

(2024) 01 ATPMLA CK 0006

Appellate Tribunal Under Prevention Of Money Laundering Act

Case No: DIARY NO. 2304/2023

Kuldeep Kumar & Anr

APPELLANT

Vs

The Competent Authority, New
Delhi

RESPONDENT

Date of Decision: Jan. 30, 2024

Acts Referred:

- Narcotic Drugs and Psychotropic Substances Act, 1985 - Section 68O(1), 68F, 68I(1), 68K, 68L
- Smugglers & Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976, - Section 12(4)
- Electricity Act, 2003- Section 125
- Arbitration and Conciliations Act, 1996 - Section 34(3)
- Code of Civil Procedure 1908 - Section 100
- Limitation Act, 1963 - Section 3, 5, 29(2)
- Constitution of India, 1950 - Article 142
- Karnataka Land Reforms Act, 1961- Section 48A

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

Bench: Division Bench

Final Decision: Dismissed

Judgement

Along with Appeal an application for Condonation of Delay (CoD) has been filed to condone delay of 241 days in filing the Appeal. In the Application for CoD, it is pleaded that the Appellant- Petitioner No. 1 was arrested on 08.12.2023 and released on bail on 05.04.2023 and that on 14.04.2023 he applied for certified copy of the impugned Order dated 02.03.2023 and that the Competent Authority took 07 months to provide certified copy of the confirming Order and that on 15.09.2023 the Appellant received the same

and that counsel was engaged on 15.10.2023. The present miscellaneous petition for restoration of the Appeal has been filed with delay which is neither intentional nor willful but due to the good and sufficient reason.

2. Heard, both the parties on the point of limitation. The Ld. Counsel appearing for the Appellants submitted that Section 5 of the Limitation Act is applicable and that the Respondent No. 1 has passed the Order ex-parte and that in the interest of justice, the application for CoD may be allowed.

3. On the other hand, the Respondent No. 1 appearing through Shri G.N. Mishra, Inspector orally submitted that the contention of the Appellants is incorrect. The certified copy of the impugned Order was received on 06.08.2023 by the Authorized person duly authorized by the Appellant Mr. Kuldeep Kumar. Shri G.N. Mishra, Inspector also placed the copy of the authority letter in which it is seen that the authority letter is dated 21.07.2023 and the date of receipt is 06.08.2023. There is no rebuttal to the above. The authority letter is taken on record.

4. According to the Appellants, the date of Order is 02.03.2023. The date of getting the certified copy is 15.09.2023. The date of expiry of 45th day is 30.10.2023 and 60th day expired on 14.11.2023. The Appeal is filed on 14.12.2023. If these dates are taken into consideration, on the admission of the Appellant themselves, there is a delay of 45 days from the day of expiry of 45 days in filing the appeal.

5. It is contented from the side of the Respondent No.1 that the certified copy of the impugned Order was received by the authorized representative of the Appellant No. 1 on 06.08.2023. It is further contented that there is a delay of 85 days from the expiry of 45 days i.e., 20.09.2023.

6. In both the cases there is delay beyond 60 days. Now the question arises, whether this Tribunal has competence to condone any delay in filing the appeal after 60 days from the date of getting the copies.

7. The relevant provision which deals with the filing of the appeal as well as the limitation and competence of this Tribunal to condone the delay is detailed in Section 68-O(1) of NDPS Act, 1985. The same is reproduced below:

“(1) [Any officer referred to in sub- section (1) of section 68E or any person aggrieved by an order of the competent authority] made under section 68 F, section 68 I, sub-section (1) of section 68K or section 68L, may, within forty-five days from the date on which the order is served on him, prefer an appeal to the Appellate Tribunal :

PROVIDED that the Appellate Tribunal may entertain an appeal after the said period of forty-five days, but not after sixty days, from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.||

8. It is necessary to bring on record some examples of similar provisions/substantially similar provisions in some other special Acts and decisions of Hon'ble Supreme Court and Hon'ble High Courts on the issue.

9. The Proviso to Section 12 (4) of Smugglers & Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 and S. 68(O)(1) of Narcotic Drugs and Psychotropic Substances Act, 1985 are similar. The relevant provisions of both the Acts are re-produced below:

—SAFEM ACT, 1976

12(4) of SAFEMA,1976:- Any person aggrieved by an order of the competent authority made under section 7. Subsection (1) of section 9 or section 10, may, within forty five days from the date on which the order is served on him, prefer an appeal to the appellate Tribunal:

Provided that the Appellate Tribunal may entertain any appeal after the said period of forty-five days, but not after sixty days, from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time."

NDPS ACT,1985 —

68-(O)(1) NDPS Act, 1985.- [Any officer referred to in subsection(1) of section 68E or any person aggrieved by an order of the competent authority] made under section 68F, section 68I Sub -section (I) of section 68K or section 68L, may, within forty-five days from the date on which the order is served on him, prefer an appeal to the Appellate Tribunal:

Provided that the Appellate Tribunal may entertain an appeal after the said period of forty-five days, but not after sixty days, from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time."

10. The provisos to section 125 of Electricity Act, 2003 and 34(3) of Arbitration and Conciliations Act, 1996 are substantially similar to the proviso to section 68(O)(1) of NDPS Act, 1985. The relevant provisions are reproduced below:

Section 125 of Electricity Act, 2003 deals with: Appeal to Supreme Court. It provides that:

— Any person aggrieved by any decision or order of the Appellate Tribunal may, file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal, to him, on any one or more of the grounds specified in section 100 of the code of Civil Procedure, 1908:

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.”

11. Section 34 (3) of Arbitration & Conciliation Act, 1996 provides that:

—34. Application for setting aside arbitral award.-

(1).....

(2).....

(2A).....

(1) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.”

12. In Hasina and Amina Bi Case the petitioners before the Division Bench of Hon’ble Delhi High Court were served with orders of Competent Authority dt. 14.07.1998 on 29/30 July, 1998 and common appeal was filed, with delay, on 20.10.1998 before this tribunal. As it appears from the copy of the Hon’ble High Court’s order that this Tribunal vide its order dt. 26.10.1998 held in that appeal that this tribunal has no power to condone the delay beyond the period of 60 days prescribed under the Act.

13. The relevant paras of the aforesaid judgment are re-produced as below:-

“para 8 – Section 12(4) of SAFEMA reads as under :-

12. Constitution of appellate tribunal

(1) xxxx xxxx xxxx xxxx

(2) xxxx xxxx xxxx xxxx

(3) xxxx xxxx xxxx xxxx

(4) Any person aggrieved by an order of the competent authority made

under section 7. Subsection (1) of section 9 or section 10, may, within forty five days from the date on which the order is served on him, prefer an appeal to the appellate Tribunal: Provided that the Appellate Tribunal may entertain any appeal after the said period of forty-five days, but not after sixty days, from the date aforesaid if it is satisfied

that the appellant was prevented by sufficient cause from filing the appeal in time.||

At para 10 of the aforesaid Judgment the Hon_{ble} Court has held that:-

—10. Anyhow, we need not go into this aspect of the matter at all inasmuch as the appellants themselves had admitted in their appeal that they had been served with the order dated 14.07.1998 passed by the competent authority on 29/30th July, 1998. That is the starting point of limitation. The appeals were filed on 20.10.1998, which is beyond 60 days from 30th July, 1998. In these circumstances, the Tribunal was left with no power to entertain the appeal. We have already indicated that the Tribunal had no Jurisdiction to entertain the review petition and or to pass nay order thereon other than dismissal of the same for non-maintainability. The review application as also the order dated 10.02.19989 cannot be looked into for any purposes in these proceedings.||

14. The facts and the provisions of law in the Hasina Ibrahim Parker &Amina Bi Kasker's cases and of the present case are identical in nature and hence considered to be applicable.

15. In view of the restriction of power, this tribunal is statutorily bound under the proviso to section 68(O)(1) of said NDPS Act, 1985 and consequently does not have power to condone delay beyond sixty days. If we look into the language of the relevant provisions, it is seen that there is clear legislative intention not to empower this Tribunal to condone the delay beyond sixty days. The Parliament has consciously excluded the power of this Tribunal.

16. In the judgment delivered on 1st March, 2017 by three Judges Bench of Hon'ble Supreme Court in the matter of ONGC v/s Gujarat Energy Transmission Corporation Ltd. and Others in civil no. 1315 of 2010 reported in 2017 SCC online SC 223, while dealing with section 125 of the Electricity Act 2003, it is held at para no. 16 of the said Judgment that;

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16. From the aforesaid decisions, it is clear as crystal that the constitution Bench in Supreme Court Bar Association (supra) has ruled that there is no conflict of opinion in Antulay's case or in Union Carbide Corporation's case with the principle set down in Prem Chand Garg Vs. Excise Commr. Be it noted, when there is a statutory command by the legislation as regards limitation and there is the postulate that delay can be condoned for a further period not exceeding sixty days, needless to say, it is based on certain underlined, fundamental, general issues of public policy as has been held in Union Carbide Corporation's case. As the pronouncement in Chhattisgarh State

Electricity Board (supra) lays down quite clearly that the policy behind the Act emphasizing on the constitution of a special adjudicatory forum, is meant to expeditiously decide the grievances of a person who may be aggrieved by an order of the adjudicatory officer or by an appropriate commission. The Act is a special legislation within the meaning of section 29(2) of the Limitation Act and, therefore, the prescription with regard to the limitation has to be the binding effect and the same has to be followed regard being had to its mandatory nature. To put it in a different way, the prescription of limitation in a case of present nature, when the statute commands that this Court may condone the further delay not beyond 60 days, it would come within the ambit and sweep of the provisions and policy of legislation. It is equivalent to section 3 of the Limitation Act. Therefore, it is uncondonable and it cannot be condoned taking recourse to Article 142 of the constitution.

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In the aforesaid judgment Hon'ble Supreme Court has categorically held that the limitation can be condoned within the extended period and not thereafter.

17. In the matter of Chhattisgarh State Electricity Board vs. Central Electricity Regulatory Commission & others reported in (2010) 5 SCC 23, while dealing with Electricity Act, their lordships of Hon'ble Supreme Court held that:

The relevant paras of the judgment are reproduced below:

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..... 29. Section 34(3) of the Arbitration and Conciliation Act,

1996, which is substantially similar to Section 125 of the Electricity Act came to be interpreted in Union of India v. Popular Construction Co. The precise question considered in that case was whether the provisions of Section 5 of the Limitation Act are applicable to an application challenging an award under Section 34 of the Arbitration and Conciliation Act, 1996. The two-Judge Bench referred to earlier decisions in Mangu Ram v. MCD 678, Vidyacharan Shukla v. Khubchand RagieP, Hukumdev Narain Yadav v. Lailit Narain Mishra, Patel Naranbhai Marghabhai v. Dhulabhai Galbabha and held: (Popular Construction Co. case, SCC pp. 474-76, paras 12 & 16) —12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are 'but not thereafter' used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. —Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended further period under the

proviso, would render the phrase 'but not thereafter' wholly otiose. No principle of interpretation would justify such a result. *

* 16. Furthermore. Section 34(1) itself provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award

'in accordance with' subsection (2) and sub-section (3). Sub-section (2) relates to grounds for setting aside an award and is not relevant for our purposes. But an application filed beyond the period mentioned in Section 34. sub-section (3) would not be an application 'in & accordance with' that sub-section. Consequently by virtue of Section 34(1), recourse to the court against an arbitral award cannot be made beyond the period prescribed. The importance of the period fixed under Section 34 is emphasised by the provisions of Section 36 which provide that: "36. Enforcement.—Where the time for making an application to set aside the arbitral award under Section 34 has expired the award shall be enforced under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the court.' This is a significant departure from the provisions of the Arbitration Act, 1940. Under the 1940 Act, after the time to set aside the award expired, the court was required to 'proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow' (Section 17). Now the consequence of the time expiring under Section 34 of the 1996 Act is that the award becomes immediately enforceable without any further act of the court. If there were any residual doubt on the interpretation of the language used in Section 34, the scheme of the 1996 Act would resolve the issue in favour of curtailment of the court's powers by the exclusion of the operation of Section 5 of the Limitation Act." (emphasis supplied) 30. In *Singh Enterprises v. CCE*- the Court interpreted Section 35 of the Central Excise Act, 1944 which is *pari materia* to Section 125 of the Electricity Act and observed: —8. The Commissioner of Central Excise (Appeals) as also the tribunal being creatures of statute are not vested with jurisdiction to condone the delay beyond the permissible period provided under the statute. The period up to which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Limitation Act, 1963 (in short the Limitation Act') can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days' time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (I) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the

period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only up to 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days' period. (emphasis supplied)

The same view was reiterated in *CCE and Customs v. Punjab Fibres Ltd.* 31. In *CCE and Customs v. Hongo India (P) Ltd.*⁴ a three-judge Bench considered the scheme of the Central Excise Act, 1944 and held that the High Court has no power to condone delay beyond the period specified in Section 35-H thereof. The argument that Section 5 of the Limitation Act can be invoked for condonation of delay was rejected by the Court and observed: "30. In the earlier part of our order, we have adverted to Chapter VI-A of the Act which provides for appeals and revisions to various authorities. Though Parliament has specifically provided an additional period of 30 days in the case of appeal to the Commissioner, it is silent about the number of days if there is sufficient cause in the case of an appeal to the Appellate Tribunal. Also an additional period of 90 days in the case of revision by the Central Government has been provided. However, in the case of an appeal to the High Court under Section 35-G and reference application to the High Court under Section 35-H, Parliament has provided only 180 days and no further period for filing an appeal and making reference to the High Court is mentioned in the Act. * *

* 32. As pointed out earlier, the language used in Sections 35, 35-B, 35-EE, 35-G and 35-H makes the position clear that an appeal and reference to the High Court should be made within 180 days only from the date of communication of the decision or order. In other words, the language used in other provisions makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning the delay only up to 30 days after expiry of 60 days which is the preliminary limitation period for preferring an appeal. In the absence of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. The High Court was, therefore, justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days. * * *

* 35. It was contended before us that the words 'expressly excluded' would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. In this regard, we have to see the scheme of the special law which here in this case is the Central Excise Act. The nature of the remedy provided therein is such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our considered view, that even in a case where the special law does not exclude

the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject matter and scheme of the special law exclude their operation. In other words, the applicability of the provisions of the Limitation Act, therefore, is to be judged not from the terms of the Limitation Act but by the provisions of the Central Excise Act relating to filing of reference application to the High Court. ||(emphasis supplied) 32. In view of the above discussion, we hold that Section 5 of the Limitation Act cannot be invoked by this Court for entertaining an appeal filed against the decision or order of the Tribunal beyond the period of 120 days specified in Section 125 of the Electricity Act and its proviso. Any interpretation of Section 125 of the Electricity Act which may attract the applicability of Section 5 of the Limitation Act read with Section 29(2) thereof will defeat the object of the legislation, namely, to provide special limitation for filing an appeal against the decision or order of the Tribunal and proviso to Section 125 will become nugatory.

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18. In an another matter i.e. Fair Growth Investments Limited v/s Custodian reported in (2004) 11SCC 472 in which their lordships of Division Bench of Hon'ble Supreme Court held that:-

The relevant paras of the judgment are extracted below —

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9. We are of the view that the provision prescribing a time limit for filing a petition for objection under Section 4(2) of the Act is mandatory in the sense that the period prescribed cannot be extended by the Court under any inherent jurisdiction of the Special Court. Prescribed periods for initiating or taking steps in legal proceedings are intended to be abided by, subject to any power expressly conferred on the court to condone any delay. Thus, the Limitation Act 1963 provides for different periods of limitation within which suits, appeals and applications may be instituted or filed or made as the case may be. It also provides for exclusion of time from the prescribed periods in certain cases, lays down bases for computing the period of limitation prescribed and expressly provides for extension of time under Section 5 in respect of certain proceedings. If the periods prescribed were not mandatory, it was not necessary to provide for exclusion or extension of time in certain circumstances nor would the method of computation of time have any meaning.

10. Section 4 (2) of the Act plainly read similarly requires a person objecting to a notification issued under sub-section (2) of Section 3 to file a petition raising such objections within 30 days of the issuance of such notification. The words are unequivocal and unqualified and there is no scope for reading in a power of Court to dispense with the time limit on the basis of any principle of interpretation of statutory provisions. In *R. Rudraiah v. State of Karnataka* 1998(3) SCC 23 it was contended on behalf of the appellants that Section 48-A of the Karnataka Land Reforms Act, 1961 which provided for the making of an application within a particular period should be construed liberally in favour of tenants so that the period was to be read as extendable. The submission was rejected on the ground that the language of Section 48-A was unambiguous and could not be interpreted differently only on the ground of hardship to the tenants.

10. The mere fact that the Special Court may have been imbued with the same status of a High Court would not alter the situation. We are of the view that it was not necessary for Section 4(2) of the Act to use additional peremptory language such as "but not thereafter" or "shall" to mandate that an objection had to be made within 30 days. The mere use of the word "may" in Sections 4 (2) of the Act does not indicate that the period prescribed under the Section is merely directory. The word may merely enables or empowers the objector to file an objection. The language in Section 4(2) of the Act may be compared with Sections 4 and 6 of the Limitation Act, 1963. Section 4 of the Limitation Act provides: "4. Expiry of prescribed period when court is closed:- Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens." Certain sub-sections of Section 6 of the Limitation Act also provide for the period within which a minor or insane or an idiot may institute suits. It cannot be contended that the word "may" in these Sections indicate that the prescribed periods were merely directory. This Court in *Mangu Ram v. Municipal Corporation of Delhi* 1976 (1) SCC 392 described statutory provisions of periods of limitation as "mandatory and compulsive" and also said:- "It is because a bar against entertainment of an application beyond the period of limitation is created by a Special or local law that it becomes necessary to invoke the aid of Section 5 (of the Limitation Act) in order that the application may be entertained despite such bar".

12. If the power to condone delay were implicit in every statutory provision providing for a period of limitation in respect of proceedings before Courts, Section 29(2) of the Limitation Act 1963 would be rendered redundant. We will discuss the scope and applicability of Section 29(2) in greater detail subsequently.

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19. The language used providing provision relating to the limitation for filing an appeal in Arbitration and Conciliation Act, 1996 (Sec. 34), the appeal proviso under Electricity Act-2003 (sec. 125), Special Court(Trial of offences Relating of Transactions in Securities) Act,1992-Ss.4(2), 3(2), & 3, 9-A and 11 the appeal proviso under SAFEMA, 1976 (sec.12(4)] and NDPS Act, 1985 [sec. 68(O)(1)] are substantially similar and the judgment of Hon'ble Supreme Court and Hon'ble High Court have settled the question of law on the issue.

20. In the given fact, provisions of law, circumstances and considering the judgments cited/discussed above, it is held that:

(i) This Tribunal is empowered to condone any delay beyond forty-five days but within sixty days from the date of service of the order.

(ii) This Tribunal is not empowered to condone any delay after sixty days from the date on which the order is served.

In a recent judgement, His Lordship of Hon'ble High Court, Delhi, vide Order dated 18.10.2023 in the matter of W. P. (C) 12677/2023 and CM APPL. 49965/2023 dismissed the Writ Petition filed by Suman Kumar Rana- in jail vs. Competent Authority by upholding the judgement and Order passed by this Tribunal on 11.07.2023.

21. With a view to consider and appreciate the arguments in its proper perspective, the object, purport and the scope of proviso to Section 68(O)(1) needs to be examined. Exclusion can be implicit or explicit. It depends upon the language used in a particular statute. The intention can only be gathered from the expression contained in the statute. The proviso to Section 68(O)(1) has created an absolute bar for extension of period of limitation beyond sixty days. The expression not after sixty days does not permit this Tribunal any further extension and it seems that the true import, purport and construction of the proviso is to restrict the total period of limitation to 60 days, i.e. 45 days principal and 15 days by extension subject to existence of sufficient cause in a given case. Any other interpretation would amount to committing violence to the statute itself which is impermissible under law.

22. Considering the relevant fact, provision of law and judgments noted above, it is held that this Tribunal has no power even to condone a single day delay after sixty days from the date of service of impugned order on the appellant. In view of the discussions made above, the Application for CoD is dismissed, consequently, the Appeal and the pending applications are also dismissed.

23. In the circumstances there is no order as to cost.

Registry is directed to send the copy of this order to both the parties.

File be consigned to record room after due compliance.

Order is pronounced in open Court.