer. The company commenced commercial production on 28.3.2001. On 22.12.2005, respondent No. 1 got itself registered under Haryana General Sales Tax Act, 1973 (now repealed) (HGST Act), Haryana Value Added Tax 2003 (HVAT Act) and Central Sales Tax Act, 1956 (CST Act). Ever since its registration, it has been doing its business regularly returning substantial gross turnover every financial year. The company had been affected by the liberalization process and became a sick industrial company within the definition of Section 3(1)(o) of the Sick Industrial Company's (Special provisions) Act, 1985 (in short, "the SICA") from the very first year of its operation i.e. 2000-01 as its accumulated losses exceeded its net worth. Based on its audited balance sheet as on 31.3.2005, the company filed a reference under the SICA vide Form No. A dated 22.5.2005 before the Board of Industrial and Financial Reconstruction, New Delhi (BIFR). Respondent No. 4 vide its order dated 2.12.2006 declared the company a sick unit and appointed UCO Bank as an operating agency to prepare rehabilitation Scheme for the company. The cut off date was fixed as 31.3.2007. Thereafter, a joint meeting of all the parties was convened. However, no notice was issued to the appellant State. Subsequently on 17.3.2008, a revival scheme was submitted by the UCO Bank operating agency. The BIFR formulated the draft rehabilitation scheme for revival of the company and invited objections/suggestions within 60 days of the date of the order. The BIFR after hearing the affected parties passed the order dated 12.6.2008. On 17.7.2009, a decision was taken by the appellant department to express its inability to implement the order dated 12.6.2008 and accordingly decided to file an appeal before the appellate authority constituted under the SICA. The said appeal was preferred under section 25 of the SICA alongwith the affidavit accompanied by an application under section 5 of the Limitation Act, 1963 (in short, "the 1963 Act") for condonation of delay of 354 days in filing the appeal. Respondent No. 3 while dealing with the appeal alongwith the application for condonation of delay dismissed the appeal being time barred vide order dated 28.4.2010. The appellant herein challenged the said order before this Court through Civil Writ Petition which was dismissed by a learned Single Judge vide order dated 29.8.2011 upholding the order passed by the appellate authority relying upon the decision of the Delhi High Court in Shri Anil Mehra Vs. M/s. East India Weaving Ltd. and Others, . Aggrieved by the order, the appellant State filed Letters Patent Appeal before this Court. Learned counsel for the appellant relied upon decision of this Court in Appellate Authority for Industrial and Finance Reconstruction's case (supra), wherein in identical issue, the delay was condoned. On the other hand, learned counsel for the respondent relied upon judgments of the Apex Court, Madras, Delhi and Kerala High Courts mentioned in the reference order holding contrary view. The Division Bench vide order dated 1.10.2013 after hearing the matter opined that in order to have consistent judicial view on the issue, the same be referred to the larger Bench for

consideration. Hence the matter is before this Full Bench.

2. The pristine legal question which has been referred to this Full Bench reads thus:-

"Whether under Section 25 of the Sick Industrial Companies (Special Provisions) Act, 1985, it would be permissible for the AAIFR to condone delay beyond the period of 45 days plus 60 days and whether if it is not so, can the High Court exercise the power under Article 226 of the Constitution of India to condone the delay and remit the matter for decision on merits by the AAIFR."

3. Bifurcating the core issues that require consideration in this reference, it may be summarized as under:-

(a) Whether under Section 25 of SICA, the delay in filing the appeal to AAIFR can be condoned beyond the period of 60 days. In other words, the provisions of Section 5 of the 1963 Act would be applicable or not?

(b) If the answer to the above is in the negative, whether the High Court is empowered under Articles 226/ 227 of the Constitution of India to condone the delay or not?

4. Examining the first issue, Sections 5 and 29(2) of 1963 Act would be germane for the purpose of deciding the controversy which provide as follows:-

"5. Extension of prescribed period in certain cases. - Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 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.

29. Savings. - (1) Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872 (9 of 1872).

(2) 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."

5. Section 5 of 1963 Act enables the Court to admit an appeal or an application after the expiry of prescribed period of limitation on sufficient cause being shown

for the delay. It is meant to condone the default of the party wherever it is able to satisfy that sufficient cause exists. Thus, sufficient cause is sine qua non for exercise of discretion for condoning delay under this provision. The discretion, however, is to be judicial and not arbitrary. "Sufficient cause" has not been defined by the legislature in the 1963 Act but is to be ascertained on the individual facts of each case.

6. Section 29(2) of the 1963 Act, inter alia provides that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period of limitation prescribed by the schedule, the provisions of section 3 shall apply as if such period was 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 shall apply only in so far as, and to the extent, they are not expressly excluded by such special or local law. When any special statute prescribes certain period of limitation shown, then the period of limitation prescribed under the special law shall prevail and to that extent the provisions of the 1963 Act shall stand excluded. If none of them are excluded, then in that situation all of them would be applicable. In our opinion, the language mentioned in Section 29(2) of the 1963 Act does not require that the special statute should expressly provide for exclusion of specific provision but it is to be gathered from the substance of the language mentioned in the statute whether the effect thereof is nothing but exclusionary. The Supreme Court in *Union of India Vs. M/s Popular Construction Co.*, while analyzing Section 29(2) of the 1963 Act in view of its earlier decision in *Hukumdev Narain Yadav Vs. Lalit Narain Mishra*, had observed as under:-

"Apart from the language, "express exclusion" may follow from the scheme and object of the special or local law. "Even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law excluded their operation."

7. The SICA is a special statute. Under Section 25(1) of SICA, remedy of appeal has been provided as under:-

"25. (1) Any person aggrieved by an order of the Board made under this Act may, within forty-five days from the date on which a copy of the order is issued to him, prefer an appeal to the Appellate Authority:

Provided that the Appellate Authority may entertain any appeal after the said period of forty-five days but not after sixty days from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time."

8. Section 25 of the SICA relates to filing of appeal against the order of the BIFR. A plain reading of Section 25(1) of SICA makes it abundantly clear that any

person aggrieved by an order of the BIFR is entitled to file the appeal to the appellate authority within forty five days from the date on which the copy of the order is issued to him. However, under the proviso thereto, the appellate authority may entertain an appeal after the said period of forty five days but not after sixty days from the date aforesaid where the appellate authority is satisfied that the appellant was prevented by sufficient cause for filing the appeal in time. In other words, the period of limitation can be extended by fifteen days on sufficient cause being shown but not thereafter.

9. We proceed to examine the scheme of special law under the SICA. The combined reading of various provisions contained clearly points out that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. Being a complete code by itself, the nature of remedy provided therein would be governed by the said Act. If, on an examination of the relevant sections, it is clear that the provisions of 1963 Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. Wherever the special law does not exclude the provisions of Sections 4 to 24 of the 1963 Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. To put it differently, the applicability of the provisions of the 1963 Act, therefore, are to be judged not from the terms of the 1963 Act but by the provisions of the SICA relating to filing of appeal. The intention of the Legislature in enacting the sub-section (1) of Section 25 of SICA and proviso thereunder is that the appeal should be preferred within forty five days from the date of issue of the order to him and the said period can be further extended on sufficient cause being shown by another period of 15 days but not thereafter. The scheme of SICA supports the conclusion that the time limit prescribed under Section 25 to file an appeal is absolute and unextendable by court under Section 5 of the 1963 Act. It is trite law that it is the duty of the court to respect the legislative intent and by giving liberal interpretation, limitation cannot be extended by invoking the provisions of Section 5 of the 1963 Act. In our view, the provisions of Section 5 of the 1963 Act would not be applicable as the applicability of Section 5 of the 1963 Act stands excluded because of the provisions of Section 29(2) of the 1963 Act as there is definite indication that Section 5 of the 1963 Act for condonation of delay beyond particular period cannot be invoked.

10. The stage is now set for adverting to precedent and, there appears to be no dearth thereof. The Supreme Court in Popular Construction Company's case (supra) was adjudicating the issue regarding applicability of Section 5 of 1963 Act for condonation of delay in filing an application under Section 34(3) of the Arbitration and Conciliation Act, 1996. After referring to its earlier decision in Vidyacharan Shukla Vs. Khubchand Baghel and Others, , Hukumdev Narain Yadav's case (supra), Mangu Ram Vs. Municipal Corporation of Delhi, , Patel Naranbhai Marghabhai and others Vs. Deceased Dhulabhai Galbabhai and

others, , it was held:

"As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are "but not thereafter" used in the proviso to subsection (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase "but not thereafter" wholly otiose. No principle of interpretation would justify such a result. Furthermore, Section 34(1) itself provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award "in accordance with" sub-section (2) and subsection (3). Sub-section (2) relates to grounds for setting aside an award and is not relevant for our purposes. But an application filed beyond the period mentioned in Section 34, sub-section (3) would not be an application "in accordance with" that sub-section. Consequently by virtue of Section 34(1), recourse to the court against an arbitral award cannot be made beyond the period prescribed. The importance of the period fixed under Section 34 is emphasised by the provisions of Section 36 which provide that:

"36. Enforcement. - Where the time for making an application to set aside the arbitral award under Section 34 has expired ... the award shall be enforced under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the court." This is a significant departure from the provisions of the Arbitration Act, 1940. Under the 1940 Act, after the time to set aside the award expired, the court was required to "proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow" (Section 17). Now the consequence of the time expiring under Section 34 of the 1996 Act is that the award becomes immediately enforceable without any further act of the court. If there were any residual doubt on the interpretation of the language used in Section 34, the scheme of the 1996 Act would resolve the issue in favour of curtailment of the court's powers by the exclusion of the operation of Section 5 of the Limitation Act."

Similar view was reiterated in *Commnr. of Customs, Central Excise, Noida Vs. Punjab Fibres Ltd., Noida*, .

11. In *Consolidated Engg. Enterprises Vs. Principal Secy. Irrigation Deptt. and Others*, , a three-Judge Bench again considering Section 34(3) of the Arbitration and Conciliation Act, 1996 after referring to the relevant provisions observed as under:

"....When any special statute prescribes certain period of limitation as well as provision for extension up to specified time limit , on sufficient cause being shown, then the period of limitation prescribed under the special law shall prevail and to that extent the provisions of the Limitation Act shall stand excluded. As the intention of the legislature in enacting subsection (3) of Section 34 of the Act

is that the application for setting aside the award should be made within three months and the period can be further extended on sufficient cause being shown by another period of 30 days but not thereafter, this Court is of the opinion that the provisions of Section 5 of the Limitation Act would not be applicable because the applicability of Section 5 of the Limitation Act stands excluded because of the provisions of Section 29(2) of the Limitation Act."

12. The Apex Court considering analogous provisions under Section 35 of Central Excise Act, 1944 in *Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur and Others*, , had held that there was complete exclusion of Section 5 of 1963 Act in the following terms:-

"The Commissioner of Central Excise (Appeals) as also the tribunal being creatures of statute are not vested with jurisdiction to condone the delay beyond the permissible period provided under the statute. The period up to which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Limitation Act, 1963 (in short "the Limitation Act") can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days" time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only up to 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days" period."

13. In *Commissioner of Customs and Central Excise Vs. Hongo India (P) Ltd. and Another*, , another three-Judge Bench of the Supreme Court considered the question whether Section 5 of the 1963 Act can be invoked for condonation of delay in filing an appeal or reference to the High Court, in view of its judgments in *Popular Construction Co. and Singh Enterprises* cases (*supra*) recorded as under:-

"As pointed out earlier, the language used in Sections 35, 35-B, 35-EE, 35-G and 35-H makes the position clear that an appeal and reference to the High Court should be made within 180 days only from the date of communication of the decision or order. In other words, the language used in other provisions makes the position clear that the legislature intended the appellate authority to

entertain the appeal by condoning the delay only up to 30 days after expiry of 60 days which is the preliminary limitation period for preferring an appeal. In the absence of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. The High Court was, therefore, justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days."

14. In Chhattisgarh State Electricity Board Vs. Central Electricity Regulatory Commission and Others, , a two-Judge Bench interpreting Section 125 of the Electricity Act, 2003, which is substantially similar to Section 25(1) of the SICA had noticed as under:-

"Section 125 lays down that any person aggrieved by any decision or order of the Tribunal can file an appeal to this Court within 60 days from the date of communication of the decision or order of the Tribunal. Proviso to Section 125 empowers this Court to entertain an appeal filed within a further period of 60 days if it is satisfied that there was sufficient cause for not filing appeal within the initial period of 60 days. This shows that the period of limitation prescribed for filing appeals under Sections 111(2) and 125 is substantially different from the period prescribed under the Limitation Act for filing suits, etc. The use of the expression "within a further period of not exceeding 60 days" in the proviso to Section 125 makes it clear that the outer limit for filing an appeal is 120 days. There is no provision in the Act under which this Court can entertain an appeal filed against the decision or order of the Tribunal after more than 120 days.

The object underlying establishment of a special adjudicatory forum i.e. the Tribunal to deal with the grievance of any person who may be aggrieved by an order of an adjudicating officer or by an appropriate Commission with a provision for further appeal to this Court and prescription of special limitation for filing appeals under Sections 111 and 125 is to ensure that disputes emanating from the operation and implementation of different provisions of the Electricity Act are expeditiously decided by an expert body and no court, except this Court, may entertain challenge to the decision or order of the Tribunal. The exclusion of the jurisdiction of the civil courts (Section 145) qua an order made by an adjudicating officer is also a pointer in that direction.

22. It is thus evident that the Electricity Act is a special legislation within the meaning of Section 29(2) of the Limitation Act, which lays down that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the one prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and provisions contained in Sections 4 to 24 (inclusive) shall apply for the purpose of determining any period of limitation prescribed for any suit, appeal or application unless they are not expressly excluded by the special or local law."

The Court then referred to some of the precedents and held: "In view of the

above discussion, we hold that Section 5 of the Limitation Act cannot be invoked by this Court for entertaining an appeal filed against the decision or order of the Tribunal beyond the period of 120 days specified in Section 125 of the Electricity Act and its proviso. Any interpretation of Section 125 of the Electricity Act which may attract the applicability of Section 5 of the Limitation Act read with Section 29(2) thereof will defeat the object of the legislation, namely, to provide special limitation for filing an appeal against the decision or order of the Tribunal and proviso to Section 125 will become nugatory."

Supreme Court has expressed similar view in relation to provisions of Section 35 of the Foreign Exchange Management Act, 1999 in *Ketan V. Parekh Vs. Special Director, Directorate of Enforcement and Another*, .

15. A Division Bench of Delhi High Court in *M/s. Agarpara Jute Mills Limited v. Board for Industrial and Financial Reconstruction and others*, WP(C) No. 2728 of 2012, decided on 8.5.2012 in relation to Section 25 of SICA itself, had pronounced as under:-

"4. We are in agreement with the view taken by the AAIFR in view of the statutory provision. We may refer to the said provision which reads as under:

"25. Appeal. - (1) Any person aggrieved by an order of the Board made under this Act may, within forty-five days from the date on which a copy of the order is issued to him, prefer an appeal to the appellate authority:

PROVIDED that the appellate authority may entertain any appeal after the said period of forty-five days but not after sixty days from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time."

5. It is, thus, clear that the statute in question itself provides the time period for appeal and makes a provision for extension of that time period provided sufficient cause is shown. Thus, a special provision has been included qua the issue of limitation in filing the appeal. The language of Section 25 of the SICA makes it clear that there is no scope for condoning the delay beyond the period of sixty (60) days. The expression used in the provision "but not after sixty days" leaves no manner of doubt that Section 5 of the Limitation Act, 1963 would have no applicability qua Section 25 of the SICA. In this regard we quote with profit the observations of the Supreme Court in the case of *Union of India Vs. M/s Popular Construction Co.*, as under:

"10. This decision recognises that it is not essential for the special or local law to, in terms, exclude the provisions of the Limitation Act. It is sufficient if on a consideration of the language of its provisions relating to limitation, the intention to exclude can be necessarily implied. As has been said in *Hukum Narain Yadav v. Lalit Narain Mishra*:

"If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein

cannot be called in aid to supplement the provisions of the Act".

11. Thus, where the legislature prescribed a special limitation for the purpose of the appeal and the period of limitation of 60 days was to be computed after taking the aid of Section 4, 5 and 12 of the Limitation Act, the specific inclusion of these sections meant that to that extent only the provisions of the Limitation Act stood extended and the applicability of the other provisions, by necessary implication stood excluded.

12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are "but not thereafter" used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of section 5 of that Act. Parliament did not need to go further. To hold that the Court could entertain an application to set aside the Award beyond the extended period under the proviso, would render the phrase "but not thereafter" wholly otiose. No principle of interpretation would justify such a result.

13. Apart from the language, "express exclusion" may follow from the scheme and object of the special or local law. "Even in a case, where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation".

The Special Leave Petition filed against the above said judgment was dismissed on 30.11.2012.

16. In view of the above, we, thus, conclude that Section 5 of the 1963 Act cannot be pressed into service in aid of a belated application under Section 25(1) of the SICA seeking condonation of delay beyond 15 days prescribed thereunder. Accordingly, Issue No. (i) is answered in the negative and it is held that the appellate authority lacks jurisdiction to condone the delay in filing the appeal under Section 25(1) of the SICA beyond the period prescribed thereunder and the provisions of Section 5 of 1963 Act are excluded from its applicability beyond 60 days enumerated in the provision.

17. The answer to the first issue being in the negative, inevitably, the scope of judicial review under Articles 226/ 227 of the Constitution of India is required to be considered.

18. The power conferred under Articles 226/ 227 is designated to effectuate the law, to ensure that rule of law is enforced and the statutory authorities and other organs of the State act in accordance with law. It is not to be invoked whereby authorities are directed to act contrary to law. Wherever, the extent of condonable period is specifically prescribed by a statute, it would not be appropriate even under Articles 226/ 227 of the Constitution to entertain the writ petition so as to breach the express provision in the statute and act contrary to

the mandate of the legislature. It is for the legislature to prescribe the limits or not to do so for condoning the delay. Exercise of extraordinary writ jurisdiction under Articles 226/ 227 of the Constitution of India would amount to doing violence to the statutory provision and rendering the same otiose. In other words, the legislative intent is clear that the Parliament never intended that delay beyond specified period in filing the appeal could be condoned. It is not for the High Court to re-write the statute in the garb of exercise of its jurisdiction under Articles 226/ 227 of the Constitution. The view which has been expressed by us herein above, is supported by various judicial precedents.

19. The Supreme Court in *M/s. Nitco Tiles Limited v. Gujarat Ceramic Floor Tiles Mfg. Assn. and others*, 2005 (12) SCC 454 concluded as under:-

"If the reasons given by the High Court were to be accepted as a valid basis for exercise of its judicial discretion to entertain the writ petition in its extra ordinary jurisdiction under Article 226 of the Constitution, then the provisions for appeal against the order passed by the designated authority in respect of anti dumping issues would be rendered otiose and a person aggrieved by the final finding of the designated authority could, despite the express provision of Section 9(C) of the Customs Tariff Act, invoke the writ jurisdiction with impunity."

20. Kerala High Court in *Thomas Thomas and Another Vs. The Kottayam Municipality and Another*, considering identical issue had opined as under:-

"8. The judgment in *Assistant Commissioner of Central Excise Vs. Krishna Poduval*, , was a case arising under the Central Excise Act. The statute prescribed the period of limitation and also restricted the power of the appellate authority to condone the delay. As in this case, an appeal was filed belatedly and since the delay sought to be condoned was beyond the permissible period, delay was declined to be condoned and consequently the appeal was rejected. The order was challenged before this court and WP(c) No. 244656/2008 7 this court entertained the writ petition on merits and examined the validity of the order passed by the departmental authorities and granted relief to the petitioner.

9. Against the judgment of the learned single Judge appeal filed by the Department and in paras 7 and 8 of the judgment, it has been held as follows.

"7. At the outset we may state that in so far as the respondents have not taken up the original orders imposing penalty in appeals before the appellate authority within the maximum period prescribed under S. 85(3) of the Finance Act, 1994, they cannot get the appeals revived and heard on merits by resorting to the discretionary remedy before this Court under Article 226 of the Constitution of India. Once the period of limitation has run itself out and the appellate authority does not have power to condone the delay in filing the appeals beyond the maximum period prescribed under the Act, the remedies of the appellants come to an end just like in the case of a time barred suit and the respondents cannot, by invoking the discretionary remedy under the extraordinary jurisdiction of this court under Article 226 of the Constitution of India, resurrect their unenforceable

cause of action and require this WP(c). No. 244656/2008 8 court to consider their contentions against the original orders on merit. That would amount to defeat the very law of limitation which we are not expected to do under Art. 226. If we are to entertain the contentions of the respondents on merits, that would amount to negating the law of limitation which we have no jurisdiction to do under Art. 226 and which may even lead to anomalous results. We are not satisfied that the jurisdiction of this Court under Art. 226 of the Constitution of India is so wide as to resurrect a cause of action which has become unenforceable on account of the law of limitation. Further, we are of the firm opinion that the jurisdiction under Art. 226 of the Constitution of India cannot be invoked against express statutory provisions, however harsh the effect of the provisions may be on an assessee or litigant.

8. The learned counsel for the respondents has cited before us a decision of the Madras High Court in *Maheswary Fire Work Industries v. commercial Tax Officer and Others* reported in 12 STC 272, which held that "although", as far as the appellate authority is concerned under the Tamilnadu General Sales Tax Act, 1959, its jurisdiction and power to condone delay is limited to a period of 30 days, that limitation cannot be made applicable to the High Court while exercising jurisdiction under Art. 226 of the Constitution of India. With great respect, we are unable to persuade ourselves to agree with the said decision which does not WP(c). No. 244656/2008 9 also contain any reasoning for holding so. According to us, all the remedies of the respondents have come to an end when their appeals were dismissed by the commissioner of Central Excise (Appeals) on the ground of limitation. Even the further appellate authority or this court does not have the jurisdiction to entertain the claim on merits disregarding the limitation or condoning the delay. In any event, the appellants have not pleaded any extraordinary circumstances warranting interference, even if we had the jurisdiction to do so."

10. This judgment of the Division Bench has been followed by the Division Bench in the case of *Krishnan T. and another v. State of Kerala and Ors.*, (ILR 2007 (1) Kerala 233), wherein para 7, it has been held as follows.

"Counsel for the appellant however, submitted that though the Government have rejected the appeal on the ground of delay this court under Article 226 of the Constitution of India can entertain the writ petition in the interests of justice. We have already held in *Abel's* case that a party cannot invoke the provisions of Article 226 so as to bypass a statutory remedy, especially when no power is conferred on the statutory authority to condone the delay. This legal position has been approved by WP(c). No. 244656/2008 10 this court in *Assistant Commissioner of Central Excise v. Krishna Poduval* where this court held that once the period of limitation has run itself out and the appellate authority does not have the power to condone the delay in filing the appeals beyond the maximum period prescribed under the Act, the remedies come to an end just like in the case of a time barred suit and cannot, by invoking the discretionary

remedy under Article 226 of the Constitution of India, resurrect unenforceable cause of action."

21. In Commissioner Udumalaipet Municipality v. Rajammal and others, CWP No. 14533 of 2001 decided on 8.6.2010, the Madras High Court had summarized the legal position as under:-

"23. The legal position is as follows:

(a) An appeal under Section 30(1) of the Tamil Nadu General Sales Tax Act, 1959 has to be filed within 30 days before the appellate Assistant Commissioner. The appellate Assistant Commissioner is empowered to condone the delay for further period of 30 days if sufficient cause for not presenting the appeal in time is shown and satisfied by the appellate authority.

(b) Under no circumstances, the appellate authority has power to condone the delay beyond 30 days.

(c) While the High Court exercising the jurisdiction under Article 226 of Constitution of India, approves the correctness of the order of the appellate authority, it has no power to direct the appellate authority to consider the appeal on merits as otherwise it would be nothing but Court extending the period of limitation.

(d) Even if the High Court accepts the explanation given by the assessee for not filing the appeal within the period prescribed under the Act, it cannot direct the appellate authority to consider the matter on merits as the High Court exercising jurisdiction under Article 226 of Constitution of India, cannot re-write the provisions of the Act."

Similar view was expressed in another decision rendered on the same day in M. Unnikrishnan v. Deputy Commissioner of Labour (Appeal) (supra).

22. The support is also drawn from the following observations of the Apex Court in Union of India and Another Vs. Kirloskar Pneumatic Company Limited, :-

"Yet the question is whether it is permissible for the High Court to direct the Authorities under the Act to act contrary to the aforesaid statutory provision. We do not think it is, even while acting under Article 226 of the Constitution. The power conferred by Article 226/ 227 is designed to effectuate the law, to enforce the Rule of law and to ensure that the several authorities and organs of the State act in accordance with law. It cannot be invoked for directing the authorities to act contrary to law."

23. Division Bench of Bombay High Court in M/s. Raj Chemicals Vs. Union of India and Others, has expressed as under:-

"The Central Excise Act, 1944 is a special Act governing the levy, collection and recovery of Central Excise duty on goods manufactured or produced in India. In sub-section (1) of section 35, the Legislature has mandated that an appeal

before the Commissioner of Appeals has to be filed within sixty days from the date of the communication of the order. Under the proviso, the Commissioner (Appeals) is permitted to allow the appeal to be filed within a further period of thirty days on sufficient cause being shown to his satisfaction. In other words, the clear intent of Parliament was that the power to condone the delay can be exercised only subject to sufficient cause being shown and to an extent of an outer limit of thirty days beyond the period of sixty days prescribed for filing of an appeal. Now it is well settled that while construing whether the special law, within the meaning of Section 29(2) of the Limitation Act, 1963 expressly excludes the provisions of Sections 4 to 24 of the Limitation Act, 1963, regard must be had to the overall scheme of the Act. Where the scheme of the Act indicates that the Legislature intended that an appellate authority should entertain an appeal by condoning a delay upto a certain period, that would evince a clear intent to exclude the provisions of Section 5 of the Limitation Act, 1963. In the present case, the clear provision is that an appeal has to be filed within sixty days and beyond that a delay upto thirty days can be condoned. The delay in excess of thirty days cannot be condoned by taking recourse to the provisions of Section 5 of the Limitation Act which would stand expressly excluded within the meaning of Section 29(2). The High Court, in the exercise of its jurisdiction under Article 226 of the Constitution, cannot permit or direct an infraction by the authorities created by a statute of the proviso of the statute under which they are constituted. When a period of limitation is prescribed for filing of an appeal and the extent of the power to condone the delay is also prescribed by the statute, the exercise of the writ jurisdiction under Article 226 of the Constitution would clearly be not warranted to direct the adjudicatory or appellate authority to breach the provision for limitation."

Earlier also in a decision in *Sheetal Enterprises Vs. Union of India (UOI) and Others*, , similar approach was adopted by the Bombay High Court.

24. In view of the above, the irresistible conclusion is that the High Court in exercise of its extraordinary jurisdiction under Articles 226/ 227 of the Constitution cannot direct the authorities under the statute to ignore or act contrary to the express provision of law. Equally, it would also not be appropriate to exercise extraordinary jurisdiction under Articles 226/ 227 of the Constitution by the High Court to condone the delay beyond the maximum period prescribed by law and direct the appellate authority to hear the appeal on merits. Thus, Section 5 of the 1963 Act cannot be pressed into service in aid of a belated application under Section 25(1) of the SICA seeking condonation of delay beyond the period prescribed thereunder.

25. Having crystallized the legal position, it would be just and fair to learned counsel for the appellant State to discuss the case law referred by her.

26. Heavy reliance was placed upon Constitution bench decision in *L. Chandra Kumar Vs. Union of India and others*, . A careful reading of the decision shows that the Apex Court therein was considering the constitutional validity of sub

clause (d) of clause (2) of Article 323A and sub clause (d) of clause (3) of Article 323B of the Constitution whereby power of judicial review conferred on the High Courts under Articles 226/ 227 and on the Supreme Court under Article 32 of the Constitution was deliberated. It was concluded that excluding the jurisdiction of the High Courts and the Supreme Court under Articles 226/ 227 and 32 of the Constitution is unconstitutional. In the present case, the legality and validity of the provision is not under challenge and moreover, the question of exercise of extraordinary jurisdiction under Articles 226/ 227 of the Constitution against the legislative mandate enshrined in a Statute was not under consideration in that case. The aforesaid pronouncement would not, thus, advance the case of the appellant State.

27. Further, with regard to the judgments in *Kailash Vs. Nanhku and Others*, , *Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI)*, , *Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Others*, , *Amlendu Kumar Bera and Others Vs. The State of West Bengal*, , *Tukaram Kana Joshi and Others thr. Power of Attorney Holder Vs. M.I.D.C. and Others*, , suffice it to notice that these were the cases either relating to laying down parameters to be followed for condoning the delay under section 5 of the 1963 Act on the ground of sufficient cause or were defining the scope of the various provisions of Code of Civil Procedure. The issue involved herein being different, no advantage can be derived by the learned State counsel therefrom.

28. Now we advert to the judgment in *State of Haryana v. AAIFR and others* (supra) which has necessitated the reference to the Full bench. The issue in that case was that the company was declared sick under the provisions of the SICA vide order dated 28.6.1999 which was followed by Draft Rehabilitation Scheme dated 11.4.2001. Objections were filed by the petitioner vide letter dated 21.6.2001 to the grant of concessions. The BIFR sanctioned the scheme on 5.7.2001 under Section 18(4) of SICA incorporating in Clause 4.5, provisions relating to grant of concessions by the State Government and other agencies including the utilization of the sales tax deferment loan scheme without any time limit and to exempt the company from applicability of sales tax instead of deferment scheme from April 1, 1996 onwards. The appeal filed by the State was dismissed on 18.9.2006 as time barred and also for non prosecution as was an application for recall of the order. Before filing the appeal, a communication was addressed by the State on October 1, 2002 raising objections to the scheme and also vide letter dated March 31, 2003, it was pointed out that the matter was to be considered by the Steering committee. The Steering Committee vide order dated August 31, 2003 concluded that the relief contemplated in the scheme was not permissible and this decision was conveyed to the BIFR. The BIFR gave further directions and proceedings for implementation of the scheme dated 5.7.2001 continued. On October 26, 2006, BIFR noticed that there was conflict between paras 4.5(ii) and 4.5(iii) of the scheme. An appeal was filed before the appellate authority which was dismissed on 12.2.2008. The appellate authority set aside observations in the order dated 26.10.2006. A writ petition was filed by

the State challenging the order dated 5.7.2001 passed by BIFR and order dated 12.2.2008 passed by appellate authority against order dated October 26, 2006. However, order of the appellate authority dated 18.9.2006 (wherein order dated 5.7.2001 was impugned) dismissing the appeal of the State as time barred and for non prosecution was never assailed in the writ petition. In the peculiar facts of that case and taking note of conduct of respondent No. 3 therein, the Division bench had exercised jurisdiction under Articles 226/ 227 of the Constitution of India and quashed the order of the BIFR dated 5.7.2001 and of the appellate authority dated 12.2.2008. Learned State counsel to buttress her submissions had relied upon the following observations of the Division Bench recorded therein:-

"We find that the State filed an appeal which was barred by limitation but the State was taking other steps and proceedings before the BIFR for implementation of the scheme continued. The observations of the AAIFR that in no situation, there could be condonation of delay beyond 60 days under Section 25 of the SICA, is not a correct interpretation of law. The said provision cannot be read as mandatory, as has been held in several decisions (see *Kailash Vs. Nanhku and Others*, . In any case, even if the said view is correct, this court is not debarred from setting aside order of the BIFR."

29. In view of our conclusion noted above, the observations of the Division bench as reproduced in para 29 cannot be held to be correctly deciding the issue and we are not in a position to subscribe to the said view and accordingly, we overrule the same. Having expounded the legal position, it may be noticed that there was delay of 354 days in filing the appeal by the appellant State before the Appellate authority. The appellate authority as well as the learned Single Judge had dismissed the appeal as time barred. The delay being beyond the condonable period prescribed in Section 25(1) of SICA, there is no merit in the Letters Patent Appeal. Consequently, the same is dismissed.