

F.No.275/65/2013-CX.8A (Pt.)
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Indirect taxes & Customs)
Legal Cell

Wing 5 'C' HUDCO-VISHALA Building
Bhikaji Cama Place, R.K. Puram
New Delhi, the 19th January'2021

To,

1. All Principal Chief Commissioners/ Chief Commissioners of Customs & GST
2. All Principal Director Generals/ Director Generals of Customs & GST
3. <webmaster.cbec@icegate.gov.in>

Sir/Madam,

Sub: Strict compliance to Limitation while filing Appeals/Petitions before Courts/ Tribunal -reg

Instructions have been issued from time to time regarding strict adherence to the time lines while filing appeals/petitions before High Courts and Supreme Court, the latest being the Instruction dated 23.12.2020 vide file of even no. (copy available on CBIC website). Despite the same, appeals/ petitions are being filed before High Courts and Supreme Court belatedly, highlighting no extra-ordinary circumstances while filing Condonation of Delay Applications.

2. In this regard, Hon'ble Supreme Court has been viewing practice of filing appeals after inordinate delay critically and consequently imposing costs on the Petitioners. In one such case of Union of India v. Jitendra in SLP (CrI.) Diary No. 24676/2020, Hon'ble Apex Court in judgment dated 08.01.2020 noted

"We have been repeatedly deprecating the practice of authorities coming before this Court after inordinate delays assuming as if the Law of Limitation does not apply to them. Repeatedly, reliance is placed on the judgments of vintage when technology was not easily available. No reference is made to the subsequent judgment in the Office of the Chief Post Master General & Ors. v. Living Media India Ltd. & Anr. -(2012) 3 SCC 563 which has dealt with the issue that consideration of the ability of the Government to file appeal in time would have to be dealt with in the context of the technology now available and merely shuffling files from one table to the other would no more be a sufficient reason.

We have also categorized such cases as "certificate cases". We have specified the object to file such cases to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, record that nothing could be done because the highest Court has dismissed the appeal. It is a completion of formality with endeavourer to save the skin of the officers who may be in default in following the appropriate legal process in time. The irony is that despite our repeated orders, very little is done at least in taking action against concerned officers who sit on files and do nothing. The presumption is as if this Court will condone the delay for the asking. We refuse to follow such a course. (emphasis supplied)

and imposed costs on the Petitioner.

3. Identical stand was taken by Hon'ble Supreme Court in the cases of State of Madhya Pradesh v. Bherulal in SLP (C) Dy No. 9217/2020 and Municipal Corporation of Greater Mumbai & Ors. v. Uday N. Murdukar in SLP (C) Dy No. 9228/2020.

4. It is also imperative to highlight certain observations of Hon'ble Supreme Court in the case of Office of the Chief Post General & Ors. v. Living Media India Ltd in Civil Appeal No. 2474-2475 of 2012, which is as follows:

*"12) It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. **The law of limitation undoubtedly binds everybody including the Government.***

*13) In our view, 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 redtape 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." (emphasis supplied)*

5. Hence, the field formations are directed to strictly adhere to the aspect of limitation in filing appeals/ petitions before Courts/ Tribunal. Reference may also be made to Instruction vide F.No. 1080/DLA/50/Tech/Monitoring/SLPs-Appeals/16 dated 01.06.2017 (copy available on CBIC website) wherein the fresh timelines for filing SLP and Civil Appeals were provided. The practice of filing Condonation of Delay Application in a mechanical fashion, without attributing cogent reasons, if any, must be discouraged by the field formations under your jurisdiction. The jurisdictional Principal Chief Commissioner / Principal Director General/ Chief Commissioner/ Director General should personally monitor that appeals/petitions are filed on time in the interests of Revenue as mentioned in Para 2(ii) of Board's Instruction dated 23.12.2020. Any appeal/petition dismissed, solely on the grounds of limitation, may be scrupulously examined and corrective steps may be taken, including disciplinary action, wherever merited.

6. Important petitions/appeals filed before Hon'ble High Courts, which would have all-India ramifications and would require policy inputs from the Board should be immediately brought to the notice of policy section concerned of the Board along with Commissioner (Legal). The same should also be mentioned separately in the monthly report being submitted to the Board.

7. Hindi version would follow.

(Anish Gupta)
OSD (Legal)