

(2007) 02 MAD CK 0325

In the Madras High Court

Case No : C.R.P. No. 1152 of 2000 and C.M.P. No. 7024 of 2000

The Assistant Collector of Central Excise and Customs

APPELLANT

Vs

Marimuthu, The Collector of Customs and Union of India
(UOI)

RESPONDENT

Date of Decision : 06-02-2007

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2007) 212 ELT 29

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : K. Veeraraghavan, A.C.G.S.C, for the Appellant; T. Ananthi, for R-1,
for the Respondent

Judgement

R. Banumathi, J.—Challenge in this Revision Petition is the order of dismissal of Application in I.A. No. 187 of 1999 in unnumbered Appeal, declining to condone the delay of 131 days in filing the Appeal.

2. Facts in nutshell are as follows: The First Respondent / Plaintiff has filed a Suit in O.S. No. 193 of 1996 on the file of Subordinate Court, Nagappattinam, making certain claim against the Petitioner / Third Defendant and other Defendants. The Petitioner / Third Defendant resisted the Suit claim by filing the Written Statement inter alia contending that the Suit is not maintainable and the amount is not payable. After contest, the suit was decreed on 27.02.1998. Appeal was preferred with a delay of 131 days. By the Impugned Order, the Application filed u/s 5 of the Limitation Act to condone the delay of 131 days in filing the Appeal was dismissed.

3. Heard the submissions of the learned Additional Central Government Standing Counsel for the Petitioner and the learned Counsel for the First Respondent.

4. Learned Additional Central Government Standing Counsel for the Petitioner contended that the case records were mixed up with other papers in the office of

the Petitioner and were not immediately traceable, which has occasioned the delay of 131 days. It was further submitted that the Petitioner being a Government Official, the Court ought to have adopted a judicial oriented approach in condoning the delay.

5. For exercise of discretion u/s 5 of the Limitation Act, the Court shall satisfy itself as to whether there was sufficient cause for exercising such discretion in condoning the delay. In an Application for condonation of delay either by the Government or Public Authority or Institutions like Temple, consideration must be with pragmatism with justice oriented approach rather than technical objection with sufficient cause for explaining every day's delay. Taking note of the impersonal machinery of the Government Departments and that it normally takes time for the State in taking decisions in filing the Appeals or to complete the formalities in obtaining permission for initiating the proceedings, in the decision reported in *State of Haryana Vs. Chandra Mani and others*, , the Supreme Court has held as under:

... 7. In *O.P. Kathpalia Vs. Lakhmir Singh (Dead) and Others*, , a Bench of Three Judges had held that if the refusal to condone the delay results in grave miscarriage of justice, it would be a ground to condone the delay. Delay was accordingly condoned. In *Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others*, , a Bench of two Judges considered the question of the limitation in an appeal filed by the State and held that Section 5 was enacted in order to enable the Court to do substantial justice to the parties by disposing of matters on merits. The expression "sufficient cause" is adequately elastic to enable the Court to apply the law in a meaningful manner which subserves the ends of justice - that being the life purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But, the message does not appear to have percolated down to all the other Courts in the hierarchy. This Court reiterated that the expression "every day's delay must be explained" does not mean that a pedantic approach should be made. The doctrine must be applied in a rational common sense pragmatic manner. 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 non deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk. Judiciary is not respected on account of its power to legalise injustice on technical grounds but, because it is capable of removing injustice and is expected to do so. Making a justice oriented approach from this perspective there was sufficient cause for condoning the delay in the institution of the Appeal. The fact that it was the State which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a Litigant, are accorded the same treatment and the law is administered in an even

handed manner. There is no warrant for according a step motherly treatment when the State is the applicant. The delay was accordingly condoned.

8. Experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note making, file pushing, and passing on the buck ethos, delay on its part is less difficult to understand though more difficult to approve. The State which represents collective cause of the community does not deserve a litigant non-grata status. The Courts, therefore, have to be informed with the spirit and philosophy of the provision in the course of interpretation of the expression of sufficient cause. Merit is preferred to scuttle a decision on merits in turning down the case on technicalities of delay in presenting the appeal. Delay was accordingly condoned, the order was set aside and the matter was remitted to the High Court for disposal on merits after affording opportunity of hearing to parties. In *Shankarrao Vs. Chandrasenkunwar*, this Court had held that the Court should not adopt an injustice oriented approach in rejecting the application for condonation of delay. The Appeal was allowed, the delay was condoned and the matter was remitted for expeditious disposal in accordance with law....

6. It is well settled that the expression "sufficient cause" must receive a liberal construction and justice oriented approach so as to advance substantial justice. Generally delays in preferring the appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bonafides is imputable to the party seeking condonation of delay. Referring to the factors which are peculiar to and characteristic of the functioning of the Government, in the above said decision, the Supreme Court has further held as follows:

...In *G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore*, , it was held that no general principle saving the party from all mistakes of its counsel could be laid. The expression "sufficient cause" must receive a liberal construction so as to advance substantial justice and generally delays in preferring the appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of delay. In litigations to which Government is a party, there is yet another aspect which, perhaps, cannot be ignored. If appeals brought by Government are lost for such defaults, no person is individually affected; but what, in the ultimate analysis, suffers is public interest. The decisions of Government are collective and institutional decisions and do not share the characteristics of decisions of private individuals. The law of limitation is, no doubt, the same for a private citizen as for governmental authorities. Government, like any other litigant must take responsibility for the acts or omissions of its officers. But a somewhat different complexion is imparted to the matter where Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its

officers or agents and where the officers were clearly at cross-purposes with it. It was, therefore, held that in assessing what constitutes sufficient cause for purposes of Section 5, it might, perhaps, be somewhat unrealistic to exclude from the consideration that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the Government. Government decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red-tape in the process of their making. A certain amount of latitude is, therefore, not impermissible. It is rightly said that those who bear responsibility of Government must have a little play at the joints. Due recognition of these limitations on governmental functioning of course, within reasonable limits is necessary if the judicial approach is not to be rendered unrealistic. It would, perhaps, be unfair and unrealistic to put Government and private parties on the same footing in all respects in such matters. Implicit in the very nature of governmental functioning is procedural delay incidental to the decision-making process. The delay of over one year was accordingly condoned....

7. In the decision reported in *State of Nagaland Vs. Lipok AO and Others*, , while considering the delay of 57 days, the Supreme Court has held that the State is an impersonal machinery working through its officers and servants and hence, it cannot be put on the same footing as an individual. The Supreme Court has further held that the public interest would suffer if appeals by the State are lost because of such delay in filing the Appeal and the Court must decide the matter on merits unless the case is hopelessly without merit.

8. Pointing out the considerable time consumed in moving the files in Government Departments, in the decision cited supra, the Supreme Court has held as follows:

...15. It is axiomatic that decisions are taken by officers/agencies proverbially at a slow pace and encumbered process of pushing the files from table to table and keeping it on the table for considerable time causing delay intentional or otherwise is a routine. Considerable delay of procedural red tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression sufficient cause should, therefore, be considered with pragmatism in a justice-oriented approach rather than the technical detection of sufficient cause for explaining every days delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-?-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and

should authorise the officers to take a decision or give appropriate permission for settlement. In the event of decision to file appeal, needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while the State is an impersonal machinery working through its officers or servants....

9. On the facts and circumstances of the case, this Court is of the opinion that the delay in filing the Appeal is also not an inordinate delay refusing to exercise the discretion. By refusing to condone the delay, the First Appellate Court has shut out the opportunity of preferring the statutory appeal. The delay in filing the Appeal is to be condoned, so as to afford an opportunity to the Petitioner to pursue the Appeal.

10. For the foregoing reasons, the Impugned order dated 06.12.1999 of the Principal District Judge, Nagappattinam in I.A. No. 187 of 1999 in unnumbered Appeal is set aside and this Civil Revision Petition is allowed. No costs. The connected C.M.P. No. 7024 of 2000 is closed. The learned Principal District Judge, Nagapattinam is directed to take the Appeal on file and make over the same to the appropriate Court for disposal in accordance with law.