

SYNOPSIS

Condonation of delay

Taxing statutes and condonation of delay

Instances of sufficient cause

Condonation of delay

Section 5 allows the extension of prescribed period in certain cases on ‘sufficient cause’ being shown for the delay. This is known as doctrine of ‘sufficient cause’ for condonation of delay. Thus any *appeal* or any *application* may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period. The concept of ‘sufficient cause’ has delightfully been undefined thereby leaving to the court a well-intended discretion to decide the individual cases whether circumstances exist establishing sufficient cause.¹ However, it must be a cause which is beyond the control of the party [Ramlal v. Rewa Coal Fields Ltd. AIR 1962 SC 361]. Explanation to Section 5 adds that the fact that the appellant or applicant was misled by any order, practice or judgement of the High Court in ascertaining or computing the prescribed period may be a sufficient cause within the meaning of this section. Supreme Court² has laid down the principles while dealing with an appeal or application not preferred within the period of limitation.³

The Court, however, has no power to admit a time barred *suit* even if there is a sufficient cause for the delay; the reason being that the period of limitation allowed in most of the suits extends

¹ R B Ramlingam v. R B Bhvansewari (2009) 2 SCC 689

² Collector (LA) v Katiji (1987) 2 SCC 107

³ Adapted from Takwani 2015 p 781

~~~~~

from 3 to 12 years whereas in appeals and application it does not exceed 6 months. Moreover, the relaxation under Section 5 is not available to time barred applications made under any of the provisions of Order XXI of the Code of Civil Procedure 1908 dealing with execution of decrees and orders. Again, it is the Court's discretion to extend or not to extend the period of limitation even after the sufficient cause has been shown though the Court should exercise its discretion judicially and not arbitrarily. The quasi-judicial tribunals, labour courts or executive authorities have no power to extend the period under this Section. However, where a special or local Act provides limitation for filing an appeal or application, Sec 5 gets enabled vide Sec 29 [Mitra 2018 v 1 p 179]. It may also be noted that Sec 29(2) is not confined to courts constituted under the Civil Procedure Code [Mukri Gopalan v C P Aboobacker (1995)5SCC5]. So, in case of special Acts providing period of limitation the quasi-judicial / executive authority gets empowered to condone the delay.

### **Taxing statutes and condonation of delay**

Taxing statutes providing period of limitation are regarded special Acts. IT Sec 119(2) empowers the income tax authorities duly authorised by the Board to admit an application or claim for any exemption, deduction, refund or any other relief under the Act after the expiry of limitation period for making such application or claim. IT Sec 249 (3) empowers the Commissioner (Appeal) to admit an appeal after the expiration of limitation period if he is satisfied that the appellant had sufficient cause for not presenting it within that period. IT Sec 253 (5) empowers the Appellate Tribunal to admit an appeal or permit the filing of memorandum of cross objection after the expiry of the limitation

~~~~~

period if it is satisfied that there was sufficient cause for not presenting it within that period. CGST Sec 107 (4) empowers the appellate authority to admit the appeal within a further period of one month beyond the period of limitation. Proviso to CGST Sec 100 (2) provides that the Appellate Authority for Advance Ruling may, if it is satisfied that the appellant was prevented by a sufficient cause for presenting the appeal within the limitation period, allow it to be presented within a further period of thirty days. CGST 112 (6) empowers the Appellate Tribunal to admit an appeal within a further period of three month after the expiry of the limitation period; and to permit the filing of a memorandum of cross-objections within a further period of forty-five days after the expiry of the limitation period. Proviso to CD Sec 128(1) provides that the commissioner (Appeal) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the limitation period, allow it to be presented within a period of thirty days. CD 129A (5) provides that the Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the limitation period if it is satisfied that there was sufficient cause for not presenting it within that period.

Instances of sufficient cause

Wrong advice given by advocate can give rise to sufficient cause in certain cases. Similarly, mistake of law in establishing or exercising the right given by law may be considered as sufficient cause. However, ignorance of law is not an excuse, nor the negligence of the party or the legal adviser constitutes a sufficient cause.

Time taken for obtaining certified copies of the decree of the judgment necessary to accompany the appeal or application is

~~~~~

~~~~~

considered for condoning the delay. This has been statutorily recognised in IT Sec 268 that in computing the period of limitation for an appeal or an application under the Act the delay on which the order complained of was served shall be excluded; and if the assessee was not furnished with a copy of the order on the date on which the order was served then the time requisite for obtaining a copy of such order shall be excluded while computing the period of limitation. Similar provisions exist under CD Sec 131A in respect of appeal or application under Chapter XV of the Custom Act.