

Delayed SLP - Lethargy no more acceptable

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IN a recent judgement in a petition filed by the Revenue, the Supreme Court observed, -2021-TIOL-192-SC-GST

A perusal of the application shows that the judgment was pronounced on 14.11.2019. The proposal for filing the Special Leave Petition was sent after almost six months on 20.05.2020 and it took another three months to decide whether to file Special Leave Petition or not on 25.08.2020.

We are of the view that such kind of lethargy on part of the revenue department with so much computerization having been achieved is no more acceptable.

The aforesaid itself shows the casual manner in which the petitioner has approached this Court without any cogent or plausible ground for condonation of delay. In fact, other than the lethargy and incompetence of the petitioner, there is nothing which has been put on record. We have repeatedly discouraged State Governments and public authorities in adopting an approach that they can walk in to the Supreme Court as and when they please ignoring the period of limitation prescribed by the Statutes, as if the Limitation statute does not apply to them.

The leeway which was given to the Government/public authorities on account of innate inefficiencies was the result of certain orders of this Court which came at a time when technology had not advanced and thus, greater indulgence was shown. This position is no more prevalent.

Despite this, there seems to be a little change in the approach of the Government and public authorities.

We have also categorized such kind of cases as "certificate cases"

filed with the only object to obtain a quietus from the Supreme Court on the ground that nothing could be done because the highest Court has dismissed the appeal. The objective is to complete a mere formality and save the skin of the officers who may be in default in following the due process or may have done it deliberately. We have deprecated such practice and process and we do so again. We refuse to grant such certificates and if the Government/public authorities suffer losses, it is time when concerned officers responsible for the same, bear the consequences. The irony, emphasized by us repeatedly, is that no action is ever taken against the officers and if the Court pushes it, some mild warning is all that happens.

Looking to the period of delay and the casual manner in which the application has been worded, we consider appropriate to impose costs on the petitioner(s) of Rs.25,000/- for wastage of judicial time which has its own value and the same be deposited with the 'Supreme Court Advocates On Record Welfare Fund' within four weeks. The amount be recovered from the officers responsible for the delay in filing the Special Leave Petition and a certificate of recovery of the said amount be also filed in this Court within the same period of time.

The Special Leave Petition is dismissed as time barred in terms aforesaid.

A copy of this order be placed before the Secretary, Ministry of Finance, Department of Revenue.

This is not the first time that the Government is facing such embarrassment, nor will it be the last. The Revenue loves litigation, but unfortunately is not adept in the art of love, I mean litigation.

It has been the constant endeavour of the Board to streamline the procedures relating to processing of departmental litigation before the Supreme Court, High Courts and CESTAT. Several circulars/ instructions have been issued by the Board, but as usual, the field officers have been disobeying them with contempt and consistency.

In CBEC CIRCULAR NO. <u>935/25/2010-CX</u>, Dated: September 21, 2010, the Board issued rather exhaustive instructions on *Measures to streamline the processing of departmental litigation before the Courts and Tribunal*

Sparks of wisdom from the Circular:

- One major cause of concern is delay in receipt of proposals in the Board's office.
- Quality of proposals sent by Commissionerates is extremely important for preparation of Civil Appeal/SLP. However, it has been observed that proposal lack quality in so far as content is concerned.
- Another significant aspect that has been found lacking in the proposals is documentation. Often complete sets of documents are either not enclosed or not found legible.
- Grading of cases pending before the Courts is very important for effective monitoring by supervisory officers.
- There are instances where the Commissioners filed appeals before the High Court after obtaining some legal advice even though the issue related to valuation or rate of duty. The High Courts rejected revenue appeals as non-maintainable and delayed appeals were filed before the Supreme Court. Board expects the Chief Commissioners to be careful while deciding about the Court to approach.

Board is serious about the business of litigation, but the field should equally be. Issuing a Circular by the Board, is no solution.

Board has issued several circulars on the subject. What is important is COMPLIANCEÂ by the field. Nothing ever happens to anybody who has refused to follow the Board directions.

The Board's assertion, of taking a serious view of violation of its instructions, is a standing joke in the field; they all know that the Board is never serious, at least that has been the experience in the last 50 years or so.

Why should the Board send these paper missiles? If the Board is really serious about effectively defending its cases, it should seriously ensure that field officers do obey its instructions; if not any number of such circulars will have no real effect and Board can continue to issue instructions threatening to take a serious view and the field will continue to smile at the joke.

After the 2010 circular, a few years later, by instruction in F.No.276/320/2016-CX.8A, dated 29.03.2016, the Board cautioned,

It has, however, been noticed that in many cases the proposals for filing SLP are being sent to the Board much after the time limit of 15 days available with the Commissionerate is over. In fact in some cases such proposals have been received in the Board after the time limit of 90 days is over. Such delays result in the dismissal of SLPs on the grounds of delay.

The delay in sending the SLP proposal for filing SLP has been viewed seriously and it is reiterated that responsible should be fixed for such delay in all cases. The field formations are, therefore, directed to scrupulously follow the above referred circular dated 21.9.2010. Any deviation will be viewed seriously.

BY instruction in F.No.276/241/2015-CX.SA (Pt.), dated 27.06.2017, the Board again directed the field:

The field formations are therefore directed to scrupulously follow the instructions contained in Board Circular No.935/25/2010-CX dated 21.09.2010, so as to avoid delay in filing of SLPs/Civil Appeals before the Apex Court.

So, the Supreme Court order dismissing the SLP referred to at the beginning, was not totally unexpected. The Board was aware of such a situation and the Board had warned the field formations to be alert. But then who bothers? The appeal in the Supreme Court is not to win a case but to answer audit.

What does the Board do when its instructions are not followed? It issues fresh instructions. Recently in December 2020 by instructions in F.No.275/65/2013-CX.8A (Pt.), dated 23rd December 2020, the Board stated,

The undersigned has been directed to refer to Board's Circular No. 935/25/2010-CX dated 21.09.2010 (copy available on CBIC website), wherein the detailed procedure for streamlining the processing of Departmental litigation was provided.

However, it has been noticed that the said Instructions are not followed scrupulously, leading to delays in filing of appeal/petitions before the Hon'ble Courts. Accordingly, it has been directed that following measures may be adopted under your Jurisdiction……

Obviously, these circulars and instructions do not have much effect. The Board is constrained to reiterate its instructions. In its latest Circular NO. 1077/01/2021-CX, Dated: January 19, 2021, the Board emphasises:

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.

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.

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.

The Supreme Court has expressed its concern in this unacceptable levels of delay in filing appeals. In *Bilfinder vs Union of India*, the Supreme Court on 10.02.2021, observed,

Repeatedly, it has come to the notice of this Court that appeals in revenue matters involving indirect taxation are being filed with a gross delay.

In the present case, the submission which has been urged before the Court by Mr S A Haseeb, learned counsel, is that there was some mis-apprehension on the part of the Commissionerate as a result of which the appeal was filed before the Gujarat High Court and after the appeal was dismissed, this Court was moved.

The legal position that the appeal would lie before this Court cannot be a matter of doubt. Certainly, it would not be open to the Department to contend that they were unaware of the legal position. Such appeals are being filed with a gross delay.

The Union government, in the Department of Revenue must find an answer to this state of affairs by ensuring that matters which are required to be litigated are litigated with all necessary dispatch and matters not worthy of being pursued are set to rest.

The Court requested the Solicitor General of India to appear to assist the Court and apprise it of the steps which would be taken by the Union government. Mr Tushar Mehta, the Solicitor General has fairly responded to the request made by the Court and submitted a detailed note on

15.02.2021 after deliberations have taken place with senior officials of the Union government, including the Finance Secretary, Union Law Secretary and the Chairpersons of the Central Board of Direct Taxes and Central Board of Indirect Taxes and Customs.

During the course of the hearing, various suggestions have been discussed including the need to incorporate technological innovations in the process of monitoring litigation involving the revenue arm of the Union government.

The Court requested that a consolidated proposal also incorporating technological modalities be placed before the Court on the next date of listing.

The Supreme court in Chief Post General & Ors. v. Living Media India Ltd - 2012-TIOL-123-SC-LMT said loudly and clearly that The law of limitation undoubtedly binds everybody including the Government.

Government should understand that and act accordingly. The field formations can start with following the Board instructions.

With or without delay, we ensure that

Litigation continuesâ€l.

Until Next Week.