

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH, MUMBAI**

**Application No.C/COD/86597, 86599, 86602, 86598/2018 In
Appeal Nos. C/88996, 88999, 89003, 88998/2018**

**M/s SAVITHRI JEWELLERS PVT LTD
SHILPA S VERNEKAR, ROSHAN S VERNEKAR
DEEPA S VERNEKAR**

Vs

**COMMISSIONER OF CUSTOMS
AIR SPECIAL CARGO**

Date of Decision: 20.3.2019

Appellant Rep by: Shri Arjun Nair, Adv.

Respondent Rep by: Shri Manoj Kumar, Joint Commissioner (AR)

CORAM: Suvendu Kumar Pati, Member (J)

Cus - Delay of 250 days in filing appeal - ground is that both the lady Directors and the Manager failed to arrange 7.5% of pre-deposit for company, its Directors and Manager against penalty imposed on them; that they lost business after being penalized and the purchaser refused to purchase the gold from them despite the fact that all dues of the Customs department had been paid by them- applications filed seeking condonation of delay.

Held: Supreme Court has [in (2001)9 SCC 106] observed that where the delay is of a few days, the Court should adopt a liberal approach; that a distinction must be made between a case where the delay is inordinate and a case where the delay is of few days; that where the delay is of inordinate, the consideration of prejudice to the opposite party will be a relevant factor calling for a more cautious approach but when the delay is of a few days, no such consideration may arise and such a case deserves a liberal approach; that discretion should be exercised on the facts of each case keeping in mind that in construing the expression 'sufficient cause', the principle of advancing substantial justice is of prime importance - in the present case, although unreasonable delay has accrued in filing the appeals, the same is attributable to the incapacity of the appellants to make payment of pre-deposit; that not condoning the delay would further increase the plight of the appellants - delay is, therefore, condoned subject to payment of cost of Rs.10,000/- each by each of the appellants within a period of thirty days - Application allowed: CESTAT [para 4 to 6]

Applications allowed

ORDER NO. M/85239-85242/2019

Per: Suvendu Kumar:

These 4 COD applications are filed to condone the delay of 250 days and admit the appeal Nos. C/ 88996, 88999, 89003, 88998/2018 on the ground that both the lady directors and the manager fail to arrange 7.5% of pre-deposit for Company, its directors and its manager against penalty imposed on them to the tune of Rs. 7,00,000/- on each of the directors, 15,00,000/- on manager and 10,00,000/- on the Company respectively. As they lost business after being penalised and the purchaser refused to purchase gold from them despite the fact that all dues of the Customs department had been cleared.

- 2. Learned Counsel for the appellant prayed to condone the delay to ensure substantial justice to the appellant as he claims merit in the appeals.**
- 3. Learned AR for the department formerly objected the COD applications but conceded that if adequate cost is imposed on the appellant, then the loss of the department would well be compensated and appeals can be disposed of on merits.**
- 4. In the decision, reported in (2001) 9 SCC 106, Hon'ble Supreme Court had observed that where the delay is of a few days, the court should adopt a liberal approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of few days. Whether the delay is inordinate, the consideration of prejudice to the opposite party will be a relevant factor calling for a more cautious approach, but in the latter case where the delay is of few days, no such consideration may arise, and such a case deserves a liberal approach. Hon'ble Supreme Court also observed that the exercise of discretion on the facts of each case, keeping in mind that in construing the expression "sufficient cause", the principle of advancing substantial justice is of prime importance.**
- 5. In the present case though unreasonable delay has accrued in filing the appeals, the same is attributable to the incapacity of the appellant to make payment of pre-deposit. Not condoning the delay would further increase the plight to the appellants as they loss business and market reputation and there could be merit in their appeals that would ensure justice to them. The prejudice to the OP may be to the extent of financial loss which can well be mitigated by way of cost.**
- 6. Having regard to the reason cited by the appellant coupled with observation made by the Hon'ble Supreme Court in the above referred judgment, delay of 250 days in filing appeal before this Tribunal is condoned subject of payment of cost of Rs.10,000/- each by each of the appellant. Appeals be admitted if cost is paid within 30 days of receipt of this order by the appellants.**

(Pronounced in court on 20.03.2019)