

Chloride Industries Ltd. Vs Union of India

Court: Bombay High Court

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.