

To condone is divine!

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As per Section 35 of the Central Excise Act, 1944 and Section 128 of the Customs Act, 1962, the power of the Commissioner (Appeals), to condone any delay in filing the appeal is limited to 30 days (reduced from three months, w.e.f. 11.05.20021). It has been time and again held that the Commissioner (Appeals) cannot condone any delay beyond this period and even the Hon'ble Tribunal cannot come to the rescue of the assesses in such cases. Recently, the Hon'ble Apex Court has also reiterated the same vide its decision reported in 2008 (221) ELT 163 SC.

No doubt, the right of appeal, being a statutory right, can be reasonably curtailed by statutory provisions. But this restriction of 30 days, seems to be unreasonable on many occasions. It is not that all the assesses are very much aware of the statutory provisions relating to appeals, etc. Similarly, not all of them are armed with "learned counsels", to guide them properly. In such a situation, many assesses fail to adhere to the time limit for filing appeal. Further, genuine reasons like, non availability of the employee concerned during the relevant time, medical reasons, being out of station, etc. hamper timely filing of appeal. Viewed in this context, the restriction of condonable delay by the Commissioner, to 30 days, seems to be unreasonable.

In this connection, it is relevant to refer to the celebrated decision of the Hon'ble Apex Court, laying down principles for condonation of delay, in the case of the Collector, Land Acquisition Vs MST Katiji - 1987 (28) ELT 185 SC, which are:

1. *Ordinarily a litigant does not stand to benefit by lodging an appeal late.*
2. *Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*
3. *"Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.*
4. *When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*
5. *There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*

6. *It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.*

Viewed in this context, it is honestly felt that the power of the Commissioner (Appeals), to condone any delay in filing the appeals, should not be curtailed at all. At least, it shall be extended to three months, as it was earlier and as it is in the case of service tax.

Will the budget makers hear this plea?