Customs, Excise and Gold Tribunal - Delhi
Collector Of Central Excise vs Gujarat Phenolic Synthetics (P) ... on 18 September, 1990
Equivalent citations: 1991 (33) ECR 154 Tri Delhi
Bench: G Sankaran, K Venkataramani, S Peeran
ORDER K.S. Venkataramani, Member

1. In this case the collector of center Excise vadodra initially filed a consolidated appeal (registered as E/A NO 2763/86-C)againts order -in appeal NO M-757-758/BD -367 -368 /86 passed by the collector of central Excise (Appeals) Bombay issued on 28.8.1986 the collector (Appeals)"s order was received by the Collector of central Excise Vadodara on 4.9.1986 The consolidated appeal was received in the Tribunal (WRB) on 27.11.1986. The Collector (Appeals) had, by the impugned order, disposed of two appeals of the respondents against two orders-in-original dated 13.7.1983 and 23.2.1984 passed by the Assistant Collector of Central Excise. Division-1, Baroda. The Collector (Appeals) proceeded to decide both the appeals by a common order by observing, "Accordingly personal hearing was fixed for 30.12.1985. The appellants vide their letter dated 24. 12.1985 requested to decide the appeals on the basis of the evidence already furnished by them. Accordingly, 1 propose to decide both the appeals on the basis of the records available with me".

2. The Collector of Central Excise, Vadodara has subsequently filed the supplementary appeal registered as A. No. 2689/90-C along with the application for condonation of delay. When the application was called, none was present for the respondents who have, however, furnished written submissions dated 17.7.1990 opposing the condonation. Shri Narasimha Murthy, the learned DR supports the COD application and submits that as the Collector (Appeals) Had passed a common order, and since the consolidated appeal against it was itself admittedly filed in time, the delay in filing the supplementary appeal should be condoned. The respondents say that the applicant Collector's submission that a common appeal was filed since the two orders-in-original passed by the Assistant Collector involved the same issue, is factually incorrect. According to them, the two issues are distinct, one on approval of classification list and the other related to eligibility for taking credit of input duty under set off notification 201/79. They also point out that the general practice has also been to file separate appeals before the Tribunal in such cases. The respondents contend that since the present supplementary appeal has been filed after four years, in view of their submissions, sufficient cause has not been shown for condoning the delay, according to them.

3. We have carefully considered the submissions made by both the sides. The question is whether the delay in filing the supplementary appeal is to be condoned or not in this case where the main appeal against a common order passed by the Collector (Appeals) has admittedly been filed in time. The Tribunal has, in a number of decisions in the past been inclined to condone the delay in such circumstances, and, as an instance in point, we may usefully refer to the Tribunal's decision in the case of Collector of Central Excise v. Raiaang Tea Estates 1985 (6) ETR 3 (T) : 1987 (11) ECR 648 (Cegat SB-D) wherein it was held that where a consolidated appeal is filed in time, the delay in filing the supplementary appeal (could be condoned. We also note that Section 35B(5) of Central Excises & Salt Act, 1944 empowers the Tribunal to condone delay irrespective of duration on sufficient cause being shown. Further, on the question of the necessity in law of filing separate appeals against a common appellate order itself, there have been different views expressed by the Tribunal. In its

decisions the Tribunal expressed the view that one appeal will suffice against a common order issued, by Collector (Appeals) whereas, in other decisions of the Tribunal it was held that a single appeal filed against several orders on a common issue is not sustainable but that dismissal of such an appeal as nullity is wrong and that the appellate authority should give time for filing separate appeals The decision also laid down that it is axiomatic in law that there should be as many appeals as, there are original orders sought to be contested The CEGAT in that case further observed, "It is to ensure that no prejudice is caused to the litigant on account of adherence to the practice, albeit wrong, and at the same time enforce the filing of the requisite number of separata appeals that we have been consistently affording an opportunity to the various appellants before us to make good the deficiency with applications for condonation of delay in filing them belatedly". In fact, it is understood that a Five-Member Bench of this Tribunal is in seisin of this very issue in Appeal No E/2454/84.B.1 in the case of M/s. Ekantika Copiers v. Collector of Central Excise, Meerut. We also bear in mind in this context the cardinal principles laid down by the Hon'ble Supreme Court in the matter of condonation of delay in the case of Collector I and Acquisition, Anantnag v. MST Katiji laying down that 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 cads of justice. In these circumstances, in the present application before us, since the consolidated appeal against a common order passed by Collector (Appeals) has admittedly been filed in time, even granting that the Collector of Central Excise, Vadodara is factually incorrect in saying the issues decided by the two orders of the Asstt. Collector are the same (and Collector (Appeals)'s order giving no reasons at all for disposing of the appeals by a common order), the delay in filing the supplementary appeal is condonable in the interests of justice, and it is accordingly condoned.

4. Both the appeals will be heard on 7.11.1990.

Sd/- (G. Sankaran)
President

Sd/- (K.S. Venkataramani)
Member

S.L. Peeran

1. I have gone through the draft order prepared by learned Member (T) Shri K.S. Venkatar

2. The Revenue had filed appeal E/No. 2763/86-C on 11 9.1986 at CEGAT, Bombay against the order of the Collector of Central Excise, Vadodara dated 28.8 1986. There were two issues before the Collector of Central Excise (Appeals) Bombay arising from two orders-in-original passed by the Asstt. Collector of Central Excise, Baroda by his order dated 13.7.1983 and order dated 23.2.1984. The order-in-original No. 33/83 dated 13,7.1983 is an independent order pertaining to proceedings initiated by Superintendent of Central Excise, Bajwa under his SCN No. CE/SCN/Phenolic/15A/80/1171 dated 21.8.1980. The Asstt. Collector by his order disallowed the credit of Rs. 680/- at E. No. 54 on RG-23 PT II dated 1 3.1980 taken by the respondent under the provisions of rule 56(5)(ii) of Central Excise Rules and directed the respondents to credit this amount. The Asstt. Collector by his order-in-original No. ! 3/84 confirmed his approval of

classification list No. 16/83 pertaining to P.F. Moulding powder and clarified the same under 15A(1) and held liable to Central Excise duty under Notification No. 241/82 dated 1.11.1982 and 142/83 dated 13.5.1983.

3. The assessees filed appeals against both the order-in-original referred to above before the Collector of Central Excise (Appeals) Bombay. The Collector of Central Excise, Bombay took up both the appeals and by his order dated 28.8.1986 allowed the appeals in favour of the assessees applying the ratio of the Tribunal order as reported in 1983 ELT 2049.

4. The Revenue has filed the appeal No. E/2763/86-C against the order-in-appeal dated 28.8.1986 passed by the Collector of Central Excise (Appeals) Bombay. In the statement of facts at page 2, it is stated as follows -

He held that in view of G.O.T. order dated 7.5.1983 and 6,10.1982 and- order-in-Revision No. 270 of 1982 dated 26.4.1982 in case of M/s. Western Bengal Coal fields Ltd., the P.F. Moulding Powder obtained by chemical reaction of P.P. resin with fillers and additives for making them fit for a particular use does not cause to be P.P. resin. It was also held that such chemically modified phenolic resin (Moulding powder) is eligible for concessional rate.

The Appellate Collector has not discussed the issue regarding the incorrect credit demanded and confirmed by Asstt. Collector in his order-in-appeal.

The Annexure B to the appeal is Grounds of appeal, which are reproduced below-

(1) The Appellate Collector's order is not proper and legal. It is without jurisdiction too. The issue involved in this case is whether duty on phenolic moulding powder .should be levied when the same is manufactured from duty-paid P.P. resins without depositing the same in BSR. The Board has also clarified that where P.P. resin is manufactured and used directly in the captive consumption for the manufacture of P.P. Moulding powder by addition of fillers/additives without the P.P. resin being deposited in the store-room, duty is required to be collected at the moulding powder stage.

(2) The Appellate Collector's order therefore, need to be reviewed on the ground that the decision regarding levy of duty on moulding powder is not correct and that he has allowed the appeal regarding the incorrect credit availed by the assessee without giving any ground for the same.

5. It is clear from the reading of the facts and grounds that the Revenue had filed the appeal only on the question of allowing the credit availed by the assessees. The Revenue in the statement of facts have clearly set out the facts of both the orders-in-original but in the grounds of appeal, they have taken up only with regard to the ground of credit. There are no separate grounds made out by the Revenue regarding the question of classification dealt by Asstt. Collector in the order-in-original No. 13/84. The Collector (Appeals) had applied the rulings of this Tribunal rendered in 1983 ELT 2049 : 1983 ECR 1818 D (Cegat)l on the question of classification. The Revenue in the appeal No. 2763/86 has not made out any ground of appeal regarding this application of the ruling. Thereby clearly indicating that they were not aggrieved by the order of the Collector in so far as the classification

question is concerned as it pertained to revised classification list No. 16/83. While the grant of credit pertained to period 1980 which is subject matter in the order-in-original No. 33/83 and disputed matter in A. No. 2763/86.

6. In the fresh appeal E. 2689/90-C filed on 6.7.1990, there is no ground made out against the order-in-original No. 13/84. This fresh appeal is identically worded as the A. No. 2763/86 to the availment of credit decided by Asstt. Collector in order-in-original No. 33/83. The Revenue has already given an impression that they were not aggrieved with the order of Collector (Appeals) pertaining to classification list No. 16/83. The Revenue has presumably woken up to file this appeal with COD only at the instance of Sr. Departmental Representative's letter dated 7.6.1990. As noticed by me, no reasons have been assigned for not preferring the appeal against the order-in-original No. 13/84 earlier. They have also not made out any grounds against the reasoning given by Collector (Appeals) in applying the ratio of this Tribunal's ruling in 1983 ELT 2049 : 1983 ECR 1818 D (Cegat). It clearly follows that the Revenue had not cared to file the appeal on this aspect and also made it known to the assessee clearly by its conduct. The respondents in their objection to the COD at para 3 have stated as follows-

Further, we beg to invite your kind attention to para 2 of the present supplementary appeal wherein the facts have been misrepresented. It has been stated therein that "since the order-in-original dated 13.7.1983 and 23.2.1984 referred to in the said order-in-appeal were involving the same issue and covering the same party only one appeal under Section 35B was preferred against the order-in-appeal dated 28.8.1986 on 21.11.1986 as per the prevalent practice". This is apparent misrepresentation of the facts in as much as that in both the appeals issues involved therein were distinctly separate i.e. one for approval of classification and another for eligibility of availing set off of excise duty on Oxalic acid falling under TI 68 at the material time under notification No. 201/79 dated 4.6.1979. This is evident from the fact that separate show cause notices, and separate orders-in-original were issued by the Department. Further it is mentioned in the appeal that one appeal was filed as per prevailing practice. Both the reasons are apparently misrepresentation. Since the Appellate Tribunal is established and as per the rule framed the appellant was required to file separate appeals in both the matter. Since the present appeal is filed after 4 years, and there being no sufficient cause and in view of the misrepresentation of facts in the appeal, the respondent beg to oppose the condonation of delay in accordance with the provisions of Section 35B(3) of Central Excise Act, 1944.

In the COD application No. 176/90-C the Revenue has made out the grounds as under-

Since, the order-in-original dated 13.7.1983 and 23.2.1984 referred to in the said order-in-appeal were involving the same issue and covering the same party only one appeal under Section 35B was preferred against the order-in-appeal dated 28.8.1986 on 21.11.1986 as per the prevalent practice. The Registry as intimated by Sr. Departmental Representative vide his F. No. E/2763/86/1947 dt. 7.6.1990 directed the appellant to file one more supplementary appeal along with an application for condonation of delay. Accordingly one more appeal is being submitted to-day to the Registry along with the application for condonation of delay.

(3) Thus the appellant most respectfully submit that the delay has been caused due to the prevailing established practice. At no stage and no point of time, an intentional or wilful delay has occurred.

The reason given is that delay was caused due to the "prevailing established practice". They have not elaborated what this means. The Revenue has not given any explanation for delay in filing the appeal 2689/90-C which 1 suppose pertains to order-in-original No. 13/84 pertaining to classification. The Revenue has not appended order-in-original No. 13/83 along with this appeal (They have erred in annexing the first sheet showing order-in-original No. 33/83 while the order annexed pertains to 13/84). Therefore, it can be easily presumed that the original appeal filed by the Revenue in E/A. No. 2763/86-C was with regard to order-in-original No. 33/83 only.

6A. The question that arises before me is as to whether the Revenue bad waived their right of appeal against the order-in-original No. 13/84 and can they seek ,to revive it by filing a supplemental appeal ,with COD filed after a lapse of more than three years, 7 months on the ground indicated above. Is the reason given sufficient for condoning the delay?

6B. It is now well settled by the rulings of this Tribunal at voted by learned Member (T) that parties have to file separate appeals against the orders-in-original The fact that separate, appeal with COD application clearly suggests that 'the COD has to be examined on its own merits and that the earlier appeal filed will not be an automatic reason for condoning the delay unless sufficient reasons assigned in that respect are given.

7. Rights accrued to an assessee on account of the Revenue not proceeding to file an appeal fey accepting the order of Collector (Appeals) cannot later, after a lapse of time, be allowed to be Snatched away from the assessee by permitting the Revenue to. persu the appeal remedy by condoning the delay especially where there are serious latches and negligence on their part. The condonation of the delay has to be exercised with due care and caution and in such a way as not to take away the rights accrued to the assessee or the Revenue as the case may be. In the circumstances of long delays, the cause shown should be sufficient meaning thereby that the party should show that there is no negligence and latches on his part in filing the appeal and in persuing their remedy. The party should show that such delay by condonation will not result in any damage or loss to the opposite side nor will it take away his rights accrued on account of non-filing of the appeal in time. The party should also show that Status quo of rights had been maintained during the period of delay. This Tribunal had laid the guidelines for condonation of delay after examining the various citations of Supreme Court in the case of Mahabir Metal Converters, Thane v. Collector of Central Excise, Bombay 1986(7) ETR 375 : 1986(6) ECR 290 (Cegat), the Bench comprising of Shri JJ. Rao. member (Tech), Shri K.S. Venkataramani, Member (Technical), Shri G P. Agarwal, Member (Judicial) and the guidelines are as under-

Before we proceed to consider the merits of the case, it would be useful to refer the following principles which are of general application-

(a) that a party is entitled to wait until the last day of limitation for filing an appeal. But when it allows 'limitation to expire and pleads sufficient cause for not filing an appeal sufficient cause must

be established that because of some event or circumstance before limitation expired it was not possible to file the appeal within the time. No event or circumstance arising after the expiry of the limitation can constitute such sufficient cause. There may be events or circumstances subsequent to the expiry of the limitation which may further delay the filing of the appeal. But that the limitation has been allowed to expire without the appeal being filed must be traced to a cause arising within the period of limitation as held by the Supreme Court in the case of Aflt Singh v. State of Gujarat ;

(b) that the party has to satisfy that he had sufficient cause for not filing the appeal within the prescribed .time that is to say the explanation must cover the whole of the period of delay;

(c) that the ignorance of law by itself is not a ground for condonation of delay;

(d) that a mistake by a lawyer is a good ground for condoning the delay provided it is honest, though wrong. However, it cannot always be put in a straight jacket of general doctrine of invariable and universal application. In other words, it should not be an attempt to save limitation in an underhand way or an advice to cover ulterior purpose;

(e) a litigant should not be easily permitted to take away a right which has accrued to his advisory by lapse of time; and

(f) that proof of sufficient cause is a condition precedent for the exercises of the discretionary jurisdiction and that even after the sufficient cause is shown, a party is not entitled to the condonation of the delay in question as a matter of right and the Court of authority hearing the appeal has no power to extend the time as a matter of indulgence.

8. Again this Tribunal has dismissed the appeals as barred by time in the case of Collector of Central Excise v. F.G.P. Ltd. as applying the rulings of the Supreme Court as laid down in the case of Union of India v. Tata Yodogawa Ltd. reported in 1988 (38) ELT 739 : 1988 (19) ECR 569 (SC) and that of Ramlal and Ors. v. Rewa Coal Fields Ltd. reported in 1962 AIR SC 361. Likewise this Tribunal did not condone the delay in the case of Kanoria Wisconsin Centrifugal Ltd. v. Collector of Central Excise reported in 1990 ELT (48) 596 : 1990 (29) ECR 472 (Cegat SB-B1).

9. The learned Member (T) has relied on the ruling of the Collector (Appeals) in the case of Collector, Land Acquisition, Anantnag v. M.S.T. Katiji . In this case there was a delay of only four days. Therefore, this Tribunal in the case of Kanoria Wiscasin Centrifugal Ltd. (supra) has observed that this ruling will not apply for long days of delays and that later ruling of the Supreme Court as recorded in the case of Union of India v. Tata Yodogawa Ltd. (supra) would be more appropriate. In the case of Collector of Customs v. Carborundum Universal as , this Tribunal held that initial decision not to contest the order of Collector (Appeals) but subsequently changed their mind to file appeal is not sufficient ground for the COD. The broad principles of condonation of delay and the law of limitation has been discussed in few of the cases by Supreme Court which are noted below-

10. Supreme Court has observed in Sangram Singh v. Election Tribunal, Kolah as reported in AIR 1955 425 at paras 16 and 17.

It is well settled that laws of procedure are something designed to facilitate justice and further its ends not a penal enactment for punishment and penalties not a thing designed to trip people up. The technical construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it..." "Our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs that proceedings that effect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large and Subject to that proviso, our laws of procedure should be construed wherever that it is reasonably possible in the light of that principle.

11. In Nav Rattan Mal v. State of Rajasthan as reported in AIR 1961 SC 1704, the Supreme Court observed at para 8 as follows-

(8) It is, no doubt true that Lord Kenyan described statutes of limitation as "Statutes of repose" (vide per Dallas C.J. in Tolson v. Keys (1822) 3 Br & B 217 at page 223) and Bramwell B as "Statutes of Peave (Hunter v. Gibbons (1856) 26 L.J. Ex 1 at page 5) though sometimes contrary opinions have been expressed. In re-Baker, Cotton L.J. observed that pleas of limitation would never be looked upon with any favour (1890) 44 Ch D 262 at page 270) since they are used to defeat debts clearly due. It is however unnecessary to examine further the theory underlying statutes of limitation. We shall proceed on the generally accepted basis that they are designed to effectuate a beneficient public purpose viz, to prevent the taking away from one what he has long been permitted to consider him own and on the faith of what he plans his life, habits and experience. This however does not militate against there being a rational basis for a distinction being drawn between the claims of the state and the claims of the individual in the matter of a provision of a war of limitation for enforcing them.

12. The Supreme Court in Ramlal v. Rewa Coalfields Ltd. reported in AIR 1962 in para 12, page 365 has observed -

It is however necessary to emphasise test even after sufficient cause has been shown that a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition proceeded for the existence of the discretionary jurisdiction vested in the Court by Section 5 (Limitation Act). If sufficient cause is not proved nothing further has to be done, the application for the condoning of delay has to be dismissed on that ground alone. If sufficient cause is shown then the court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all facts and it is at this stage that diligence of the party or its bona fides may fall for consideration but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the court may regard as relevant. It cannot justify an enquiry as to why the party was sitting idle during all the time available to it. In this connection we may point out that considerations of bona fide or due diligence are always material and relevant when the Court is dealing with applications made under Section 14 of the Limitation Act. In dealing with such applications the Court is called upon to consider the effect of the combined provisions of Sections 5

and 14 Therefore, in our opinion considerations which have been expressly made material and relevant by the provisions of Section 14 cannot to the same extent and in the same manner be invoked in dealing with applications which fall to be decided only under Section 5 without reference to Section 14. In the present case there is no difficulty in building that the discretion should be exercised in favour of the appellant because apart from the general criticism made against the appellants lack of diligence during the period of limitation no other fact bad been adduced against it. Indeed as we have already pointed out, the learned Judicial Commissioner rejected the appellants' application for condonation of delay only on the ground that it was appellant's duty to file the appeal as soon as possible within the period prescribed and that in our opinion is not a valid ground.

12. In the case of Rajender Singh v. Bania Singh as reported in 1973 SC 2537 at para 17, the Supreme Court of India observed-

"The policy underlying statutes of limitation spoken of statutes of repose or of peace has been thus stated in Halbury's Law of England Vol. 24 P. 181 (para 330) "330-Policy of Limitation Act. The Courts have expressed at least three differing reasons supporting the existence of statutes of limitation namely (1) that long dormant claims have more of cruelty than justice in them (2) that a defendant might have lost the evidence to disprove a state claim and (3) that persons with good causes of actions should pursue them with reasonable diligence".

"The objection of the law of limitation is to prevent disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or latches".

13. The Supreme Court in Ajit Singh v. State of Gujarat reported in AIR 1981 733 para 6, has observed that-

Now it is true that a party is entitled to wait until the last day of limitation for filing an appeal but when it allows limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising before limitation expired, it was not possible to file the appeal within the time. No event or circumstance arising after the expiry of limitation can constitute such sufficient cause. There may be events of circumstances subsequent to the expiry of limitation which may further delay the filing of the appeal. But what the limitation has been allowed to expire without the appeal being filed must be traced to a cause arising within the period of limitation.

14. In the Union of India v. Tata Yodogawa Ltd. (supra), ECR(19) ECR 569 SC ECR C Cus 1411 SC the Supreme Court has held that interdepartmental correspondence and processing is not a sufficient ground for condonation of delay.

15. The reasons given by the Revenue are not sufficient for condoning the delay in this case. It would seriously prejudice the rights of the assessee. The Revenue had not made out any grounds against the order of the Collector (A) while applying the ratio of this Tribunal in 1983 ELT 2049 : 1983 ECR 1818 D thereby clearly indicating that they had accepted this portion of the order pertaining to

classification of the product for the period after 1983. The grounds made out clearly indicate this. It pertains to availment of credit under notification No. 201/77 which was subject matter of order-in-original No. 33/83 which had been alone the subject matter of dispute in A. No. 2763/86-C. Even in this appeal No. 2689/80-C no grounds have been made out against the Collector (Appeals) reasoning pertaining to application of the ratio of this Tribunal as stated above. Therefore, the ruling of the Supreme Court as rendered in Collr. land A., Anantnag v. M.S.T. Katiji (supra) ECR (19) ECR 565 SC; ECR C Cus 1335 SC relied upon by the learned Member (T) is not at all applicable on the facts and circumstances of this case.

Therefore, applying the ratio of the ruling of the Hon'ble Supreme Court and the Tribunal in the above noted citations, I order for dismissing the COD application and consequently the appeal is also dismissed.

Sd/- (S.L. Peeran)
Dt. 7.9.1990 Member (Judicial)

FINAL ORDER

In view of the majority opinion, the delay in the filing of the supplementary appeal is