

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
ALLAHABAD**

REGIONAL BENCH - COURT NO.I

**Excise Appeal No.70104 of 2020**

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-1113-19-20 dated 27/11/2019 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida)

**M/s E L Sewedy Electrometer (P) Ltd.** .....Appellant  
(C-138, Sector-63, Noida, U.P.)

VERSUS

**Commissioner of Central GST &**

**Central Excise, Noida**

....Respondent

(C-56/42, Renu Tower, Sector-62, Noida)

**APPEARANCE:**

A Letter on Record, for the Appellant

Shri Santosh Kumar, Authorised Representative for the Respondent

**CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

**FINAL ORDER NO.- 70031/2023**

DATE OF HEARING : 17 August, 2023  
DATE OF DECISION : 17 August, 2023

**SANJIV SRIVASTAVA:**

This appeal has been filed by the appellant against Order-in-Appeal No.NOI-EXCUS-001-APP-1113-19-20 dated 27.11.2019 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida. By the impugned order Commissioner (Appeals) has also observed as follows:-

*"5. I have carefully gone through the case records, grounds of appeal, the averments made during the course of personal hearing, oral submissions, application of condonation of delay and submissions made through letter*

*dated 21.10.2019 and relevant provisions of the Act. First of all, I take up the issue of condonation of delay in filing the appeal. The reason of delay in filing the appeal as submitted by the Appellant are that "Director of the company had gone out of India and no person was competent to take decision issue of filing the appeal"*

*6. I find that the adjudicating authority passed the impugned order on 23.03.2018 which was received by the appellant on 23.03.2018. The appeal against the said impugned order has to be filed within 60 days of the receipt of the order. The appeal has been filed in this office on 14.06.2018. There is a delay of 23 days in filing the appeal. Under the proviso of Section 35 of the Central Excise Act, 1944 the delay with sufficient cause could be condoned only for further period of thirty days. In this regard, I observe from the copy of passport (showing outgoing and incoming detail of the director) submitted vide their letter dated 21.10.2019 that the director had departed abroad (Egypt) on 23<sup>rd</sup> April, 2018 after one month of receipt of the impugned order and he arrived in India on 14<sup>th</sup> May, 2018 i.e. 8 days before the due date of filing of the appeal against the impugned OIO as prescribed time limit under Section 35 of the Central Excise Act, 1944. From the above, I find that appellant had a sufficient time to take decision/filing the appeal as prescribed under Section 35 of the Central Excise Act, 1944.*

7. I also place the reliance upon the judgement of Hon'ble Tribunal Madras in the case of Zafarullah vs. Collector of Customs CE 1992 (60) E.L.T. 263 (Tribunal), wherein Tribunal held that "The Hon'ble Supreme Court in the case of Ramlal vs. Rew Coalfields, AIR 1962 S.C. 361, have held that bona fides and due diligence are material and relevant factors for consideration of condonation of delay and that even after sufficient cause has been shown by the party he is not entitled to the condonation of delay as a matter of right. It has also been held by the Supreme Court that once the limitation period is over the appellant is called upon to explain the day-to-day delay. In the present case it is observed that the appellant has made general pleas about the delay in filing the appeal and, as mentioned above, the appellant was not diligent enough in pursuing the appellate remedy. In the facts and circumstances of the case, therefore, the delay in filing the appeal is not condoned."

8. I find that the reason for condonation of delay given by the Appellant is very contradictory and irrational for not filing the appeal within the prescribed time limit. The appellant has not been able to satisfy me in this regard through their evidence submitted vide letter dated 21.10.2019. In such a situation I am inclined to hold that the reasons mentioned for condonation of delay is neither proper nor sufficient and in the facts and circumstances of the case, the application is dismissed and consequently,

*without going into the merits of the case, the appeal bearing No.499/CE/Noida/APPL/NOI/2018-19 dated 14.06.2018 is rejected on the grounds of limitation period.”*

2.1 Appellant has vide his letter dated 14.08.2023 requested for decision on merits.

2.2 Learned Authorized Representative submits that the director of Company has left the country after one month from the date of receipt of the order. The decision of filing of appeal could have been taken within one month before the Director left the country. Accordingly, the Commissioner (Appeals) was fully justified in condoning the delay and dismissing the appeal filed by the appellant.

3.1 I have considered the impugned order along with submissions made in appeal and during the hearing of appeal by the Authorized Representative.

3.2 The only issue that is required to be considered in this appeal is as to whether the Commissioner (Appeals) was justified in rejecting the appeal of the appellant on the ground of limitation. Commissioner (Appeal) has been authorized under the Central Excise Act, 1944 to condone the delay up to 30 days in filing the appeal.

3.3 It is settled law for such technicalities right of appeal - to be heard by a Competent Appellate Authority, as statutorily provided should not be withered away. Commissioner (Appeals) in this case by not allowing the application for condonation of delay has denied the opportunity to the appellant to put his case

on merits in appeal filed. There is enough reason to justify the delay of twenty three days ideally such delay should have been condoned and appeal heard on merits.

3.4 In case of Municipal Corporation, Gwalior vs Ramcharan (D) by Lrs [2002 (142) E.L.T. 275 (S.C.)], Hon'ble Supreme Court has held:-

*"..... Valuable rights of the parties in an immoveable property are involved. On the totality of the facts and circumstances of the case, we are of the opinion that the High Court ought to have been taken a liberal, and not a rigid and too technical a view of the issue before it and should have condoned the delay in filing the appeal and concentrated on examining whether the appeal raised any substantial question of law worth being heard by the High Court. In our opinion, a sufficient cause for condoning the delay in filing the appeal before the High Court is made out."*

3.5 In case of Kothari Sugars And Chemicals Ltd [2018 (361) ELT 643 (Mad)] Hon'ble Madras High Court held as follows:

*"2. It is worthwhile to notice a decision of the Apex Court reported in AIR 1987 SC 1353 = 1987 (28) E.L.T. 185 (S.C.) (Collector, Land Acquisition, Anantnag and Another v. Mst. Katiji and Others) held as follows :*

*"3. The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts 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. And such a liberal approach is adopted on principle as it is realized that :-*

*"Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 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."*

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.*

*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 stepmotherly treatment when the 'State' is the applicant praying for condonation of delay. In fact 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. In any event, the State which represents the 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 the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. ..."*

*3. In view of the above decision of the Supreme Court, there is no justification on the part of the authorities in not condoning the delay in filing the appeal. Hence, the Writ Petition is allowed. The impugned order confirming the order of the original authority is set aside and the matter is remitted to the first appellate authority/Commissioner of Customs and Central Excise (Appeals-II), Trichy. The delay in filing the appeal is condoned. The second respondent is directed to entertain the appeal and number the same and decide the issue on merits and in accordance with law, after affording reasonable opportunity of hearing to both sides and dispose of the appeal within a period of one month from the date of receipt of a copy of this order. If the petitioner-Company fails to represent the matter for any reason whatsoever, the second respondent is directed to pass orders on merits based on the documents available on record. No costs. W.P.M.P. is closed."*

3.6 Accordingly, I do not find any merits in this order of Commissioner (Appeals) dismissing the appeal of the appellant on grounds of limitation after dismissing his application for condonation of delay. The matter needs to be remanded back to Commissioner (Appeals) for decision on merits in appeal that was filed by the appellant before him.

4. Appeal allowed and matter remanded back to Commissioner (Appeals) for decision on merits, to be decided within three months of date of receipt of this order.

(Dictated and pronounced in open court)

**(SANJIV SRIVASTAVA)**  
**MEMBER (TECHNICAL)**

*LKS*