

(2024) 02 ATPMLA CK 0001

Appellate Tribunal Under Prevention Of Money Laundering Act

Case No: MP-FE-698/MUM/2020 (COD), FPA-FE-37/MUM/2020

Union Of India Enforcement
Directorate, Mumbai @
APPELLANT @Hash Dilip Dalpatlal
Mehta

APPELLANT

Vs

RESPONDENT

Date of Decision: Feb. 7, 2024

Acts Referred:

- Foreign Exchange Management Act, - Section 19(2)
- 1999

Hon'ble Judges: V. Anandarajan, Member

Bench: Single Bench

Advocate: Varun Mishra, Aranya Sanay, Tushar Shah, Johan A Chokshi

Final Decision: Dismissed

Judgement

In the instant case, an appeal has been preferred by the appellant Directorate, i.e., the Directorate of Enforcement, Mumbai, against the adjudication order dated 29th November 2019 passed by the Additional Director of Enforcement, the Directorate of Enforcement, Mumbai on 08.07.2020. Along with the appeal, the appellant Directorate has also filed an application for condonation of delay of 122 days in filing the aforesaid appeal. This order seeks to dispose of the said application for condonation of delay filed under section 19(2) of the Foreign Exchange Management Act, 1999 (FEMA, 1999).

2. It is stated in the application that the impugned order was received in the Head Office of the Directorate in New Delhi on 22.01.2020. In accordance with the well-settled mechanism for internal review of such adjudication orders, a specific review committee in the appellant's Head Office in New Delhi takes into account such

orders for examining their legality, propriety or correctness for the purpose of their acceptance or otherwise. In the instant case, upon review of the impugned adjudication order, an e-mail communication dated 16th June 2020 was received from HQrs conveying the approval and direction of the competent authority to challenge the said adjudication order.

3. Once the aforesaid communication conveying the Competent Authority's approval was received in Mumbai, the process of drafting the appeal against the said order was undertaken. The said process of drafting the appeal undergoes several layers, including vetting by the Assistant Legal Advisor of the Zonal office and administrative approval by the Joint Director as the Zonal Head. These steps also took some time. In the meantime, the statutory period to file the appeal expired and there was a delay of 122 days in filing the appeal. It is stated that the delay was neither deliberate nor intentional. Keeping in view the process of review of such orders, communication of the decision of the competent authority to the concerned office of this Directorate and the time taken in the actual drafting of the appeal the appellant Directorate has prayed that the delay in filing the present appeal may be condoned in the interest of justice and fair play.

4. In the above context, the appellants have also drawn attention to the order of the Hon'ble Supreme Court's Order in Suo Motu W.P. (Civil) No.03/2020 wherein, taking into consideration the impact of the surge of Covid-19 and the adversities faced by litigants, it was held by the Apex Court that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings. It was further held that in cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022.

5. It is submitted that the situation on account of the Covid-19 virus was grimmer in the State of Maharashtra, especially in Mumbai, where the office of the appellant Directorate is situated. Offices were hardly functional with only skeletal staff available on account of extreme difficulties including closure of the local railways and public transport system. It is, therefore, contended that the delay was not wanton or willful and has largely arisen on account of the lockdown which may also be treated as an instance of force majeure.

6. It is further submitted that if the delay is not condoned, irreparable damage to the interest of justice would be caused as the balance of convenience lies in favour of the appellants. The appellant/ applicant has thus prayed that the interest of the Revenue may also be kept in view and the delay in filing this appeal may be condoned taking

into account the facts and circumstances of the case in totality and appeal may be treated within the limitation and in order to render justice.

7. The learned counsel for the respondent has strongly opposed the application. It is firstly contended by him that the appellant has not made out sufficient cause to condone a gross delay of 122 days. At the outset, though it has been submitted that the impugned order was received by the appellant at its Head Office in New Delhi on 22.1.2020 and, accordingly, there has been a delay of 122 days, no documentary evidence, such as an inward acknowledgement stamp etc., has been furnished in support of the said statement. On this ground alone, it is submitted, the application ought to be dismissed in limine.

8. Next, it is stated that this Appellate Tribunal is entitled to condone a delay in filing an appeal on sufficient grounds being made out by the appellant. In the present case, the appellant Directorate has not explained the reasons for belatedly approaching the Hon'ble Tribunal in any manner whatsoever. The only explanation offered is that the communication received conveying approval to file the captioned appeal only arrived on 16 June 2020, which itself is belated by a period of over 100 days from 07.03.2020 when the statutory period to file the captioned appeal expired in terms of Sec. 19(2) of the Act, and that it ought to be appreciated that the process of drafting the appeal undergoes "several layers". This explanation, the respondent submits, is absurd, to state the least.

9. Reliance is sought to be placed by the respondent on the decision of the Hon'ble Supreme Court *Basawaraj and Another v. Special Land Acquisition Officer*, (2013) 14 SCC 81 wherein it was held as below:

"13. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."

10. The following other propositions arising from various decided cases are relied upon:

- The appellant who seeks condonation of delay must explain the delay of each day. It is true that the courts should not be pedantic in their approach while condoning the delay and explanation of each day's delay should not be taken literally, but the fact remains that there must be a reasonable explanation for the delay – Ajay Dabra Vs. Pyare Ram and Ors. 2023 SCC OnLine SC 92 (dated 31st Jan, 2023)

- In absence of any material evidence it cannot be said that the delay has been explained. Still to condone the delay would be giving a premium to a person who fails to explain the delay and who is guilty of delay and laches. The law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same - Lingeswaran etc. Vs. Thirunagalingam SLP to Appeal (Civil) Nos. 2054-2055/2022 (Order dated February 25, 2022)

11. As regards the Suo-Motu case cited by the appellant Directorate, it is contended that the Hon'ble Supreme Court's order in the said Suo-Moto Writ Petition (Civil) No. 3 of 2020 does not apply to the present case at all as the said order expressly states that the period from 15.03.2020 till 28.2.2022 would stand excluded from limitation whereas in the present case the statutory period to file the appeal had expired on 7 March 2020. The appellant places reliance upon the judgment of the Apex Court in Sagufa Ahmed & Ors. v. Upper Assam Plywood Products Pvt. Ltd. and Ors., (2021) 2 SCC 317 wherein the it was held:

"17. But we do not think that the appellants can take refuge under the above order in Cognizance for Extension of Limitation in (order dated 23.3.2020 of the Hon'ble Supreme Court of India passed in Suo Moto Writ Petition (Civil) No. 3 of 2020), What was extended by the above order of this Court was only "the period of limitation" and not the period upto which delay can be condoned in exercise of discretion conferred by the statute. The above order passed by this Court was intended to benefit vigilant litigants who were prevented due to the pandemic and the lockdown, from initiating proceedings within the period of limitation prescribed by general or special law. It is needless to point out that the law of limitation finds its root in two Latin maxims, one of which is Vigilantibus Non Dormientibus Jura Subveniunt which means that the law will assist only those who are vigilant about their rights and not those who sleep over them."

12. Based on their contentions as above, the respondents submit that absolutely no sufficient cause or ground has been made out by the Appellant to condone the gross delay of 122 days. Accordingly, the application ought to be dismissed being fundamentally misconceived and untenable. In their written submissions, the

appellants have further submitted that the respondent was exonerated without imposition of any penalty by the adjudicating authority finding a lack of any material evidence, and furthermore, that the respondent has since passed away on 24th August, 2021.

13. I have given careful consideration to the facts on record and the rival contentions of the parties. At the outset, it is seen that the application of condonation of delay available in the court file neither mentions the date of receipt of the adjudication order, nor the date of expiry of the limitation period, nor even the period of delay in respect of which condonation is sought. The relevant parts of the application have been left blank. Even the contents of the said application do not bring out sufficient cause to explain the delay in filing the appeals. The appellant Directorate has primarily reiterated the internal procedure for review of cases for filing of appeal. It appears to have been taken for granted that the procedure being what it is, time will be taken in processing the matter for filing of the appeal. No specific or substantial reasons leading to delay in the instant case have been cited. It cannot be the case of the appellant that their internal procedure is such that delay is inevitable in every case where the appellant Directorate decides to file an appeal.

14. In [Post Master General v. Living Media India Ltd., 2012 (277) E.L.T. 289 (SC)], the Hon'ble Supreme Court had observed as follows:

It is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay."

15. The Hon'ble Madras High Court in Union of India (Represented by Director of Enforcement) v. A.M.S. Ahamed Maulana C.M.A. No. 2717 of 2016 has observed as below:

"13. A perusal of the application before the Tribunal does not give sufficient cause as to why delay should be condoned, except simply stating that the impugned order was received on 20.10.2010 and the decision to file an appeal was taken on 31.10.2010, and

further papers were sent on 17.03.2011 and received in Delhi on 23.03.2011 and the appeal was filed on 04.04.2011. Nothing else has been mentioned in the application. No reason has been given explaining the delay in taking the decision to file the appeal, sending files to Delhi, and the delay between the receipt of the papers in Delhi and filing of the appeal before the Tribunal. In the absence of any explanation either before the Tribunal or in the High Court delay in filing the appeal before the Tribunal cannot be condoned.

16. Nor can the decision of the Hon'ble Supreme Court in the Suo-Motu case help the appellant in the instant case as the limitation period in the instant case had already expired before the period exempted by the Hon'ble Supreme Court in the said case commenced. Having given careful consideration to facts of the case at hand against the legal position emerging from the cases cited above as well as the judicial precedent cited by the respondents, therefore, I do not find that reasonable and sufficient cause to condone the delay in filing the appeal in the instant case has been brought out.

17. Accordingly, for the reasons cited above, the application for condonation of delay is hereby dismissed.

18. Consequently, the appeal filed by the appellant Directorate is also dismissed, being out of time.