

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST) NO.5497 OF 2020

Skoda Auto Volkswagen India Pvt. Ltd.
formerly known as Skoda Auto India Pvt. Ltd. ... Petitioner
Vs.
Commissioner (Appeals) and another ... Respondents

Mr. Anay Banhatti and Mr. Ameya Pant i/b. DMD Advocates for
Petitioner.
Mr. Jitendra B. Mishra for Respondents.

**CORAM : UJJAL BHUYAN &
ABHAY AHUJA, JJ.**

**Reserved on : DECEMBER 16, 2020
Pronounced on: MARCH 12, 2021**

JUDGMENT and ORDER : (Per Ujjal Bhuyan, J.)

By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of order dated 27.02.2020 passed by respondent No.1 and further seeks a direction to respondent No.1 to decide the appeal filed by the petitioner on merit.

1.1. Be it stated that being aggrieved by the order-in-original dated 08.07.2019 passed by the Assistant Commissioner of Goods and Services Tax, Aurangabad Urban Division whereby demand of service tax to the extent of Rs.15,03,571.00 was confirmed along with levy of interest and penalty, petitioner preferred appeal before the Commissioner (Appeals), Central Goods and Services Tax (CGST) and Central Excise, Nashik i.e., respondent No.1. By the impugned order dated 27.02.2020, the application for condonation of delay in filing the appeal was rejected. Consequently, the related appeal was dismissed as being time barred without entering into the merits. It is this order which is under impugment in the present proceeding.

2. We have heard Mr. Banhatti, learned counsel for the petitioner and Mr. Mishra, learned counsel for the respondents.
3. Facts lie within a narrow compass in as much as we are not called upon to enter into the merit of the claim of the petitioner.
4. Petitioner is a private limited company engaged in the business of import, manufacturing, assembling and sale of motor vehicles and motor parts. It may be mentioned that petitioner is the successor company formed pursuant to the scheme of amalgamation between Skoda Auto India Private Limited, Volkswagen Group Sales India Private Limited and Volkswagen India Private Limited which was sanctioned by the National Company Law Tribunal, Mumbai Bench.
5. On 08.04.2019, Assistant Commissioner of Goods and Services Tax, Aurangabad Urban Division issued notice to the petitioner to show cause-cum-demand alleging that there was short payment of service tax by the petitioner by not including the amount of TDS and the amount of R&D cess in payment of royalty which amount was quantified at Rs.15,03,571.00 for the period from April, 2016 to March, 2017. Petitioner was also called upon to show cause as to why interest and penalty should not be levied.
6. Petitioner filed its reply to the show cause notice on 14.05.2019 denying the allegations made.
7. Following the above, a personal hearing was held on 11.06.2019 in the office of the Assistant Commissioner.
8. Assistant Commissioner, being the adjudicating authority, thereafter passed the order-in-original dated 08.07.2019 confirming service tax demand of Rs.15,03,571.00, charged interest thereon under

section 75 of the Finance Act, 1994 besides imposing penalties under sections 76 and 77 of the Finance Act, 1994.

9. It is stated that the order-in-original was dispatched by the office of the Assistant Commissioner to the petitioner on 29.08.2019 by speed post. It was received by the petitioner on 30.08.2019.

10. According to the petitioner, after receipt of the order-in-original, copy of the same was handed over to the Assistant Manager (Taxation), who was responsible for handling the matter. On and from 22.11.2019, the Assistant Manager (Taxation) who was in-charge of preparation and following up of appeal against the order-in-original ceased to be in the employment of the petitioner. In the course of handing over of charge of the office, there was a lapse in communication as to the last date for filing of appeal before respondent No.1.

11. Petitioner has stated that the appeal was required to be filed under section 35-F of the Central Excise Act, 1944 read with section 83 of the Finance Act, 1994. On 29.11.2019, petitioner deposited an amount of Rs.1,12,768.00 being 7.5% of the service tax demand of Rs.15,03,571.00 which is a pre-requirement for filing such appeal.

12. Having made the pre-deposit as above, petitioner dispatched its appeal against the order-in-original to respondent No.1 on 02.12.2019 by speed post which was received by respondent No.1 on 04.12.2019. Limitation period for filing such appeal is two months extendable by another one month, total three months. The three months' period had lapsed on 30.11.2019, which was a Saturday. Therefore, the appeal was dispatched by the petitioner immediately on the following Monday i.e., on 02.12.2019 being the next working day. Petitioner also sent an application dated 05.12.2019 to respondent No.1 requesting the latter to condone the delay in presenting the appeal, if any.

13. By the impugned order dated 27.02.2020, respondent No.1 held that petitioner had received the order-in-original on 30.08.2019. Petitioner had the normal period of limitation for filing the appeal upto 30.10.2019. This period could be extended by another month if delay could be satisfactorily explained. Adding this one month, the limitation period would stand extended to 30.11.2019. However, the present appeal was filed on 04.12.2019 i.e., the date of receipt of the appeal, which was beyond the extended period of limitation. Holding that respondent No.1 had no power to condone the delay beyond the period of one month after the normal period of limitation of two months, the appeal was found to be time-barred. Consequently, the application for condonation of delay was rejected. Resultantly, the appeal was dismissed as time barred without entering into the merit.

14. Aggrieved, present writ petition has been filed seeking the reliefs as indicated above.

15. Mr. Dhanman Meena, Assistant Commissioner of CGST and Central Excise, Aurangabad has filed an affidavit for and on behalf of the respondents. It is stated that petitioner had received the order-in-original on 30.08.2019. Petitioner filed appeal against the said order before the Commissioner (Appeals) by transmitting the same through speed post on 02.12.2019, which was received by the Commissioner (Appeals) on 04.12.2019. Though the appeal was dispatched on 02.12.2019, it cannot be construed to be the date of filing the appeal. Since the appeal was received on 04.12.2019, the same was treated as the date of filing the appeal. Further, petitioner filed an application dated 05.12.2019 for condonation of delay in filing the appeal which was received on 09.12.2019. Reference has been made to various judicial pronouncements whereafter it is contended that the appeal was filed not only beyond the normal limitation period of two months but even beyond the extended period of limitation of further one month. Appellate authority had no power and jurisdiction to entertain the appeal after the

extended limitation period was over as there is no such provision. That apart, the appeal was not accompanied by an application for condonation of delay which was filed belatedly on 05.12.2019 by sending through speed post received on 09.12.2019. In that view of the matter, it is contended that the appellate authority has no power or jurisdiction to condone the delay in filing the appeal beyond the extended period of limitation. In the circumstances, respondent No.1 was justified in rejecting the appeal of the petitioner as being time-barred. No case for interference is made out.

16. Petitioner has filed rejoinder affidavit. While contesting the contentions of the respondents urged in the reply affidavit, petitioner has reiterated the averments and grounds urged in the writ petition. Referring to the time-frame computed in ground A of the writ petition, it is stated that on the basis of such computation, appeal filed by the petitioner through speed post would be within time. Petitioner has also referred to section 10 of the General Clauses Act, 1897 (for short 'the General Clauses Act' hereinafter) and submits that the last date of the extended period of limitation was 30.11.2019, which was a Saturday. Therefore, petitioner was legally within its right to file the appeal on the immediately following working day i.e., Monday (02.12.2019), with 01.12.2019 being a holiday on account of being a Sunday which would be within the limitation period. Petitioner has asserted that contention of the respondents that 04.12.2019 would be construed to be the date of filing the appeal as on that date the appeal was received would not be a correct interpretation of the factual and legal position. Reference has been made to several judicial pronouncements in support of the contention that the appeal was filed within the extended limitation period.

17. Learned counsel for the petitioner submits that matter relates to levy of service tax dues. Therefore, the appeal filed by the petitioner was governed by the provisions of section 85 of the Finance Act, 1994.

Referring to sub-section (3A), he submits that the limitation period for filing such an appeal is two months from the date of receipt of the order of the adjudicating authority. However, as per the *proviso* to sub-section (3A), the appellate authority if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of two months, may allow it to be presented within a further period of one month. Learned counsel for the petitioner has taken us to ground A of the writ petition wherein the relevant dates and computation of the time-frame for filing the appeal have been set out. The order-in-original dated 08.07.2019 was dispatched to the petitioner by speed post which was received by the petitioner on 30.08.2019. As per sub-section (3A) of section 85, the limitation period of two months was available till 30.10.2019. However, as per the *proviso*, the appellate authority i.e., Commissioner (Appeals) has the discretion to extend the period of limitation by a further period of one month. Thus, the extended period of limitation would expire on 30.11.2019. 30.11.2019 was a Saturday. Petitioner transmitted the appeal to the appellate authority on the immediately next working day i.e., on Monday 02.12.2019 by speed post, as 01.12.2019 was a holiday on account of being a Sunday.

17.1. Learned counsel for the petitioner has referred to section 10 of the General Clauses Act and submits that under the said provision, if any act or any proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period then if the court or office is closed on that day or the last day of the prescribed period, then the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the court or office is open. On this basis he submits that 30.11.2019 was the last day of the extended period of limitation; as such, the appeal was dispatched by speed post on the next working day i.e., on Monday 02.12.2019 as 01.12.2019 was a holiday on account of Sunday. Therefore, learned counsel for the petitioner submits that the appeal having been dispatched on 02.12.2019 was within limitation.

Respondent No.1 fell in error in construing the date of receipt of the appeal i.e., 04.12.2019 as the date of filing the appeal. The appeal being filed within the extended period of limitation i.e., on 02.12.2019, the delay condonation application was filed on 05.12.2019 but respondent No.1 completely misdirected himself and rejected the said application by taking the view that respondent No.1 has no jurisdiction to condone the delay thereby rejecting the related appeal as being time barred.

17.2. Referring to the decision of the Allahabad High Court in *Commissioner of Customs and Central Excise Vs. Ashok Kumar Tiwari, 2015 (37) STR 727*, he expands his arguments by submitting that the day when the order was received by the petitioner would have to be excluded. If this is so then the limitation of two months would commence from 31.08.2019 and would continue till 31.10.2019. If the extended period of limitation of one month is added to this, it would mean that the same would expire on 01.12.2019. 01.12.2019 being a Sunday, the next working day i.e., 02.12.2019 would be construed to be the last day of the extended period of limitation. His further contention is that it is not the date of receipt of the appeal but the date of dispatch which should be treated as the date of filing the appeal. In this connection, he has relied upon a decision of the Allahabad High Court in *Jhabboo Lal Kesara Rolling Mills Vs. Union of India, 1985 (19) ELT 367*.

17.3. Learned counsel for the petitioner has referred to a series of other judgments which have been placed before the Court by way of compilations including a judgment of the Kerala High Court in *Bannari Amman Steels (P) Ltd. Vs. Commissioner of Central Excise, 2004 (2) KLT 197* which took the view that where the appeal was dispatched to the appellate authority prior to the expiry of the period of limitation, it would not be barred by limitation.

18. *Per contra*, Mr. Mishra, learned counsel for the respondents has

referred to the impugned order of respondent No.1 and submits that respondent No.1 has taken a very considered view of the matter. Limitation prescribed under the statute particularly in a fiscal statute would have to be construed strictly. The appellate authority has no jurisdiction to condone any delay beyond what has been prescribed by the statute. Learned counsel for the respondents has placed reliance on a recent decision of the Supreme Court in the case of *Assistant Commissioner, Kakinada Vs. M/s. Glaxo Smith Kline Consumer Health Care Limited*, **AIR 2020 SC 2819** and submits that Supreme Court has made it abundantly clear that the appellate authority is not empowered to condone the delay beyond the aggregate period of limitation, in this case two months plus one month. In that case, Supreme Court further held that when the statutory appeal was barred by limitation, the High Court ought not to have exercised its writ jurisdiction under Article 226 of the Constitution of India to examine challenge to the order of assessment. He, therefore, submits that there is no merit in the writ petition which should be dismissed.

19. Submissions made by learned counsel for the parties have received the due consideration of the Court. Also perused the materials on record.

20. At the outset it would be appropriate to first take note of the undisputed dates as the dates are most relevant in the present case.

20.1. Adjudicating officer passed the order-in-original on 08.07.2019. However, this order was dispatched to the petitioner by the office of the adjudicating officer by speed post on 29.08.2019. It was received by the petitioner on 30.08.2019.

20.2. Petitioner dispatched the appeal against the said order-in-original to respondent No.1 by speed post in the correct address on 02.12.2019. Respondent No.1 received the appeal on 04.12.2019. Petitioner also sent

application for condonation of delay on 05.12.2019, which was received by the office of respondent No.1 on 09.12.2019.

21. Since the matter relates to levy of service tax, filing of appeal is governed by section 85 of the Finance Act, 1994, as amended. Section 85 reads as under:-

“85 - (1) Any person aggrieved by any decision or order passed by an adjudicating authority subordinate to the Principal Commissioner of Central Excise or Commissioner of Central Excise may appeal to the Commissioner of Central Excise (Appeals).

(2) Every appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(3) An appeal shall be presented within three months from the date of receipt of the decision or order of such adjudicating authority, relating to service tax, interest or penalty under this Chapter made before the date on which the Finance Bill, 2012 receives the assent of the President:

Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of three months.

(3A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 receives the assent of the President, relating to service tax, interest or penalty under this Chapter:

Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.

(4) The Commissioner of Central Excise (Appeals) shall hear and determine the appeal and, subject to the provisions of this Chapter, pass such orders as he thinks fit and such orders may include an order enhancing the service tax, interest or penalty:

Provided that an order enhancing the service tax, interest or penalty shall not be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

(5) Subject to the provisions of this Chapter, in hearing the appeals and making order under this section, the Commissioner of Central Excise (Appeals) shall exercise the same powers and follow the same procedure as he exercises and follows in hearing the appeals and making orders under the Central Excise Act, 1944.”

22. From the above, we find that as per sub-section (1), any person aggrieved by any decision or order passed by an adjudicating authority subordinate to the Principal Commissioner of Central Excise or Commissioner of Central Excise, may appeal to the Commissioner of Central Excise (Appeals). Sub-section (2) says that every appeal shall be in the prescribed form and shall be verified in the prescribed manner. Limitation for filing of such appeal is provided in sections 3 and 3A; section 3 not being relevant in this case as the order-in-original was passed after receipt of assent of the President to the Finance Bill, 2012. As far as section 3A is concerned, it says that an appeal shall be presented within two months from the date of receipt of the decision or order of the adjudicating authority. As per the *proviso*, Commissioner of Central Excise (Appeals) may allow such appeal to be presented within a further period of one month if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the prescribed period of two months.

22.1. A careful analysis of sub-section (3A) of section 85 would go to show that the appeal has to be presented within two months from the date of receipt of the decision or order of the adjudicating authority. However, the said limitation period of two months can be extended for a further period of one month if the appellate authority is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months.

23. Before we analyze the provision relating to filing of appeal in matters of central excise, which at the first blush appears to be *pari-materia* to section 85(3A), what is noticeable in section 85(3A) is that

the word 'presented' is used and not 'filed'. In other words, the appeal is to be presented and not filed. Thus, presentation of appeal has to be within two months from the date of receipt of the order or decision appealed against. Therefore, the date of receipt of the order or decision appealed against becomes very relevant. Limitation period of two months can be extended for a further period of one month if the appellate authority is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the limitation period of two months.

24. Section 35 of the Central Excise Act, 1944 deals with appeals filed in respect of order-in-original passed by the adjudicating authority in matters relating to central excise. Sub-section (1) of section 35 provides for filing of appeal against such order before the Commissioner of Central Excise (Appeals) within 60 days from the date of communication of such decision or order. As per the *proviso*, the appellate authority may allow presentation of such appeal within a further period of 30 days if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal.

24.1. Without much deliberation at this stage what is immediately noticeable is that under section 35 of the Central Excise Act, 1944, the limitation period is 60 days from the date of communication, extendable by another period of 30 days. On the other hand, in sub-section (3A) of section 85 of the Finance Act, 1994, as amended, the limitation period for presentation of appeal is two months from the date of receipt of the decision or order, extendable by a further period of one month. We will advert to this aspect in more detail a little later.

25. Commissioner (Appeals) took the date of filing of appeal as 04.12.2019, which was the date of receipt of the appeal by the Commissioner (Appeals) sent by speed post on 02.12.2019. Referring to the language of sub-section (3A) of section 85 of the Finance Act, 1994,

he held that the appeal filed was beyond the extended period of limitation and at his level, the delay could not be condoned. He also held that the provisions of section 85 of the Finance Act, 1994 are *pari-materia* to those of section 35 of the Central Excise Act, 1944. In this connection, reliance was placed on a decision of the Supreme Court in *Singh Enterprises Vs. Commissioner of Central Excise, 2008 (221) ELT 163* in which case Supreme Court affirmed the view taken by the appellate authority and the high court that there was no power to condone the delay after expiry of the extended period of 30 days. Resultantly, the application for condonation of delay was rejected and the appeal was dismissed as being time barred. Relevant portion of the impugned order dated 27.02.2020 passed by respondent No.1 is extracted hereunder:-

“18.1. On perusal of the above referred provision, it is seen that the time limit for filing an appeal in Service Tax matters is governed in terms of provisions of Section 85(3A) of the Finance Act, 1994, wherein the time specified for filing an appeal is two months from the date of receipt of the impugned order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, he can allow it to be presented within a further period of one month. In other words, the appeal has to be filed within two months but in terms of the proviso further one month time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (3A) of section 85 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of one month over and above the normal period of two months.

18.2. In the present case, it is established that the appellant has received the impugned OIO on 30-08-2019. The appellant was required to file the appeal within two months period (normal period for filing appeal) i.e. by 30-10-2019. The period may be extended by another one month if the delay is explained satisfactorily. The appeal could still have been filed within further one month's period from 30-10-2019 i.e. by 30-11-2019 with an application for condonation of delay in filing appeal. I find that the present appeal has been filed on 04-12-2019. Thus Commissioner (Appeals) can condone the delay upto one month only if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within prescribed two months. But in the present case, the appellant has filed the appeal after three months . Therefore, the delay of more than

one month cannot be condoned at my level in accordance with Section 35 of the Central Excise Act, 1944 / Section 85(3A) of the Finance Act, 1994. Accordingly, the above referred appeal is time barred and cannot be entertained under Section 35 of the Central Excise Act, 1944 / Section 85(3A) of the Finance Act, 1994.

19. In *Tops Security Ltd. Vs. CCE, Hyderabad*, the same provision of the Finance Act, 1994 (Section 85) was considered and it was held that Commissioner (Appeals) has no power to condone delay in filing appeal beyond statutory period beyond the maximum period prescribed under the statute which is a settled position of law. The Tribunal also relied and applied earlier decisions in case of *Delta Impex Vs. CCE 2004 - TMI - 47071 - (High Court of Delhi)* and *M. R. Tobacco Pvt. Ltd. Vs. UOI 2004 - TMI - 47158 - (High Court of Delhi)*. This issue came to a finality vide the Hon'ble Apex Court Judgment in the matter of *Singh Enterprises [2008 (221) ELT 163 (SC)]* wherein the Hon'ble Apex Court held, inter alia, as under:

'8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of Statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the Statute. The period upto which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Indian Limitation Act, 1963 (in short the 'Limitation Act') can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power

to condone the delay after the expiry of 30 days period.'

In such light it is observed that the above case law is in context of Section 35 of the Central Excise Act, 1944. The provision of Section 85 of the Finance Act, 1994 are '*pari-materia*' with those of Section 35 of the Act of 1944, thus citation would be squarely applicable in all of the instant matters, as the appeals covered under the present case relate to Central Excise matter as well as Service Tax matters.

20. Hence, I find that the appeal bearing No.199/2019-20 is beyond my purview. In view of the above and without going into the merits of the case, I pass the following order:

ORDER

The application for condonation of delay in filing the appeal in respect of appeal Nos.199/2019-20 is rejected. The main appeal, being time barred, is also dismissed in limine without going into merits of the case.”

25.1. While there is no dispute to the proposition that section 5 of the Limitation Act, 1963 would stand excluded when the statute itself provides the limitation period for filing of appeal as well as the period beyond the limitation period within which the delay in filing the appeal can be condoned. But the observation of respondent No.1 that the provisions of section 85 of the Finance Act, 1994 and section 35 of the Central Excise Act, 1944 are *pari-materia* may not be correct.

26. From a comparison of section 35 of the Central Excise Act, 1944 and section 85(3A) of the Finance Act, 1994, as amended, we have already noticed the subtle difference in language in the two provisions which may have a considerable significance in the facts of the present case. While under section 35 the period of limitation is 60 days plus 30 days that is at the most 90 days, under sub-section (3A) of section 85, the period of limitation is two months plus one month i.e., total three months at the maximum.

27. As per sub-section (35) of section 3 of the General Clauses Act, the word 'month' has been defined to mean a month reckoned according

to the British calendar.

27.1. In the case of *In re: V. S. Metha*, **AIR 1970 AP 234**, Andhra Pradesh High Court was considering the provisions of section 106 of the Factories Act, 1948 as per which no court shall take cognizance of any offence punishable under the said act unless complaint thereof is made within three months from the date on which the alleged commission of the offence came to the knowledge of the inspector. In that context, Andhra Pradesh High Court examined the meaning of the word 'month' : whether it would mean 30 days in which case the complaint should be filed within 90 days from the date of knowledge. After referring to section 3(35) of the General Clauses Act, it was held that the word 'month' would mean a calendar month and by extension the term 'three months' as appearing in section 106 of the Factories Act, 1948 would only mean a period of three calendar months.

27.2. Again, in *Bibi Salma Khatoon Vs. State of Bihar*, **AIR 2001 SC 3596**, Supreme Court dealt with the provisions of section 16(3) of the Bihar Land Reforms Act, 1961 which provided that benefits under the said act could be availed of if an application is made within three months of the date of registration of the documents of transfer. Posing the question as to what was meant by the word 'month', Supreme Court held that British calendar would mean Gregorian calendar. It was held that when the period prescribed is a calendar month running from any arbitrary date, the period of one month would expire upon the day in the succeeding month corresponding to the date upon which the period starts.

27.3. Supreme Court in *State of H. P. Vs. M/s. Himachal Techno Engineers*, **2010 AIR SCW 5088** considered the period of limitation prescribed under sub-section (3) of section 34 of the Arbitration and Conciliation Act, 1996. While section 34 relates to application for setting aside arbitral award, sub-section (3) thereof prescribes the period of

limitation for filing of such application which is three months. In that context, Supreme Court examined the meaning of the word 'month' and held that a month does not refer to a period of 30 days but refers to the actual period of a calendar month. It was clarified that if the month is April, June, September or November, the period comprising the month will be 30 days; if the month is January, March, May, July, August, October or December, the month will comprise of 31 days; but if the month is February, the period will be 29 days or 28 days depending upon whether it is a leap year or not. After referring to section 3(35) of the General Clauses Act, it was held that the general rule is that the period ends on the corresponding date in the appropriate subsequent month irrespective of some months being longer than the rest. Therefore, it was held that when the period prescribed is three months (as contrasted from 90 days) from a specific date, the said period would expire in the third month on the date corresponding to the date upon which the period starts. As a result, depending on the months, it may mean 90 days or 91 days or 92 days or 89 days.

28. We have noticed that the order passed by the adjudicating authority was dispatched to the petitioner by speed post and the petitioner received the same on 30.08.2019. Petitioner also dispatched the appeal to respondent No.1 by speed post on 02.12.2019. This was received by respondent No.1 on 04.12.2019 who treated or construed the date of receipt of the appeal by speed post as the date of presentation of the appeal. Respondent No.1 has not taken or raised any objection as to dispatch of appeal by speed post. Nonetheless since this aspect has come to our notice it needs to be clarified that there is no bar under section 85(3A) of the Finance Act, 1994, as amended, or the rules framed thereunder i.e., the Service Tax Rules, 1994 for dispatching or presentation of appeal by speed post or by post.

29. In *Bhikha Lal Vs. Munna Lal*, **AIR 1974 Allahabad 366** (Full Bench), it was held that if the creditor and the debtor reside at two

different places served by postal system, from the very fact that the creditor makes a demand through the post, an authority to the debtor to meet his obligation through the post is implied. In the facts of that case, it was held that as the appellants demanded arrears of rent by letter sent through post, it would amount to an authorization or invitation to the respondent to make the payment through post.

29.1. We are in respectful agreement with the views expressed by the Full Bench of Allahabad High Court. That being the position, we hold that there was no infirmity on the part of the petitioner in dispatching the appeal by post; speed post in the present case as the order challenged in the appeal was sent to the petitioner by speed post.

30. Coming back to section 85(3A), we find that while prescribing the period of limitation, Parliament has used the expression "within two months *from* the date of receipt of the decision or order", which is of course extendable by a further period of one month in an appropriate case. We have already discussed above that a month means and has to be reckoned according to the British calendar and not by the number of days comprising a month. In so far the word 'from' appearing in sub-section (3A) is concerned, it appears from the language used that the period of limitation is to be counted from the date of receipt of the decision or order.

30.1. In this connection, section 9 of the General Clauses Act is quite instructive and the same is extracted hereunder:-

“9. Commencement and termination of time.- (1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word 'from', and, for the purpose of including the last in a series of days or any other period of time, to use the word 'to'.

(2) This section applies also to all Central Acts made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.”

30.2. As per sub-section (1) of section 9 when the word 'from' is used, the first day in a series of days or any other period of time is to be excluded. But when the word 'to' is used, the last day in a series of days or any other period is to be included. Thus, section 9 of the General Clauses Act statutorily recognizes that while computing the time period, the first date is to be excluded when the word 'from' is used and to include the last date when the word 'to' is used.

31. In *Tarun Prasad Chatterjee Vs. Dinanath Sharma*, (2000) 8 SCC 649, Supreme Court explained the principle contained in section 9 and held that when a period is delimited by statute or rule which has both a beginning and an end, and the word 'from' is used indicating the beginning, the opening day is to be excluded and if the last day is to be included the word 'to' is to be used. It was held thus:-

“In order to apply Section 9, the first condition to be fulfilled is whether a prescribed period is fixed “from” a particular point. When the period is marked by terminus a quo and terminus ad quem, the canon of interpretation envisaged in Section 9 of the General Clauses Act, 1897 require to exclude the first day.”

32. This position was also explained by a Division Bench of the Allahabad High Court in *Ashok Kumar Tiwari (supra)* where it was held that the day on which the order was received by the assessee would have to be excluded in view of the provisions of section 9 of the General Clauses Act.

32.1. At this stage we may also mention that in sub-section (3A) of section 85, while the word 'from' is used to indicate commencement of the limitation period, the word 'to' is conspicuous by its absence to indicate capping of the limitation period.

33. There is one more aspect which we would like to deal with before we revert back to the calculation of the limitation period and this is that respondent No.1 has construed the date of receipt of the appeal by speed post as the date of presentation of the appeal i.e., 04.12.2019 and

therefore, it was held that the appeal was beyond the period of limitation.

34. In **Jhabboo Lal Kesara Rolling Mills** (*supra*), a Division Bench of the Allahabad High Court took the view that if the appeal was sent by registered post to the appellate authority at the correct address within the period of limitation but was received beyond the period of limitation that would not render it barred by limitation. This principle will apply where it is found that the appeal had been dispatched to the appellate authority prior to the expiry of the period of limitation.

35. This position has been reiterated by the High Court of Kerala in **Bannari Amman Steels (P) Ltd.** (*supra*) where it has been held that when the appeal was dispatched to the appellate authority prior to the expiry of the period of limitation, it would not be barred by limitation if the same was received after the period of limitation.

36. Thus having a clear picture of the legal position, we may now address the issue at hand. Petitioner received the order-in-original sent by speed post on 30.08.2019. As per section 9 of the General Clauses Act, this date would have to be excluded while counting the limitation period of two months which would then commence from 31.08.2019. We have also seen that while construing the word 'month', it would mean a month as reckoned according to the British calendar, number of days in a month being immaterial. Therefore, the two months' limitation period was available to the petitioner upto 31.10.2019. If we add the extended period of limitation of further one month, it would mean that delay could be condoned till 31.11.2019 because the total period of three months had commenced from 31.08.2019 and would be available till 31.11.2019 but because there is no 31 days in November, the extended period of limitation would spill over to 01.12.2019. This is more so because the word 'to' is not used in section 85(3A) to cap the limitation period on 30.11.2019. Therefore, the appeal was required to have been

dispatched by 01.12.2019. But it was dispatched on 02.12.2019.

37. At this stage, we may refer to section 10 of the General Clauses Act. Section 10 reads as under:-

“10. Computation of time.- (1) Where, by any Central Act or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877 applies.

(2) This section applies also to all Central Acts and Regulations made on or after the fourteenth day of January, 1887.”

37.1. The object of this provision was succinctly explained by the Supreme Court in *Harinder Singh Vs. S. Karnail Singh*, AIR 1957 SC 271 wherein their Lordships stated that the object of this section is to enable a person to do what he could have done on a holiday, on the next working day. Where, therefore, a period is prescribed for the performance of an act in a court or office, and that period expires on a holiday, then according to this section the act should be considered to have been done within that period, if it is done on the next day on which the court or office is open. For section 10 to apply the requirement is that there should be a period prescribed and that period should expire on a holiday. Section 10 itself indicates that this provision is for computation of time. Therefore, if the limitation for filing an appeal or the extended period for filing an appeal expires on Sunday but it is filed on Monday, then by operation of section 10 it would be deemed to have been done within time.

38. We find that 01.12.2019 was a Sunday. Therefore, benefit of this public holiday would be available to the petitioner in terms of section 10

of the General Clauses Act. Accordingly, the appeal presented on 02.12.2019 would be construed to be within the extended period of limitation, 01.12.2019 being a public holiday. Whether the benefit of the extended period of limitation of one month is to be granted to the petitioner or not is however within the discretion of respondent No.1.

39. Before parting with the record we may refer to the decision of the Supreme Court in **M/s. Glaxo Smith Kline Consumer Health Care Limited** (*supra*) relied upon by learned counsel for the respondents. The issue before the Supreme Court in that case was whether the High Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India ought to have entertained a challenge to the assessment order on the sole ground that the statutory remedy of appeal against the said assessment order stood foreclosed by the law of limitation. As would be evident from the above, the issue before the Supreme Court was quite different from the one which we are adjudicating in the present proceeding. Nonetheless, we may mention that Supreme Court considered the provision of filing appeal under the Andhra Pradesh Value Added Tax Act, 2005. As per section 31 of the said act, an appeal could be preferred against the assessment order within 30 days of service of the order which period is extendable by a further period of 30 days if the appellate authority is satisfied that the appellant had sufficient cause for not preferring the appeal within the initial period of 30 days. In that case, the appeal was filed even beyond the extended period of limitation which was rejected by the appellate authority on the ground that it had no power to condone the delay beyond 30 days. However, the High Court under Article 226 of the Constitution of India entertained the writ petition challenging the order of assessment and set aside the order of assessment, relegating the petitioner to the assessing authority for reconsideration of its assessment. It was in this factual backdrop that Supreme Court answered the question framed by holding that the High Court ought not to have entertained the writ petition whereafter the judgment of the High Court was set aside and the writ petition was

dismissed.

39.1. Evidently, the provision of law and computation of the period of limitation in **M/s. Glaxo Smith Kline Consumer Health Care Limited** (*supra*) and in the present case are quite different. Issues arising for consideration are also different since in this case we are examining the legality and validity of the order of respondent No.1 in rejecting the appeal of the petitioner as being time barred.

40. Thus upon thorough consideration of the matter, we hold that dispatch of the appeal by the petitioner on 02.12.2019 was within the extended period of limitation of one month and, therefore, without considering the prayer for condonation of delay of the petitioner, respondent No.1 ought not to have rejected the appeal as being time barred by taking the ground that he had no jurisdiction to condone the delay beyond the extended limitation period of one month.

41. Consequently, we set aside the order dated 27.02.2020 passed by respondent No.1 and remand the matter back to respondent No.1 to consider afresh the application of the petitioner for condonation of delay in filing the related appeal.

42. Writ petition is accordingly allowed to the above extent. However, there shall be no order as to cost.

(ABHAY AHUJA, J.)

(UJJAL BHUYAN, J.)

Minal Parab