

(2023) 11 ATPMLA CK 0002

Appellate Tribunal Under Prevention Of Money Laundering Act

Case No: MP-PMLA-2681, 2682, 2683/LKW/2016, FPA-PMLA-1424/LKW/2016

Dehati Stapanan Nyas

APPELLANT

Vs

Joint Director, Directorate Of
Enforcement

RESPONDENT

Date of Decision: Nov. 21, 2023

Acts Referred:

- Prevention Of Money Laundering Act, 2002 - Section 26

Hon'ble Judges: G.C. Mishra, Member; Balesh Kumar, Member

Bench: Division Bench

Advocate: Abhay Pandey, Aditya Singla, Sahil Sharma

Final Decision: Dismissed

Judgement

MP-PMLA-2681/LKW/2016

FPA-PMLA-1424/LKW/2016

1. Along with the appeal an application for Condonation of Delay (CoD) U/s 26 has been filed by the appellant to condone delay of 750 days on the ground mentioned therein.

2. The respondent has filed reply to the application for CoD on 07.08.2023 to dismiss the application for CoD on the grounds stated in the reply.

3. The application was taken up for hearing on 31.10.2023. Heard both sides on the application for CoD, and perused the application for CoD and

other material available on record. It is seen from the application that the sole ground taken in the application for CoD is that the appellant had

preferred Writ Petition (C) bearing no. 2896/2014 before the Single Bench of Honâ€™ble High Court, Jharkhand and L.P.A no.120/2016 before the

Division Bench of the Honâ€™ble High Court of Jharkhand.

4. It is contended in the application that the appellant obtained the certified copy from the Ld. Adjudicating Authority on 07.06.2014 and preferred Writ

Petition (C) no. 2896/2014 (the date of filing Writ Petition is not mentioned) which was dismissed on 10.02.2016. Being aggrieved with the dismissal

Order, the appellant preferred L.P.A bearing no. 120/2016 before the Division Bench of the Honâ€™ble High Court, Jharkhand which was also

dismissed on merit on 13.07.2016. The copies of Orders of Honâ€™ble High Court, Jharkhand in the Writ Petition as well as the L.P.A have been

filed by the appellant. During the course of hearing the Ld. Counsel for the appellant reiterated the aforesaid grounds. Prayer has been made to

condone the delay of 750 days in filing the appeal. It is also contended by the Ld. Counsel for the appellant that a liberal view may be taken to

condone the delay. In this regard, he has relied upon the judgement dated 27.02.2002 passed by the Honâ€™ble Supreme Court of India in the matter

of Appeal (Civil) 1704 of 2002 Ram Nath Sao @ Ram Nath Sahu and Ors. Vs Goberdhan Sao and Ors.

5. The Ld. Counsel appearing for the respondent strongly raised objection to the prayer of the appellant and submitted that there are no sufficient

grounds made out/ explained by the appellant to condone the delay. It was also contended that the appellant has not bonafidely proceeded before the

Honâ€™ble High Court, Jharkhand in view of there being a specific provision U/s 26 of the PMLA, 2002 for filing of appeal against the order of

Adjudicating Authority. It was further contended that the appellant did not prefer any appeal even after the Order was passed on 10.02.2016 by the

Honâ€™ble High Court, Jharkhand opining that the Petitioner therein (and the appellant herein) has adequate alternative remedy if, so aggrieved by

the Order of the Adjudicating Authority, to raise his grievances before the Appellate Tribunal. The Ld. Counsel for the respondent inter- alia submitted

that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case and that the expression

sufficient cause cannot be liberally interpreted if, negligence, inaction or lack of bona fides is attributed to the party. He has relied on the judgement

passed by the Honâ€™ble Supreme Court in the matter of Basawaraj Vs. Special Land Acquisition Officer (2013) 14 SCC 81. The Ld. Counsel for

the respondent also submitted that the Court cannot enquire into belated and stale claims on the ground of equity. And that delay defeats equity and

that the Courts help those who are vigilant and do not slumber over their rights. He has relied on the judgement of the Honâ€™ble Supreme Court in

the matter of Pundlik Jalam Patil Vs. Executive Engineer, Jalagaon (2008) 17 SCC 448. Further contention of the respondent was that the appellant

has failed to provide sufficient cause and explain the delay and that the appellant has filed a Writ Petition before the Honâ€™ble High Court but never

approached this Tribunal being aware of the procedure and mechanism under the PMLA. The Application for CoD is misconceived and without any

basis and hence should be rejected outrightly.

6. We have given a thoughtful consideration to submissions made by the Ld. Counsel for both the parties, the Application for CoD, the reply thereto

and the judgements relied upon by the parties and also the material available on record.

7. There is a huge delay of 750 days in filing the appeal. The Appellant has not pleaded either in writing or during the course of hearing that the

appellant was not aware of the provision for filing of appeal before this Tribunal U/s 26 of PMLA, 2002, the statutory remedy available under the said

Act of 2002. It is seen from the certified copy of the impugned Order that the same is received on 03.06.2014 not on 07.06.2014 as pleaded and that

the appeal was to be filed within 45 days which expired on 18.07.2014. The appellant neither preferred any appeal within the aforesaid period before

this Tribunal nor is there any explanation to that effect. The appellant also could not say on which date the appellant preferred Writ Petition (C) no.

2896/2014 before the Honâ€™ble High Court, Jharkhand. It is also seen from the photo copy of the Judgement and Order dated 10.02.2016 that the

appellant had challenged the Order dated 12.05.2014 passed by the Adjudicating Authority in the Original Complaint no. 230/2013 on the ground of

violation of principles of natural justice. The Honâ€™ble High Court dismissed the said Writ Petition wherein it is held as below:

Perusal of provisions of appeal show that the Legislature has consciously used the expression, any person that while undertaking

attachment proceedings not only the parties before the Adjudicating Authority but other person whose property may have been attached

would have an opportunity to prefer an appeal on being aggrieved before Appellate Tribunal. Petitioner, if so aggrieved by the order of the

Adjudicating Authority was entitled to invoke the Forum of Appeal before the Appellate Tribunal as per procedure prescribed therein and

subject to all conditions stipulated thereunder. It is not out of context to observe here that in matters relating to fiscal statutes and such

Specialized Act where a comprehensive mechanism has been laid down from the stage of investigation, provisional attachment and

adjudication up to forum of appellate body, writ court should not enter into an arena of adjudication at stage where a person aggrieved

has remedy available under the Act before the Appellate Forum where issues on merits as also grounds relating to violation of principle of

natural justice can be raised. In such circumstances, this Court is of the opinion that the petitioner has adequate alternative remedy if so

aggrieved by the order of Adjudicating Authority to raise his grievances.

Ld. Counsel for the petitioner submits that the appellate remedy may be delayed on account of petitioner prosecuting the instant Writ

Petition before this Court. Therefore, the Appellate Tribunal may be directed to consider the question of delay sympathetically.

Ld. Counsel for the Respondents Directorate submits that provisions of section 26 of the Act itself provide for a person aggrieved to give

sufficient reasons for any delay in preferring the appeal.

It goes without saying that the Appellate Tribunal would consider such issue in accordance with the law and the fact that petitioner has

been prosecuting the Writ Petition before this Court for the instant cause of action.

Accordingly, the Writ Petition is dismissed on the aforesaid grounds.â€

8. In the aforesaid Order of the Honâ€™ble High Court, Jharkhand, the Honâ€™ble Court has clearly spelt out that the appellant himself prayed the

Honâ€™ble Court, for directions to the Tribunal to consider the question of delay sympathetically and that this Appellate Tribunal has been asked to

consider the issue of delay in accordance with law and the fact that the petitioner therein has been prosecuting the Writ Petition before the

Honâ€™ble Court for the instant cause of action.

9. The aforesaid Order of the Honâ€™ble High Court passed in the Writ Petition is binding on both the parties as well as on this Appellate Tribunal,

therefore, it is held that, the period taken in prosecuting the Writ Petition (C) bearing no. 2896/2014 before the Honâ€™ble High Court, Jharkhand up

to the date of passing of the aforesaid Order i.e., till 10.02.2016 is to be ignored.

10. Even though liberty was granted by the Honâ€™ble Court in the aforesaid Writ Petition, the appellant did not file any appeal before this Tribunal

rather challenged the Order in the Writ Petition by way of L.P. A bearing no. 120/2016 wherein no such liberty was either prayed or granted to the

appellant.

11. It is on record that the L.P.A no. 120/2016 filed by the appellant before the Honâ€™ble High Court, Jharkhand was also dismissed on merit by

Order dated 13.07.2016. The said L.P.A was filed even though liberty was granted by the Honâ€™ble High Court, Jharkhand to prefer appeal before

this Appellate Tribunal. The reason for filing the L.P.A in spite of the Orders dated 10.02.2016 of the Honâ€™ble High Court, Jharkhand has neither

been stated nor argued. The said L.P.A does not therefore appear to be bona fide. There is no other pleading in the application for CoD except a

mention about filing of L.P.A.

12. It is seen from the Order of the Honâ€™ble High Court that the appellant had prior knowledge of alternative statutory remedy available U/s 26 of

the PMLA, 2002 but he did not avail that opportunity which goes to show that the appellant deliberately did not exhaust the statutory alternative

remedy. From the aforesaid facts it is seen that there is no sufficient explanation in filing the appeal from 11.02.2016 till 09.08.2016, i.e., when the

appeal was filed.

13. The judgement cited by the appellants are taken into consideration. Period taken in prosecuting the L.P.A cannot be said to be bona fide. The

delay with effect from 11.02.2016 to 09.08.2016 counting 179 days cannot be condoned. In the judgements cited by the respondents, it is observed by

the Honâ€™ble Supreme Court that the discretion to condone delay is to be exercised judiciously, based on facts and circumstances of each case. We have duly considered the grounds in the application for CoD but in the fact, and circumstances of the case the application for condonation of delay of 179 days cannot be allowed.

14. Accordingly, the application for CoD is dismissed. Consequently, the appeal and the pending applications are also dismissed and disposed of. It may be noted here we have not gone into merit of the appeal.

Application No. MP-PMLA-2681/LKW/2016(CoD) and Appeals No. FPA-PMLA-1424/LKW/2016 are dismissed.

The registry is directed to send the copy of the Order to the parties. The record be consigned to the record room after due compliance.