

\* HIGH COURT OF DELHI : NEW DELHI

Date of decision: 29<sup>th</sup> May, 2006

+ CEAC 17/04 & C.M.16142/04

% Commissioner of Central Excise, ..... Appellant  
Through Mr.A.K.Bhardwaj, Advocate

versus

M/s Emm Ess Electricals ..... Respondent  
Through Mr. Rajesh Rawal, Advocate

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR  
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

VIPIN SANGHI, J. (ORAL)

1. The present is an appeal under Section 35 H(1) of the Central Excise Act, 1944 impugning the final order passed in

CEAC17.2004

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appeal No. A/119/03, NB-C dated 14.2.2003. The appeal has been filed beyond the period of limitation and accordingly the aforesaid application has been filed by the appellant seeking condonation of delay in filing the appeal.

2. It is stated in the application that the order passed by the Customs, Excise and Gold Control Tribunal on 14.2.2003, was received by the appellant on 7.4.2003. The appeal was thereafter filed in this Court on 27.10.2004. Since the limitation for filing of an appeal under Section 35 H(1) of the Central Excise Act, 1944 is six months, apparently there is a delay of over a year in the filing of the present appeal.

3. The reason given by the appellant for delay in filing the appeal is that there was frequent transfer of officers dealing with the matters which resulted in communication gap between the counsel and the department. It is stated that the appellant is Union of India and the appeal involves a huge amount of public

exchequer. It is further claimed that the delay occurred in filing the appeal due to unavoidable circumstances.

4. This Court issued notice to the respondent on the application seeking condonation of delay on 17.12.2004. The respondent has filed its reply to the aforesaid application contesting the same. The respondent states that the ground urged for condonation of delay is vague and no detailed particulars have been furnished by the appellant.

5. On 29.7.2005 the petitioner sought an opportunity to file a better affidavit in support of the application for condonation of delay. Four weeks time was granted for the purpose. The appellant has filed an additional affidavit dated 2.9.2005 purporting to explain the delay in the filing of the appeal. We have gone through the additional affidavit filed by the appellant. We are not satisfied that the appellant has made out sufficient cause for condonation of delay in filing the appeal.

6. It is claimed that it took about five months to get the documents from the correct divisional office due to the fact that in November 2002 there was reorganisation of Central Excise formation in Delhi and one new commissionerate was carved out of Delhi Commissionerate and in place of four divisions, eight divisions were created. It is claimed that the review branch collected the documents from the concerned range of Division-IV on 4.9.2003 and the matter was put up to the Assistant Commissioner (Review) for necessary action at its end. It is claimed that thereafter the case was processed and the proposal for final RA was sent to Law Branch on 3.10.2003 i.e. after one month. It is claimed that on 14.5.2004 i.e. after nearly 8 months, a government counsel was nominated to draft and file the RA. It is further claimed that the draft RA was supplied to the Commissioner for signature on 13.7.2004, i.e. after another two months and the signed RA was sent by the Review Branch to the Law Branch on 29.9.2004, i.e.

after another 2-1/2 months. It is further claimed that the Law Branch provided the RA to the counsel on 1.10.2004 for filing the same before the Court. However the counsel noticed certain deficiency in the same and finally the RA was filed on 27.10.2004, i.e. after nearly one month. From the aforesaid it can be seen that practically at every stage of the handling of the case, there was significant delay. It appears that the approach of the concerned officers was casual and lacked any sense of urgency. It appears that there was no effort to file the appeal within limitation or even to curtail the delay in the filing of the same.

7. The counsel for the appellant places reliance on the decision of the Hon'ble Supreme Court of India in the case of State of Bihar and Others vs. Kameshwar Prasad Singh & Another, (2009)

9 SCC 94. In the said case the Hon'ble Supreme Court had condoned the delay of 679 days in the filing of the SLP. The appellant has referred to para 12 of the said decision, wherein the

Hon'ble Supreme has extracted para 11 of another decision of the Apex Court in the case of State of Haryana vs. Chandramani, (1996) 3 SCC 132.

8. The aforesaid decision of the Hon'ble Supreme Court in the case of State of Bihar vs. Kameshwar Prasad Singh (supra) was a case where, by placing reliance upon the impugned judgment of the High court, a number of writ petitions had been filed in the High Court of Patna for grant of similar benefits. It was urged before the Hon'ble Supreme Court that the judgment impugned had been passed in violation of the provisions of law and the rules applicable and it was creating havoc in the Department and that the Government was facing great trouble in compliance with the directions of the High Court conferring uncalled for benefits on the Respondents in that case. It was also submitted that if the impugned judgment is not rectified or set aside, the interest of more than 250 officers would be adversely affected. It was also claimed

that if promotions are given in terms of the directions of the High Court, the same was likely to upset the entire cadre of Deputy SPs of Police as well as Inspectors of Police in the State of Bihar. If not stopped, the consequence would be uncalled for litigation with heavy financial burden upon the State. The Hon'ble Supreme Court, looking into the facts and circumstances of that case and with the object of doing substantial justice to all the parties concerned condoned the delay, since the Hon'ble Court was of the opinion that sufficient cause had been made out by the petitioners in that case.

9. From a reading of the aforesaid decision of the Hon'ble Supreme Court, it is clear that the Court condoned the delay since it found sufficient cause therefor. In fact in the said decision, the Hon'ble Supreme Court also extracted paragraph 9 from its earlier decision in N. Balakrishnan vs. M. Krishnamurthy, (1998) 7 SCC 123, wherein it was inter alia observed as follows:-

“Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory.”

10. In our opinion, the decision of the Hon'ble Supreme Court in the case of State of Bihar vs. Kameshwar Prasad Singh (Supra) does not come to the aid of the appellant in the present case, since the fact situation in the present case is entirely different. It cannot be said that the Hon'ble Supreme Court granted a Carte Blanch to every recalcitrant Petitioner or Appellant while deciding the aforesaid case.

11. We may also refer to the two decisions relied upon by the respondents. In Union of India vs. Tata Yodogawa Limited, 1988 (38) DLT 739 (S.C) the Hon'ble Supreme Court observed as follows:-

“From 26.12.1986 to 10.2.1987 and from 6.3.1987 to 24.3.1987 there is no cogent and possible explanation. It may be mentioned that



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the special leave petition was actually filed on 23.3.1987. There is no whisper to explain what "legal problems in filing the special leave petition arose". It appears to us that no attempt has been made to explain this delay. In that view of the matter we gave further opportunity to the petitioners to file additional affidavit explaining the caused, if any, for this delay. It is further stated in the rejoinder affidavit to the counter affidavit on behalf of the respondents that "such delay is always beyond the control of especially in Government matters as the file has to be routed through several sections of the department." We are aware of the fact that the Government being impersonal takes longer time than the private bodies or the individuals. Even giving that latitude, there must be some way or attempt to explain the cause for such delay. As stated from the facts narrated hereinbefore there is no sufficient cause to explain the delay. hence, the application for condonation of delay is dismissed."

12. A decision of the Division Bench of this Court in

Commissioner of Central Excise Delhi II vs. Bluemax Sport Wear,

2005 (186) DLT 399 (Delhi) to which one of us (Madan B. Lokur, J)

was a party, is also relevant to this case. In this case there was

delay of 96 days in the filing of the appeal. The same had been

returned by the registry of the Court by raising objections, since the same was filed without a supporting affidavit. For almost two years after the raising of the objection by the registry the appellant did not take any steps and there was a delay of more than two years in refiling of the appeal. Like in the present case, in that case as well the only reason given by the appellant for the delay in filing and refiling of the appeal was that there was frequent transfer of officers dealing with the matters resulting in communication gap between the counsel and the department. This Court did not accept the explanation furnished by the appellant in that case as making out sufficient cause for condonation of delay. The appellant has urged the same grounds in the present case as well, to seek condonation of delay in the filing of the appeal.

13. Since we have already observed that we are not satisfied with the explanation furnished by the appellant for seeking condonation of delay, in our opinion the delay cannot be condoned

and the present appeal is liable to be dismissed on that account.

14. In view of the aforesaid, we reject the application seeking condonation of delay in filing of the appeal and consequently the appeal itself is dismissed as being barred by limitation.

✓  
(VIPIN SANGHI)  
JUDGE

Madan Lokur  
(MADAN B. LOKUR)  
JUDGE

29<sup>th</sup> May, 2006  
as