

(1989) 03 BOM CK 0032**Bombay High Court****Case No:** Writ Petition No. 1061 of 1989

Chloride Industries Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: March 21, 1989**Citation:** (1990) 47 ELT 318**Hon'ble Judges:** S.C. Pratap, J; B.G. Kolse Patil, J**Bench:** Division Bench**Judgement**

S.C. Pratap, J.

Rule returnable forthwith. Respondents waive service.

2. Delay of 16 days in the filing of the appeal in question was not condoned by the Tribunal. Hence this petition.

3. Now, it is very difficult for this Court to exercise its discretionary powers to interfere with the matter which itself is basically discretionary and when the said discretion could not be said to have been exercised arbitrarily. In this case, however, we find that the appeal is filed not against any demand as such but on the question of refund sought to be claimed by the petitioner company and this claim for refund runs into, what we are informed at the bar, over Rs. 40 lacs. The delay again has occurred not because of any sheer negligence or neglect on the part of the petitioners but because of certain circumstances not entirely within the control of the petitioners. The legal advice and opinion obtained from an Advocate who later shifted to Delhi and the legal advice obtained from a subsequent Advocate, through not very cogent reasons for condoning the delay, are nevertheless factors which cannot be said to be totally irrelevant. The delay again is not gross but, as indicated, of 16 days. We also cannot overlook the weighty observations of the Supreme Court in Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, on which, naturally, heavy reliance has been placed by the petitioner's learned Counsel Mr. Avinash Shivade. These observations have been quoted at page II of this petition. In the context of all these circumstance, we are inclined to condone delay

and permit the petitioners to have their claim adjudicated on its own merits and in accordance with law but on payment of exemplary costs as directed below.

4. Hence order : This petition is allowed. The impugned Order No. 1752/88/WRB, dated 9-12-1988 (Exh. "B") as also the impugned Order No. 1753/88/WRB, dated 9-12-1988 (Exh. "C") are set aside and delay in filing the appeal in question is condoned and the appeal is directed to be heard and decided on its own merits and in accordance with law subject to the condition that the petitioners pay, latest by 25th April, 1989, to the Collector, Central Excise, Pune as and by way of exemplary costs of this petition, amount quantified at Rs. 5000/- (Rupees five thousand). If the said amount is not paid latest by 25th April 1989, the aforesaid impugned orders Exhibits "B" and "C" shall stand confirmed and this petition shall stand dismissed.

5. Rule is made absolute on conditions aforesaid with order of costs as directed above.