

HIGH COURT OF GUJARAT**Bench: Justice Ashutosh Shastri and Justice Hemant M. Prachchhak****Date of Decision: December 18, 2023**

R/CIVIL APPLICATION (FOR CONDONATION OF DELAY) NO. 1423 of 2020

In F/FIRST APPEAL NO. 530 of 2020

R/CIVIL APPLICATION NO. 1424 of 2020

In F/FIRST APPEAL NO. 533 of 2020

R/CIVIL APPLICATION NO. 1425 of 2020

In F/FIRST APPEAL NO. 537 of 2020

R/CIVIL APPLICATION NO. 1426 of 2020

In F/FIRST APPEAL NO. 539 of 2020

R/CIVIL APPLICATION NO. 1427 of 2020

In F/FIRST APPEAL NO. 544 of 2020

R/CIVIL APPLICATION NO. 1428 of 2020

In F/FIRST APPEAL NO. 547 of 2020

R/CIVIL APPLICATION NO. 1429 of 2020

In F/FIRST APPEAL NO. 550 of 2020

R/CIVIL APPLICATION NO. 1430 of 2020

In F/FIRST APPEAL NO. 553 of 2020

UNION OF INDIA THROUGH ASSISTANT DIRECTOR**Versus****MANSUKH SHAH HUF****Legislation:**

Section 42 of the Prevention of Money Laundering Act (PMLA), 2002

Rule 67 of the Gujarat High Court Rules, 1993 –

Section 3, Section 5, Section 29(2) of the Limitation Act, 1963

Article 142 of the Constitution of India

Subject:

Condonation of delay in filing First Appeals against orders of the Appellate Tribunal (PMLA), New Delhi. The judgement deals with the interpretation of statutory provisions regarding limitation periods and the mandatory requirements for filing appeals under specific acts and rules.

Headnotes:

Condonation of Delay – Request for condonation of 38 days delay in preferring substantive First Appeals against the order passed by Appellate Tribunal (PMLA), New Delhi – Explained as administrative difficulties in seeking legal opinion – Opposed on grounds of exceeding statutory period prescribed under Section 42 of the PMLA Act, 2002. [Para 1-7]

Statutory Interpretation – Interpretation of provisions under Prevention of Money Laundering Act and Gujarat High Court Rules – Strict adherence to statutory periods and mandatory rules highlighted – Importance of adhering

to the clear and unambiguous language of special statutes emphasized. [Para 10-17, 29]

Limitation Period – Emphasis on strict compliance with limitation periods prescribed in statutes – Analysis of the maximum permissible period for filing an appeal under Section 42 of the PMLA Act, 2002 – Appeal filed beyond the permissible extended period deemed inadmissible. [Para 18-20, 26-28]

Decision – Applications for condonation of delay dismissed due to non-compliance with statutory provisions and maximum permissible period – Rule discharged. [Para 31]

Referred Cases:

- Postmaster General and others v. Living Media India and Another, (2012) 3 SCC 563.
- B.K.S. Marulasiddaiah and Company v. Madras Pakku Mandy, (2015) 15 SCC 740.
- Chhattisgarh State Electricity Board v. Central Electricity Regulatory Commission and others, (2010) 5 SCC 23.
- Sneh Gupta v. Devi Sarup and others, (2009) 6 SCC 194.
- Oil and Natural Gas Corporation Limited v. Gujarat Energy Transmission Corporation Limited and others, (2017) 5 SCC 42.
- Assistant Commissioner (CT) LTU, Kakinada and others v. Glaxo Smith Kline Consumer Health Care Limited, 2020 SCC OnLine SC 440.
- M/s. Easland Comines, Coimbatore v. Collector of Central Excise, Coimbatore, AIR 2003 SC 843.
- K.P. Varghese v. Income tax Officer, Ernakulam and Another, AIR 1981 SC 1922.
- Commissioner of Income-tax, Bangalore v. Venkateswara Hatcheries (P) Ltd., AIR 1999 SC 1225.
- Bihari Chowdhary and Another v. State of Bihar and others, AIR 1984 SC 1043.
- Council for Indian School Certificate Examination v. Isha Mittal and Another, (2000) 7 SCC 521.
- State of Jharkhand and others v. Ambay Cements and Another, 2004 AIR SCW 6703.
- Maiji Sannemma alias Sanyasirao v. Reddy Sridevi and others, 2021 SCC OnLine SC 1260.

Representing Advocates:

For the Applicant: Mr. Siddharth Dave for Mr. Devang Vyas.

For the Respondent: Mr. N.D. Nanavati, Senior Advocate with Ms. Disha N. Nanavaty.

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE ASHUTOSH SHASTRI)

1. By way of these applications, the applicant has prayed for condonation of delay of 38 days which has occurred in preferring substantive First Appeals challenging the order dated 3.9.2019 passed by learned Appellate Tribunal (PMLA), New Delhi whereby learned Appellate Tribunal has set aside the order of adjudicating authority dated 1.3.2018 for confirming the attached properties under Original Complaint No.819 of 2017 dated 11.10.2017 issued by the Directorate of Enforcement. The applications are submitted with an explanation as reflecting in paragraphs 3 and 4 basically and pursuant to Rule having been issued on 17.3.2020 on Civil Application, affidavit-in-reply is filed opposing the condonation of delay. The record indicates that against the said affidavit-inreply, affidavit-in-rejoinder as well as Sur-Rejoinder have also been submitted on record and since pleadings have been completed, learned advocates have requested the Court to take up the Civil Application for its disposal in accordance with law.

2. With the aforesaid background, learned advocate Mr. Sid Dave for Mr. Devang Vyas, learned Additional Solicitor General of India appearing for the applicant and learned senior advocate Mr. N.D. Nanavaty with Ms. Disha N. Nanavaty appearing for the respondent have been heard.

3. Learned advocate Mr. Siddharth Dave appearing on behalf of the applicant has submitted that First Appeal has been filed raising issue on law and facts and has substantively challenged the order passed by learned Appellate Tribunal (PMLA), New Delhi dated 3.9.2019 and according to Mr. Dave, considering serious controversy involved in the present proceedings, a brief delay of 38 days may kindly be condoned.

4. Learned advocate Mr. Dave has drawn our attention to the explanation which has been put forth and has submitted that delay has occurred not with any intent but on account of the circumstance beyond the control and as such since administrative difficulties in between cropped up, as indicated, in seeking legal opinion to prefer an appeal, some delay without

any malafide intent has occurred and as such has requested that instead of disposal of the main substantive appeal on technicality, appeal may be heard on its merits in accordance with law and as such has requested that this few days' delay may kindly be condoned in the interest of justice.

5. Learned advocate Mr. Dave has submitted that it is a settled proposition of law that delay must be construed liberally unless there is any malafide intent and here in absence thereof, this brief delay of 38 days may kindly be condoned. It has been submitted that it is a settled position of law that whenever substantial justice is pitted against technical consideration, substantial justice must be given a predominance and therefore, keeping in view that salutary principle, delay may kindly be condoned which would meet the ends of justice.

6. As against this, learned senior advocate Mr. N.D. Nanavati appearing on behalf of the respondent has vehemently opposed the delay condonation application by filing affidavit-in-reply and has submitted that when Statute has prescribed a particular period, beyond the said period, Court cannot pass any order by condoning the delay and as such by referring to Section 42 of the PMLA Act, 2002 has submitted that since delay is beyond the period of 60 days, as can be seen from the chronology of dates, no order be passed on the present Civil Application. By inviting attention to the averments which are made in the affidavit-in-reply, Mr. Nanavati has submitted that even take it from the date of filing, then also application is submitted beyond the period of 60 days. So, in any case, this maximum period which has been prescribed may not be ignored. By giving chronology of dates, Mr. Nanavati has submitted that it is a settled position of law that Law of Limitation is a matter of important policy and as such lethargy or pedantic approach on the part of the authority may not be visualized sympathetically and simply because the applicant is a Government agency, no different yardstick be provided while considering request for condonation of delay. Mr. Nanavati has submitted that

here is a case in which appeal has been filed on 6.1.2020, undisputedly without initially submitting application for condonation of delay and thereafter, delay condonation application has been submitted at a later point of time, that is not permissible. Hence, application being devoid of merit deserves to be dismissed.

7. By giving data pointing out material facts, learned senior advocate Mr. Nanavati has submitted that presentation and registration of Civil Application is at a much later period of time and that is seen beyond the period of 60 days as contemplated under Section 42, the application does not deserve to be entertained. Hence, no case is made out by the applicant to condone the delay. Apart from this, Mr, Nanavati has submitted that irrespective of the aforesaid circumstance, even explanation has not been sufficiently tendered before the Court to persuade for condonation of delay and mere filing of appeal without application for condonation of delay is improper and apart from that, it is impermissible as well. Further, learned senior counsel Mr. Nanavati has submitted that even within the extended period, which is permissible to be considered for condonation of delay of further 60 days apart from the fact that there is no proper explanation, but that period has also been elapsed before filing the present applications and as such when a law mandates a maximum period, beyond that, no equitable consideration may be provided to condone further delay. It has been submitted that Gujarat High Court Rules are prescribing that every appeal shall be accompanied with Civil Application for condonation of delay if it is there and by referring to Rule 60, Mr. Nanavati has submitted that since the applicant has submitted the appeal as well as Civil Application in violation of the aforesaid Rules, application may not be entertained. It has been submitted that no-doubt, principle is vogue that substantial justice may be given a predominance, but at the same time, statutory provisions may not be ignored and here is a case in which appeal proceedings have been submitted in violation of the statutory provisions and

permissible limits, hence the application being devoid of merit, deserves to be dismissed.

8. To substantiate his contentions, learned senior advocate Mr. Nanavati has submitted that if there is no sufficient explanation found by the Court, request cannot be entertained and for that that purpose, has made a reference to the decision delivered by the Hon'ble Apex Court in the case of Postmaster General and others v. Living Media India and Another reported in (2012) 3 SCC 563 (Para 12 and 13). Yet another decision is submitted to indicate that appeal must be accompanied with Civil Application for condonation of delay. A reference is made to the observations made by the Hon'ble Apex Court in paragraph 5 onwards in the decision in the case of B.K.S. Marulasiddaiah and Company v. Madras Pakku Mandy reported in (2015) 15 SCC 740. Yet, few other decisions have also been pointed out by learned senior advocate Mr. Nanavati to oppose the application for condonation of delay which judgments are:

- (1) In the case of Chhattisgarh State Electricity Board v. Central Electricity Regulatory Commission and others reported in (2010) 5 SCC 23 (para-37)
- (2) In the case of Sneh Gupta v. Devi Sarup and others reported in (2009) 6 SCC 194 (para 17)
- (3) In the case of Oil and Natural Gas Corporation Limited v. Gujarat Energy Transmission Corporation Limited and others reported in (2017) 5 SCC 42 (Para 10)

And by referring to the aforesaid judgments, learned senior advocate has stoutly objected the delay being condoned, hence requested to dismiss the application.

9. In rejoinder to this, learned advocate Mr. Siddharth Dave has submitted that on the contrary, pursuant to the order passed in the present proceedings, delay has been more accurately and sufficiently explained and same is specifically explained in affidavit-in-rejoinder and by referring to certain averements which are made in the said rejoinder, which is part of the

pleadings, has requested that delay of 38 days deserves to be condoned in the interest of justice and has further submitted that powers of the High Court are not curtailed, since substantial justice demands that technical consideration be put aside by the Court so as to excavate truth from the proceedings on examination of the merits of the case and according to Mr. Dave, here is a case in which if appeal proceedings are examined strictly in accordance with law, then real truth will come out and impugned orders are not sustainable in the eye of law and as such has requested that main appeal proceedings which are substantive in nature may not be scuttled on account of technicality of mere 38 days, hence usual principle as tried to be canvassed by learned senior advocate is of no much significance, hence application be allowed. Paragraphs 3 and 4 of the affidavit-in-rejoinder are reproduced hereunder:

“3. Before dealing with the affidavit in reply parawise, I would like to place the following details by way of this additional affidavit explaining the delay in detailed, caused in filing of the afore referred appeal.

- I. I say and submit that the impugned order dated 3rd September, 2019 passed by the appellant authority at New Delhi was forwarded by the appellant authority vide its communication dated 24th September, 2019 as discernible from the communication forwarded by the appellate authority. The said order passed by the appellant authority along with the said letter came to be received by the appellant department on 30th of September, 2019. Copy of the said communication dated 24th September, 2019 forwarded by the appellant authority, New Delhi which has been received by the appellant department on 30th September, 2019 is also produced by the applicant herein along with the appeal filed by the applicant herein - original appellant. However, for the sake of convenience, copy of the said communication dated 24th September, 2019 is annexed hereto and marked as "Annexure I" to this affidavit in rejoinder.
- II. It is submitted that after the receipt of the said order of 30th September, 2019, the concerned officer has forwarded the same before the higher officer of the Enforcement Department and thereafter, the concern officer has forwarded the same to the legal department for legal opinion. Accordingly after the completion of all departmental formalities and after obtaining necessary permission for filing an appeal under Section 42 of the Prevention of Money Laundering Act, 2002, the impugned order was forwarded to the learned Counsel for filing the same before the Hon'ble High Court.
- III. That thereafter, the learned Advocate has called upon the entire record of the case papers and thereafter the department has provided all the details to the learned Counsel appearing for the department. That thereafter, the learned Counsel has prepared the draft memo of appeal and accordingly the same has been forwarded to the department

for approval and finalization of the same.

- IV. That thereafter, the concern officer has forwarded the said draft of an appeal for the finalization of the draft memo of appeal to the higher authority and after getting the confirmation, the department has forwarded the final draft to the learned Counsel appearing for the department for the filing of the appeal before the Hon'ble High Court
 - V. That thereafter, immediately, the learned Advocate has filed the First Appeal before the Hon'ble High Court on the first day of reopening of the winter vacation i.e. 6th of January, 2020. In the said circumstances the delay of 38 days occurred in filing an appeal.
 - VI. That impugned order which has been passed on 3rd September, 2019, has been received by the department only on 30th September, 2019 and therefore, the period of limitation would start from the date of the receipt of the said order i.e. from 30th September, 2019. Therefore, the appellant was required to file an appeal within a period of 60 days in view of the provision of Section 42 of Prevention of Money Laundering Act, 2002, However, there was some delay occurred because of the unavoidable circumstances as stated herein above and the afore referred appeal came to be filed on 6th January, 2020. There is a small delay of about 38 days in filing an appeal occurred because of the afore referred circumstances and therefore, the same is the sufficient cause by which the department was prevented from filing an appeal within a period of 60 days from the date of receipt of communication of the order passed by the appellate authority. That even as per the provision of Section 42 itself, the Hon'ble Court has jurisdiction to condone the delay up to the 60 days. Therefore, in the present case delay which is of 38 days may kindly be condoned.
 - VII. That the appellant is having good chance on merits of the appeal and therefore, one chance may be given to the department to submit its case on merits.
4. Without prejudice to the afore referred contentions in the form of an additional affidavit of the applicant orig. appellant, now dealing with the affidavit in reply parawise, the applicant would like to offer following comments to place for the kind consideration of the Hon'ble Court.
- I. With regard to paragraphs 1 and 2 of the petition, the answering respondent submits that the contents of paragraphs 1 and 2 are formal in nature and hence, the answering respondent offers no comments.
 - (i) Contents of paragraph no. 1 to 3 of the affidavit in reply filed by the respondent is denied. It is submitted that the Provision of Section 42 of the Prevention of Money Laundering Act, 2002 clearly provides that an appeal under the Provision of Section 42 is required to be file within a for the period of 60 days from the date of communication of order of the appellate authority. The said Provision further provides that the Hon'ble Court can Condone delay of further period of 60 days in filing an appeal under the Provision of Section 42 of the Prevention of Money Laundering Act, 2002. However, in the present case, the delay in filing of the present appeal is only 38 days and therefore, the Hon'ble Court has jurisdiction to Condone the delay of 38 days in filing of an appeal.
 - (ii) With regard to the contents of paragraph no. 4 it is retreated that an order which is impugned is passed on 3rd September, 2019. However, the copy of the said order was forwarded by the authority only on 24-09-2019 and the same has been served upon the department only on 30th September, 2019. Therefore, the period of limitation would start from the date of receipt of communication of the order i.e. from the date of 30th September, 2019. The department has filed an appeal after the completion of the departmental formalities immediately on the first day of reopening of the winter vacation.

Therefore, the period of winter vacation is also require to be given set off. However, the department has calculated the delay of 38 days in filing of the present appeal which is explained herein above. That in view of the Provision of Section 42 as referred herein above, the Hon'ble Court can Condon the delay up to the period of 60 days and therefore, the Hon'ble Court can Condone the delay of 38 days in filing of an appeal, which is not beyond the period of 60 days

- (iii) With regard to the contents of paragraph no. 5 to 10 of the affidavit in reply filed by the respondent herein, it is submitted that the decision cited by the respondent herein would have no application in the fact and circumstances of the present case as in the present case, the delay is only for the period of 38 days and not beyond 60 days. Therefore, the Hon'ble Court has power to condone the delay for the period of 38 days and the same may kindly be condoned in the interest of justice.
- (iv) In view of the afore referred set of facts and circumstances of the case as well as in view of the submission which may be urged at the time of hearing of the present application, the Hon'ble Court be pleased to Condone the delay as prayed for in the interest of Justice.”

10. Having heard learned advocates appearing for the parties and having gone through the material on record, it appears that condonation of delay request has been made, may be of 38 days only, but *prima facie*, it requires that the special Statute, i.e. Prevention of Money Laundering Act, is having a stringent provision and therefore keeping in view the said stringent provision, the request whether to be considered or not is a central issue and as such before coming to an ultimate conclusion, few circumstances stated hereunder require to be taken note of.

11. It is a trite law of Rules of Interpretation that if the language of the statutory provision is simple and unambiguous it should be read with clear intention of the Legislature and Courts are not expected to fill a gap nor any addition or subtraction of any word is permissible and Court cannot rewrite the statutory provision. This provision of law is culled out from the following decisions and since we deem it proper to consider, we hereby quote relevant observations from the respective paragraphs:-

(1) Paragraph 9 of the judgment delivered by the Hon'ble Apex Court in the case of **Commissioner of Income-tax, Bangalore v. Venkateswara Hatcheries (P) Ltd.** reported in **AIR 1999 SC 1225** reads as under:-

“9. A reading of aforesaid dictionary meanings of the word produce does indicate that if a living creature is brought forth it can be said that it is produced. However, dictionary gives more than one meaning of the word produce. Neither the word produce nor the word article has been defined in the Act. When the word is not so defined in the Act it may be permissible to refer to dictionary to find out the meaning of that word as it is understood in the common parlance. But where the dictionary gives divergent or more than one meaning of a word, in that case it is not safe to construe the said word according to the suggested dictionary meaning of that word. In such a situation the word has to be construed in the context of the provisions of the Act and regard must also be had to the legislative history of the provisions of the Act and the scheme of the Act. It is settled principle of interpretation that the meaning of the words, occurring in the provisions of the Act must take their colour from the context in which they are so used. In other words, for arriving at the true meaning of a word, the said word should not be detached from the context. Thus, when the word read in the context conveys a meaning, that meaning would be the appropriate meaning of that word and in that case we need not rely upon the dictionary meaning of that word.”

(2) Paragraph 4 of the judgment delivered by the Hon'ble Apex Court in the case of **Bihari Chowdhary and Another v. State of Bihar and others** reported in **AIR 1984 SC 1043** reads as under:-

“4. When the language used in the Statute is clear and unambiguous, it is the plain duty of the Court to give effect to it and considerations of hardship will not be legitimate ground for not faithfully implementing the mandate of the legislature.”

12. Yet another proposition is that the provision cannot be interpreted in a manner to defeat its object and merely because it causes any hardship to a party, no different interpretation can be given, rather it is a duty cast upon the Court to give effect to the words which are used in the provision. This proposition can be seen from the decision delivered by the Hon'ble Apex Court

in the case of **M/s. Easland Comines, Coimbatore v. Collector of Central Excise, Coimbatore** reported in **AIR 2003 SC 843 (at 850)**. Relevant observations from the aforesaid decision contained in para-15, we deem it proper to quote hereunder:-

“15. In our view, it would be difficult to accept the aforesaid contention. It is well settled law that merely because a law causes hardship, it cannot be interpreted in a manner so as to defeat its object. It is also to be remembered that the Courts are not concerned with the legislative policy or with the result, whether injurious or otherwise, by giving effect to the language used nor it is the function of the Court where the meaning is clear not to give effect to it merely because it would lead to some hardship. It is the duty imposed on the Courts in interpreting a particular provision of law to ascertain the meaning and intendment of the Legislature and in doing so, it should presume that the

provision was designed to effectuate a particular object or to meet a particular requirement. Re: Firm Amar Nath Basheshar Dass v. Tek Chand, [1972] 1 SCC 893.”

13. Yet another proposition which has been consistently made by the Hon’ble Apex Court is that Rule of Construction should be preferred which advances the purpose and object of a legislation and plain language used in the provision ordinarily be adopted as can be seen from the decision delivered by the Hon’ble Apex Court in the case of **K.P. Varghese v. Income tax Officer, Earnakulam and Another** reported in **AIR 1981 SC 1922**.

14. Further, it is a trite law that if specific Statute is having penal consequences, provisions have to be strictly construed. Now, keeping the aforesaid proposition of law right from the Hon’ble Apex Court in the decisions which have been quoted herein-before, we may revert back ourselves to the Gujarat High Court Rules, 1993 which prescribes methodology for preferring an appeal. We have been brought to the notice about specific provision relates to an office objection about limitation. Rule 67 of the High Court Rules specifically indicates that when an appeal, application or memorandum of cross-objection is submitted after expiration period of limitation, shall be accompanied by a separate application for condonation of delay.

A separate stamped application for excusing delay shall be made which is a mandate of rule which is undisputedly applicable to the present proceedings as well. Since this provision is a mandatory provision, as is reflecting from the mere reading of the words of the provision, same have to be adhered to by the litigant as and when such proceedings are being initiated. We deem it proper to quote Rule 67 of the

Gujarat High Court Rules, 1993 hereunder:-

67. Procedure in regard to office objection as to limitation.—

- (i) When an appeal, application or memorandum of crossobjection is presented after the expiry of the period of limitation specified therefore, shall be accompanied by separate application for condonation of delay.
- (ii) If objection is raised by the office to the registration of an appeal or application or memorandum of cross objections on the ground of its being beyond time,

a separate regular stamped application 1[or application with e-payment receipt] for excusing delay in presenting the same shall be made within 15 days from the date of the notice under Clause (a) or as the case may be, clause (b) of sub-rule (iii) of Rule 66 above, or where the duplicate of the office objections has been delivered to the party in person under clause (b) of the said sub-rule (iii) from the date of receipt thereof by him, failing which the office shall place the matter before the court for orders not later than a week after the expiry of period prescribed under sub-rule (iv) (a) of Rule 65.

- (iii) Notwithstanding that the objection as to delay in filing the matter has not been finally decided, the party or Advocate shall be required to remove all other objections within the time specified in sub-rule (iii) of rule 65.
- (iv) If no application for excuse of delay or note for revision of the Registrar's order is filed within 15 days from the date of the order of the court under sub-rule (iii), the matter shall without any delay, be placed for orders before the Registrar and the Registrar shall pass orders refusing to Register the matter.
- (v) When an application for excusing delay is made under any of the provisions of this Rule, the Appeal or application shall be registered provided no other objection survives.”

15. Yet another provision is also brought to our notice from the special Statute namely Prevention of Money Laundering Act. Section 42 of this Act has specifically prescribed a period of limitation to submit an appeal to the High Court and such regulatory provision is reproduced hereunder:-

“42. Appeal to High Court.-Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law or fact arising out of such order: Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

Explanation. For the purposes of this section, "High Court" means-

- (i) The High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and
- (ii) Where the Central Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain.”

16. A bare perusal of this provision is clearly indicating in its plain and unambiguous language that appeal has to be filed within a period of 60 days before the High Court from the date of communication of an order of the Appellate Tribunal and further grace period has been provided of 60 days with a clear rider “not exceeding sixty days”. So, plain and simple language used

in this provision is that initial period of 60 days can be extended if the High Court is satisfied that sufficient cause is shown but not exceeding 60 days. Undisputedly, this provision is not under challenge before us and this provision is of a special Statute with clear language, we are of the opinion that this provision has to be observed strictly by either side.

17. In the light of the aforesaid provisions which are mentioned about the manner in which appeal has to be presented with Civil Application for condonation of delay and in addition as to within which period same can be submitted and maximum period condonable is also prescribed in the Statute.

18. In the light of this provision, dates and sequence of events placed before us if to be looked into, same would indicate clear picture.

19. Learned senior advocate Mr. N.D. Nanavati has pointed out before us the material facts emerging from the record and has indicated each day and how much days' delay in a tabular form and such tabular particulars we deem it proper to quote hereunder as the same has been placed before us after serving the copy to learned advocate Mr. Siddharth Dave for the applicant.

Mode of Communication	Date	Completion of statutory period of 60 days	Completion of Grace period of 60 days	Presentation of Appeal	Registration of CA	Registration of CA
On Board	03.09.2019	02.11.2019	01.12.2020	125	155	191
On Website	20.09.2019	19.11.2019	18.12.2020	108	138	174

By	30.0	29.1	28.0	98	128	16
Post	9.20	1.20	1.20			4
	19	19	20			

20. The afore-mentioned dates which are not in dispute but indicating that presentation of the application is out side the extended period of limitation as provided in Section 42 of the aforesaid Act. To meet with this, valiant attempt is made by learned advocate Mr. Siddharth Dave by pointing out the circumstances which are stated in para 3 and 4 of the rejoinder affidavit submitted by the applicant and has reiterated his request that this being a sufficient explanation for condonation of delay, irrespective of the period which has been prescribed in the Statute in the larger interest of justice, Court may consider the request and condone the delay of small period of 38 days which has occurred in preferring the appeals and has reiterated that the applications being considered and allowed in the interest of justice.

21. As we have discussed above the proposition of law laid down on the issue, we are of the clear opinion that the dates which are indicating on record are clearly reflecting a situation where the applicant has submitted beyond the maximum period prescribed in the Statute. Mere filing of appeal memo without observing Rule 67 of the Gujarat High Court Rules would not come to the rescue of the applicant more particularly when Rule 67 is clearly postulating a procedure how to submit an appeal and application for condonation of delay and here, we have found that such Rule having been not observed and maximum period prescribed under the Statute is not permitting, we desist ourselves from exercising any discretion in favour of the applicant and this is more so in view of the following proposition of law placed before us by learned senior advocate Mr. Nanavati which we hereinafter discuss.

22. Along with the affidavit-in-reply, learned senior counsel Mr. Nanavati has attached one decision delivered by the Hon'ble Apex Court in the case of

**Assistant Commissioner (CT) LTU, Kakinada and others v. Glaxo Smith
Kline**

Consumer Health Care Limited reported in **2020 SCC OnLine SC 440**. The Hon'ble Apex Court while dealing with the issue of statutory remedy has observed about the limitation issue. We hereby refer the clear observation made in para-15 of the said judgment hereunder:

“15. From the aforesaid decisions, it is clear as crystal that the Constitution Bench in Supreme Court Bar Assn. v. Union of India, (1998) 4 SCC 409, has ruled that there is no conflict of opinion in Antulay case [A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602] or in Union Carbide Corpn. case [Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584] with the principle set down in Prem Chand Garg v. Excise Commr., AIR 1963 SC 996. Be it noted, when there is a statutory command by the legislation as regards limitation and there is the postulate that delay can be condoned for a further period not exceeding sixty days, needless to say, it is based on certain underlined, fundamental, general issues of public policy as has been held in Union Carbide Corpn. case [Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584]. As the pronouncement in Chhattisgarh SEB v. Central Electricity Regulatory Commission, (2010) 5 SCC 23, lays down quite clearly that the policy behind the Act emphasising on the constitution of a special adjudicatory forum, is meant to expeditiously decide the grievances of a person who may be aggrieved by an order of the adjudicatory officer or by an appropriate Commission. The Act is a special legislation within the meaning of Section 29(2) of the Limitation Act and, therefore, the prescription with regard to the limitation has to be the binding effect and the same has to be followed regard being had to its mandatory nature. To put it in a different way, the prescription of limitation in a case of present nature, when the statute commands that this Court may condone the further delay not beyond 60 days, it would come within the ambit and sweep of the provisions and policy of legislation. It is equivalent to Section 3 of the Limitation Act. Therefore, it is uncondonable and it cannot be condoned taking recourse to Article 142 of the Constitution.”

23. Further, learned senior advocate Mr. Nanavati has also referred to few other judgments and since same have been placed before us for consideration, we deem it proper to consider the same. Judgment of the Hon'ble Supreme Court in the case of **Chhattisgarh State Electricity Board v. Central Electricity Regulatory Commission and others** reported in **(2010) 5 SCC 23** has been placed before us to give a meaning to the words “Deemed Communication”. Since the relevant observations are contained in para- 37, we deem it proper to quote the same hereunder:-

“37. The issue deserves to be considered from another angle. As mentioned above, Rule 94(2) requires that when the order is reserved, the date of pronouncement shall be notified in the cause list and that shall be a valid notice of pronouncement of the order. The counsel appearing for the parties

are supposed to take cognizance of the cause list in which the case is shown for pronouncement. If title of the case and name of the counsel is printed in the cause list, the same will be deemed as a notice regarding pronouncement of order. Once the order is pronounced after being shown in the cause list with the title of the case and name of the counsel, the same will be deemed to have been communicated to the parties and they can obtain copy through e-mail or by filing an application for certified copy.”

24. Further decision delivered by the Hon’ble Apex Court in the case of **Oil and Natural Gas Corporation Limited v. Gujarat Energy Transmission Corporation Limited and others** reported in **(2017) 5 SCC 42** has also been brought to our notice on the issue of maximum period of limitation, ofcourse in a different Statute, but analogy is applicable herein. We deem it proper to quote para-10 of the said judgment hereunder:

“10. In the instant case, as is noticeable, the judgment was reserved on 18-9-2007 and pronounced in open court on 28-9-2007. Therefore, the date of communication would be 28-9-2007 as per the principle laid down in Chhattisgarh SEBS. We entirely concur with the said view. In the case at hand, the certified copy was applied through e-mail on 9-10-2007 and delivered on the same date. Be that as it may, the date of communication is 28-9-2007 and, therefore, the appeal preferred under Section 125 of the Act should have been filed within 60 days i.e. 27-11-2007, to come within the period of limitation and further to be entitled to get the benefit of Section 5 of the Limitation Act, he should have filed the appeal within a further period of 60 days i.e. 26-9-2008. Thus calculated, there is total delay of 71 days and 11 days beyond the expiry of 60 days, the limit that is stipulated under Section 125 of the Act.

25. Further decision delivered by the Hon’ble Apex Court in the case of **Sneh Gupta v. Devi Sarup and others** reported in **(2009) 6 SCC 194** is also relevant to the issue, of which we quote para 70 hereunder:-

“70. Even otherwise, we do not think that any error has been committed by the High Court in arriving at the finding that the appellant had knowledge of the passing of the compromise decree much earlier. She did not file any application for condonation of delay. She filed two more applications for recall of the order dated 6.11.2004 in other enacted appeals. Those applications were also filed after expiry of the period of limitation and none of those applications were also accompanied with an application for condonation of delay. In absence of any application for condonation of delay, the Court had no jurisdiction in terms of Section 3 of the Limitation Act, 1963 to entertain the application for setting aside the decree. [See Dipak Chandra Ruhidas v. Chandan Kumar Sarkar [(2003) 7 SCC 66]; and Sayeda Akhtar v. Abdul Ahad [(2003) (7) SCC 52].”

26. A further decision of the Hon’ble Apex Court in the case of **Postmaster General and others v. Living Media India and Another** reported in **(2012) 3 SCC 563** has also been brought to our notice, which has

also dealt with the period of limitation and sufficient cause has been interpreted which can be seen from para 25 onwards in the said judgment.

The very relevant paragraph in addition to other observations contained in para 28, 29 and 30 we deem it proper to quote hereunder:

- “28. 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.
29. 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.
30. 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. Accordingly, the appeals are liable to be dismissed on the ground of delay.”

27. So, conjoint effect of the aforesaid proposition of law is leading to situation where maximum period is prescribed in a Special Statute, delay should not be liberally construed if it is beyond maximum period rather cannot be condoned. At this stage, we may refer to one of the decisions delivered by the Hon’ble Apex Court in a recent past on the issue of object of law

of limitation, i.e. in the case of **Maiji Sannemma alias Sanyasirao v. Reddy Sridevi and others** reported in **2021**

SCC OnLine SC 1260. We deem it proper to quote para 19 and 21 of the said decision hereunder:-

“19. In the case of Pundlik Jalam Patil (supra), it is observed as under:-

“The laws of limitation are founded on public policy. Statutes of limitation are sometimes described as "statutes of peace". An unlimited and perpetual threat of limitation creates insecurity and uncertainty: some kind of limitation is essential for public order. The principle is based on the maxim "interest

republicae ut sit finis litium", that is, the interest of the State requires that there should be end to litigation but at the same time laws of limitation are a means to ensure private justice suppressing fraud and perjury, quickening diligence and preventing oppression. The object for fixing time-limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy..."

21. In The case of Pundlik Jalam Patil (supra), it is observed by this Court that the court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The Courts help those who are vigilant and "do not slumber over their rights".

28. One another judgment which has been brought to our

notice is that Penal Statute is to be strictly construed and apart from that if Statute provides that a particular thing to be done in the manner prescribed, it should be done in that manner and not in other way. This observation contained in para-26 of the judgment delivered by the Hon'ble Apex Court in the case of **State of Jharkhand and others v. Ambay Cements and Another** reported in **2004 AIR SCW 6703**, we deem it proper to quote hereunder since we found it relevant:

"26. Whenever the statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to severe consequences, such requirement would be mandatory. It is the cardinal rule of the interpretation that where a statute provides that a particular thing should be done, it should be

done in the manner prescribed and not in any other way. It is also settled rule of interpretation that where a statute is penal in character, it must be strictly construed and followed. Since the requirement, in the instant case, of obtaining prior permission is mandatory, therefore, non-compliance of the same must result in canceling the concession made in favour of the grantee-the respondent herein."

29. Yet another observation from the decision delivered by the

Hon'ble Apex Court in the case of **Council for Indian School Certificate Examination v. Isha Mittal and Another** reported in **(2000) 7 SCC 521**, is that even equity under the guise of substantial justice cannot prevail over when the Statute has made a clear provision. Hence, keeping in view the observations contained in para-4 of the said decision, even equitable considerations are also not permitting us to ignore specific provision. Hence,

general provision would not apply here in the present case on hand. Hence, the applications being devoid of merits deserve to be dismissed.

30. On overall consideration of the aforesaid proposition of law, sequence of events in consonance with the statutory provisions, we are of the opinion that in any case, on the touchstone of the general provision also, what has been explained is mere administrative delay, but that administrative delay on this peculiar background of fact is not justifiable to ignore the aforesaid discussion. Hence, even on that count also, mere administrative exigency cannot be taken as an aid by the applicant to make a request for condoning the delay.

31. In view of the aforesaid discussion and in view of the circumstances stated herein-above, it is not possible for us to consider the request of the applicant in all these applications which are filed for seeking condonation of delay and accordingly all these applications being devoid of merits stand **DISMISSED**.

Rule discharged.

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