

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

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M.A. NOS. 673 & 828 OF 2015

IN

APPEAL NO. 65/2015

IN THE MATTER OF:

Jagannath Mane
S/o late Shri Shivaji Mane,
aged about 46 years, R/o A-576,
Ram Nagar, Khandwa (M.P)

.....Appellant

Versus

सत्यमेव जयते

1. Union of India through
Secretary, Ministry of Forest
and Environment, Paryavarn Bhawan,
New Delhi.
2. The State of Madhya Pradesh
Through Secretary Department of
Revenue, Mantralaya Vallabh Bhawan,
Bhopal.
3. State Level Environment Impact
Assessment Authority (M.P.), Paryavaran
Parisar E/5, Arera Colony, Bhopal (M.P)
4. M.P. Pollution Control Board, Scheme
No. 78, Part-2, Aranya, Vijay Nagar, Indore
(M.P)
5. The Collector Khandawa, District
Khandwa (M.P)
6. District Mining Officer,
Khandwa District Khandwa, (M.P)
7. Smt. Jyoti W/o Shri Gopal Aitalkar,
R/o Ramnagar Khandwa, District-Khandwa
(M.P)
8. Chhagan S/o Shri Devram Aitalkar
R/o Ramnagar Khandwa,
District- Khandwa (M.P)

..... Respondents

COUNSEL FOR APPELLANT:

Mr. Shekhar Sharma, Adv

COUNSEL FOR RESPONDENT:

Mr. Vishwendra Verma and Mr. Karan Sinha Advs.
for respondent no. 1.

Mr. V.K. Shukla, Adv. for respondent nos. 2, 5 and 6.

Mr. Rajul Shrivastav and Ms. Sucheta Yadav Advs.
for respondent no. 4.

Mr. Prashant Malvia, Adv. for respondent no. 7.

Mr. S.A. Zaidi and Ms. Gulnaz Parveen, Advs. for
respondent no. 8.

JUDGMENT

PRESENT:

Hon'ble Mr. Justice U.D. Salvi (Judicial Member)

Hon'ble Mr. Ranjan Chatterjee (Expert Member)

**Reserved on: 6th November, 2015
Pronounced on:, 29th January 2016**

- 1. Whether the judgment is allowed to be published on the net?**
- 2. Whether the judgment is allowed to be published in the NGT Reporter?**

Hon'ble Mr. Justice U.D. Salvi (Judicial Member)

1. The present appeal was initiated as an application for quashing the Environmental Clearances-dated 18th December, 2014 and 12th December, 2014 granted for the purpose of carrying out stone mining in the land bearing Khasra No. 748 of village Nahalda, Teshil and District Khandwa, to the respondent nos. 7 and 8 respectively on 15th April, 2015.

2. Having felt the need of an Appeal to challenge the Environmental Clearances in question, when the application was placed before us for admission, the applicant- now the

appellant herein sought time to convert the application into an appeal. Eventually, the application for converting Original Application into appeal – M.A. No. 518/2015 was moved and the conversion of the application into an appeal was allowed vide order dated 25th May, 2015. Liberty was granted to move an application for condonation of delay in preferring Appeal in prescribed time and thus an application for condonation of delay- M.A. No. 673/2015 was moved on 1st July, 2015. Notice to this application was issued and has been responded to by respondent no. 2 State of MP, respondent no. 5 District Collector Khandwa, respondent no. 6 District mining officer Khandwa with reply dated 3rd August, 2015. The Respondent nos. 7 and 8 the project proponent has filed a succinct reply dated 17th August, 2015 thereto.

- 3.** According to the applicant/appellant the respondent nos. 7 and 8 ventured to undertake illegal stone mining activity in the land described as “Chhote Bade Jhhad ka Jungle” in village Nahalda and the fact of having applied for the Environmental Clearances came to his knowledge from the information made available to him on official website of SEIAA, MP and he had objected to the grant of Environmental Clearances vide application/objections dated 13th November, 2014; and he could obtain copies of the lease granted to the respondent nos. 7 and 8 on 5th January, 2015. He added that he had moved O.A. No. 85/2014 questioning the acts of respondent nos. 7 and 8 in relation to the illegal stone mining

in question; and upon getting the knowledge of grant of aforesaid Environmental Clearances, had thrown challenge to it by moving M.A. No. 231/2015 in O.A. NO. 85/2014 on 17th January, 2015. It is the case of the applicant/appellant that the Learned Counsel appearing for him having realised his mistake in initiating application for throwing challenge to the ECs in 85 of 2014 had moved an application O.A. No. 119/2015 for quashing the said Environmental Clearances during the pendency of O.A. No. 85/2014 separately on 15th April, 2015 and therefore, the time was consumed and the delay occurred bonafidely.

4. The Respondent nos. 2, 5 and 6 submit, pointing out to the provision prescribing the period of limitation and power to condone delay in preferring the appeal within the prescribed period under section 16 of the National Green Tribunal Act, 2010 as well as the decision of this Tribunal in M.A. No. 104/2012-Save Mon Region federation vs. Union of India, that the delay of 146 days in preferring the Appeal cannot be condoned vide reply dated 3rd August, 2015. According to the respondent nos. 2, 5 and 6, the period of limitation triggered on 5th January, 2015, when the appellant obtained copies of Environmental Clearance under RTI and the application for condonation of delay was filed on 1st July, 2015. According to the respondent nos. 7 and 8, the material events concerning the present appeal, admittedly, unfolded in following manner:

- i. 12/12/14 & 18/12/14 –Respondent no. 3 grants environmental clearance to the answering respondents herein.*
- ii. 05/01/15 – Appellant obtained certified copy of the environmental clearance granted by the respondent no. 3 under RTI.*
- iii. 15/04/15 – Appellant files O.A. No. 119/15.*
- iv. 01/07/15 – Appellant sworn an affidavit in support of M.A. No. 673/15 in appeal No. 65/15.*
- v. 02/07/15 – This Hon’ble Tribunal permits the appellant to convert O.A. No. 119/15 into appeal No. 65/15 in terms of order dated 25/05/15 passed by this Hon’ble Tribunal.*

5. The respondent nos. 7 and 8 without admitting the case of the applicant/appellant but with reference to the facts revealed in the present case by the applicant/appellant submitted that the applicant/appellant had knowledge of the Environmental Clearance granted on 5th January, 2015 and the period of 30 days therefrom expired on 3rd February, 2015, and the period of 60 days from 3rd February, 2015 expired on 4th April, 2015 whereas the O.A. NO. 119/2015 which was allowed to be converted in Appeal on 25th May, 2015 was filed on 15th April, 2015; and as such delay caused in filing the present Appeal in teeth of clear and unequivocal language “not exceeding 60 days” in proviso to section 16 of the NGT Act, 2010, cannot be condoned and the application for condonation of delay deserves to be dismissed.

6. Learned Counsel appearing for the applicant/appellant submitted that the respondent nos. 7 and 8 were carrying on stone mining and stone crushing activities in forest land-Khasra No. 748 of village Nahalda described as “Chote Bade Jhhad ka Jungle” since the allotment of mining lease vide

order dated 3-09-2009 and damage to the forest land on account of activity prompted him to file O.A. No. 85/2014 (initially No. O.A. 60/2014 before the Central Bench of NGT) for direction to stop such illegal mining and stone crushing activities; and upon grant of Environmental Clearances he had moved application No. 231/2015 for cancellation of said Environmental Clearances in O.A. No. 85/2014. He further submitted that the act of seeking cancellation of the Environmental Clearances in O.A. No. 85/2014 was indeed a mistake on his part which was sought to be corrected by moving a separate application O.A. No. 119/2015 for the cancellation of the said Environmental Clearances on 15th April, 2015 and ultimately this O.A was got converted into an Appeal No. 65/2015 challenging the Environmental Clearances in question in the manner required by law.

7. Relying on the judgments delivered by the Hon'ble Apex Court in Consolidated Engineering Enterprise's Case (AIR 2009 SC (Supp) 396: Consolidated Engineering Enterprises Vs. Principal Secretary, (Irrigation Department) and Ors.), M.P. Steel Corporation's Case (2015) 7 SCC 58; M.P. Steel Corporation vs. Commissioner of Central Excise). He submitted that for the purpose of computation of the period of limitation it is just and necessary to exclude the time spent bonafide in the Court in prosecuting the proceedings initiated prior to the institution of the present Appeal on application of Section 14 of the Limitation Act; and in any event the principle

of Section 14 based on advancing the course of justice in a case of diligent pursuit of a remedy in a wrong forum inherent in invocation of section 14 of Limitation Act, needs to be applied in the present case and the delay, if any, in preferring the present Appeal, deserves to be condoned. He submitted that this aspect was not adequately considered by this Tribunal while delivering judgment in Dileep Namdeo's Case (order dated 5th September, 2012 in Appeal No. 24/2012: Dileep Namdeo Dherange & Ors. vs. MoEF & Ors.). He further submitted that the Hon'ble Apex Court did consider the relevant legal provisions and the previous judgments delivered in Consolidated Engineering Enterprise's Case (Supra), Mukri Gopalan's case (Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker: (1995) 5 SCC, Parson Tool's Case (CST vs. Parson Tools and plants: (1975) 4 SCC 22) and concluded that the Principle of Section 14 of the Limitation Act which is a Principle based on advancing the case of justice would certainly apply and the time taken in prosecuting bonafide proceedings diligently, which ultimately end without decision on merits of the case, be condoned. He, therefore, urged the Court to apply the Principle thus expounded by the Hon'ble Apex Court to facts and circumstances in the present case allowing the application 673/2015 for condonation of delay.

- 8.** Learned Counsel appearing on behalf of the respondent nos. 7 and 8 submitted, particularly with reference to the judgment delivered by this Tribunal in Dileep Namdeo's case (Supra),

that the Hon'ble Apex Court in M/s Parson Tools and Plant case has held that where the special provision is enacted in respect of limitation for any civil action to be taken under the special enactment, the Tribunal cannot out stretch the period of limitation by taking aid of provisions under the Limitation Act, 1963; and due to the special Provision under Section 43 of the Arbitration and Conciliation Act, 1996, the provisions of Section 14 of the Limitation Act, 1963 are attracted to the arbitration proceedings as concluded by the Hon'ble Apex Court in Consolidated Engineering Enterprises Case (Supra). According to the Learned Counsel appearing for respondent nos. 7 and 8, the clear and unambiguous provision in the proviso to Section 16(2) of NGT Act, 2010 "not exceeding 60 days" left no discretion with the Tribunal to condone the delay beyond the period prescribed therein. He added that in the given facts and circumstances the application of the Principle of Section 14 of the Limitation Act, 1963 to condone delay occasioned on account of failure of the prior proceedings in O.A. No. 85/2014 and M.A. No. 231/2015 therein not due to defect of Jurisdiction or other cause of like nature and particularly when the prior proceedings were not prosecuted with due diligence and in good faith, is unwarranted.

9. Perusal of the Judgment delivered in M.P. Steel Corporation's Case (Supra) reveals that the Hon'ble Apex Court considered many of its Judgments including Judgments delivered in Consolidated Engineering Enterprise Case, Mukri Gopalan

Case, Parson Tools and Plants Case on the application of the provisions of the Limitation Act to the proceedings before the Quasi Judicial Tribunal/Forums, and while reiterating its view that the Limitation Act including Section 14 would not apply to the Appeals filed before the Quasi Tribunal held that the Principles thereof would be applicable for the purpose of condonation of delay in filing Appeal in following words:

“38. We have already held that the Limitation Act including Section 14 would not apply to appeals filed before a quasi-judicial Tribunal such as the Collector (Appeals) mentioned in Section 128 of the Customs Act. However, this does not conclude the issue. There is authority for the proposition that even where Section 14 may not apply, the principles on which Section 14 is based, being principles which advance the cause of justice, would nevertheless apply. We must never forget, as stated in Bhudan Singh V. Nabi Bux that justice and reason is at the heart of all legislation by Parliament. This was put in very felicitous terms by Hegde, J. as follows:

“9. Before considering the meaning of the word ‘held’ in Section 9, it is necessary to mention that it is proper to assume that the lawmakers who are the representatives of the people enact laws which the society considers as honest, fair and equitable. The object of every legislation is to advance public welfare. In other words as observed by Crawford in his book on ‘Statutory Constructions’ that the entire legislative process is influenced by considerations of justice and reason. Justice and reason constitute the great general legislative intent in every piece of legislation. Consequently were the suggested construction operates harshly, ridiculously or in any other manner contrary to prevailing conceptions of justice and reason in most instances, it would seem that the apparent or suggested meaning of the statute, was not the one intended by the lawmakers. In the absence of some other indication that the harsh or ridiculous effect was actually intended by the legislature, there is little reason to believe that it represents the legislative intent.”

10. This Tribunal in Dileep Namdeo's Case did consider the relevant observations made by the Hon'ble Apex Court in

Consolidated Engineering Enterprise's Case analysing the provision of Section 14 of the Limitation Act, 1963 and culled out the following conditions required to co-exist for attracting the rigour of Section 14 of the Limitation Act, 1963:

1. Both the prior and subsequent proceedings are civil proceedings prosecuted by the same Party;
2. The prior proceeding had been prosecuted with due diligence and in good faith;
3. The failure of prior proceeding was due to default of Jurisdiction or other cause of like nature;
4. The earlier proceeding and the latter proceedings must relate to the same matter and issue and;
5. Both the proceedings are in a Court.

11. The Hon'ble Apex Court at para 43 of its Judgment in M.P. Steel Corporation's Case (Supra) thus concluded:

"We conclude, therefore, that the Principle of Section 14 which is a principle based on advancing the cause of justice would certainly apply to exclude time taken in prosecuting proceedings which are bonafide and with due diligence pursued, which ultimately end without a decision on the merits of the case."

Not only, therefore, while applying the Principle of Section 14 one has to verify the co-existence of the aforesaid conditions necessary for attracting the rigour of said provision but also to ensure that such Principle is applied for advancing cause of justice.

12. Before applying such Principle to do justice or advance of justice in a given case, one needs to understand what "Justice" means in context with Equity. P. Ramanatha Aiyar's "The Law Lexicon" 3rd Edition, 2012 would enrich our understanding of Justice in context with Equity in following words:-

"Justice: Equity *Justice is a written or prescribed law, to which one is bound to conform and make it the rule of one's decision : equity is a law in our hearts; it conforms to no rule but to circumstances, and decides by the consciousness of right and wrong. The proper object of justice is to secure property; the proper object of equity is to secure the rights of humanity. Justice is exclusive, it assigns to everyone his own; it preserves the subsisting inequality between men; equity is communicative; it seeks to equalise the condition of men by a fair distribution. Justice forbids us doing wrong to any one; and requires us to repair the wrongs we have done to others; equity forbids us doing to others what we would not have them do to us; it requires us to do to other what in similar circumstances we would expect from them. The obligations to justice are imperative; the observance of its laws is enforced by the civil power, and the breach of them is exposed to punishment; the obligations to equity are altogether moral; we are impelled to it by the dictates of conscience; we cannot violate it without exposing ourselves to the Divine displeasure. Justice is inflexible, it follows one invariable rule, which can seldom be deviated from consistently with the general good; equity, on the other hand, varies with the circumstances of the case, and is guided by discretion; justice may, therefore, sometimes run counter to equity, when the interests of the individual must be sacrificed to those of the community; and equity sometimes tempers the rigour of justice by admitting of reasonable deviations from the literal interpretations of its laws."*

13. In simple terms, to do justice means to give unto one what is due to him by Law. Justice follows an invariable rule and the obligations to justice are imperative. While applying the Principle of Section 14 of the Limitation Act, therefore, one as to circumspect and answer the questions as to whether the exclusion of time taken in prosecuting proceedings was

intended by the legislature in making the specific provision prescribing the limitation and for condonation of delay in Section 16(2) of the NGT Act, 2010 and whether the previous proceedings were prosecuted/pursued with due diligence before any wrong forum in good faith or not.

14. While considering the element of due diligence and caution for attracting the provisions of Section 14 of the Limitation Act, 1963, The Hon'ble Apex Court in Consolidated Engineering Enterprise Case observed thus:

35. To attract the provisions of Section 14 of the Limitation Act, five conditions enumerated in the earlier part of this Judgment have to co-exist. There is no manner of doubt that the section deserves to be construed liberally. Due diligence and caution are essentially pre-requisites for attracting Section 14. Due diligence cannot be measured by any absolute standards. Due diligence is a measure of prudence or activity expected from and ordinarily exercised by a reasonable and prudent person under the particular circumstances. The time during which a court holds up a case while it is discovering that it ought to have been presented in another court, must be excluded, as the delay of the court cannot affect the due diligence of the party. Section 14 requires that the prior proceeding should have been prosecuted in good faith and with due diligence. The definition of good faith as found in Section 2(h) of the Limitation Act would indicate that nothing shall be deemed to be in good faith which is not done with due care and attention. It is true that Section 14 will not help a party who is guilty of negligence, or inaction. However there can be no hard and fast rule as to what amounts to good faith. It is a matter to be decided on the facts of each case. It will, in almost every case be more or less a question of degree. Merely filing of an application in wrong court would not prima facie show want of good faith. There must be no pretended mistake intentionally made with a view to delaying the proceedings or harassing the opposite party. In the light of these principles, the question will have to be considered whether the appellant had prosecuted the matter in other courts with due diligence and in good faith.

15. In the instant case, the appellant intended to quash the Environmental Clearances granted as per EC Regulations, 2006. Section 16(h) of the NGT, 2010 in clear terms leaving no scope for confusion, spelt out provisions for throwing challenge to it by way of an Appeal to the Tribunal. It is also not the case of the appellant that there was any confusion much less honest doubt in that regard. Admittedly, the steps were taken to throw challenge to the ECs in question, particularly, by way of a separate proceedings- O.A No. 119/2015 which was got converted into the present appeal for the first time before this Tribunal, competent in law to entertain such challenge on 15th April, 2015. In absence of any element of confusion or honest doubt as regards the explicit provision of 16(h) of the NGT Act, 2010. One cannot rule out the possibility of pretended mistake intentionally made with the view to delay the proceedings or harass the opposite party.

16. Pertinently, O.A. No. 85/2014 as well as M.A. No. 231/2015 made therein for questioning the grant of ECs in question were disposed of with the following order:

Original Application No. 85 of 2014

The Learned Counsel appearing for the Applicant submits that after filing of this Application the private respondents have been granted Environmental Clearance. The applicant has challenged that Environmental Clearance by filing separate and independent application. He submits that

grounds raised by him in this application have already been taken in that application, however he prays for further relief that he may be permitted to raise question of issuance of direction to the authorities for recovery of compensation for illegal and unauthorized mining. The Learned Counsel appearing for respondents have no objection to such a prayer. Consequently Original Application No. 85 of 2014 stands disposed of as not pressed. Liberty granted as prayed.

M.A. Nos. 227 of 2014 to 230 of 2014, 231 of 2015

All these M.A. Nos. 227 of 2014 to 230 of 2014 and 231 of 2015 do not survive for consideration as the main application itself stands disposed of.

The facts and circumstances in the present case thus point out that the appellant was guilty of negligence, lapses or inaction in as much as the applicant/appellant made conscious choice of filing an application for challenging the ECs in pending Original Application before the Tribunal competent to entertain the appeals against such ECs and later on did not press for such application and filed a separate application and not the appeal therefor and therefore, the Principle of Section 14 will not come to his help.

17. As noticed by the Hon'ble Apex Court in M.P. Steel Corporation's Case (Supra) at Para 38, it is proper to assume that the law makers enact laws which the society considers as honest, fair and equitable with the object to advance public welfare. What legislature, therefore, actually intended in enacting Section 16 of the NGT Act, 2010 is worthy of consideration as entire legislative process is/has to be influenced by consideration of Justice and reason. Such consideration would be a pointer to where the justice lies.

18. NGT Act, 2010 has been enacted to provide a forum for effective and expeditious disposal of cases relating to Environmental Protection and conservation of forest and other natural resources including enforcement of any legal right relating to environment. Chapter III of the National Green Tribunal Act, 2010 deals with jurisdiction, powers and proceedings of the Tribunal. Section 14, 15 and 16 therein provide for remedies available for:

- (i) Settlement of disputes,
- (ii) Compensation and restitution and
- (iii) Appeals against the orders, decision or directions issued by various regulatory authorities respectively.

A glance at these provisions clearly reveals that the discretion conferred upon the Tribunal to condone the delay in initiating an action under the said provisions within a stipulated period of time is restricted by use of the phrase "not exceeding 60 days". At the same time, it is significant to note the provisions of Section 16 and 18 therein which permit "any person aggrieved" to move an application or appeal to the Tribunal. Section 18 of the NGT Act require such application or appeal as the case may be, to be dealt with by the Tribunal as expeditiously as possible with endeavour made to dispose of such application or the appeal finally within 6 months from the date of filing of the application or the appeal after providing to the parties an opportunity to be heard. The NGT Act, 2010 by virtue of Section 19 therein has

rendered the Tribunal free from the bondage of the procedure laid down by the Code of Civil Procedure, Act, 1908 and Rules of Evidence contained in the Evidence Act, 1872. This has been particularly done to achieve the dispensation of the environmental justice expeditiously, preferably within the time frame stipulated by law.

19. Alike the Provisions in NGT Act, 2010 the NGT (practice and procedure) Rules, 2011 framed thereunder for regulating practice and procedure of the Tribunal, stipulate time frame for:

- i) Rectification of defects-Rule 10(3);
- ii) Filing of replies and other documents-Rule 16(1);
- iii) For hearing and final decision-Rule 18(3);
- iv) Moving an application for restoration of application or appeal dismissed for default- Rule 20(2);
- v) For setting aside the order passed ex-parte in an application or appeal- Rule 21(2); and
- vi) For preferring an application for Review- Rule 22(1).

Pertinently, Rule 13 of the NGT (Practice and Procedure) Rule, 2011 also requires every applicant or the appellant to adhere to certain discipline in setting forth their case concisely under distinct heads in Form-1 and Form-2 prescribed thereunder. This has been particularly done to save on time and consequently to curb delay in dispensing environment justice.

20. Perusal of EC Regulations, 2006, which prescribes procedure for grant of EC, reveals that the course of appraisal of every proposal for grant of EC by the Expert Appraisal Committee is well formulated to bring all material aspects of the project under Appraisal before the Expert Appraisal Committee and time frame is provided for concluding such process.

21. Time is thus material dimension of the environmental justice, particularly process of grant of EC subject to certain safeguards under the Environment (Protection) Act, 1986. Both stipulation of time frame and the safeguards point out how delicate balance between necessary development and environment is attained without sacrificing inter-generational equity and without any unwarranted loss of time in decision making in course of dispensing environmental justice, particularly in granting ECs. Furthermore, Environment Clearance Regulation, 2006 provides for cancellation of prior Environment Clearance already granted upon revelation of deliberate concealment and submission of false or misleading information or data. Material for the process of grant of EC- vide para 8(vi) of Environment Clearance Regulation, 2006. Evidently, the dispensation of environmental justice and particularly, the decision to grant EC is based on an informed decision taken upon professedly true and correct facts and provides for environmental safeguards. Law makers, therefore, expected such decision/s to remain free from

indefinite threat of challenge and consequent debate, particularly, from wide spectrum of aggrieved persons after lapse of a fixed period of time in the interest of environmental justice and sustainable development and incorporated the restrictive phrase 'not exceeding sixty days' in Section 14, 15 and 16 of NGT Act, 2010.

22. All this has found utterance in the proviso to the Section 16 of NGT Act, 2010 in following terms:

Tribunal to have appellate jurisdiction-Any person aggrieved by,-

.....

(h) an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 (29 of 1986)

.....

may, within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal:

Provided that the Tribunal 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 under this section within a further period not exceeding sixty days.

The legislature thus intended by coining the phrase “not exceeding 60 days” that justice in dealing with such Appeals would lie if the Appeals are not entertained beyond the period as prescribed in the provisos to the said Sections.

23. In M.P. Steel Corporation case the Hon'ble Apex Court applied the Principle of Section 14 to the case under Section 128 of the Customs Act, 1962, in the given facts and circumstances of the said case. Moreover, Section 128 of Customs Act, 1962 reads as under:

(1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a 281 [Commissioner of Customs] may appeal to the 280 [Commissioner (Appeals)] 282 [within sixty days] from the date of the communication to him of such decision or order: 283 [Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.]

284 [(1A) The Commissioner (Appeals) may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing: Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.]

(2) Every appeal under this section shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf.]

The Provision in Section 128 is unlike the provision in Section 16(h) which uses the restrictive phrase “not exceeding 60 days”.

24. In our considered opinion, therefore, the Tribunal cannot out stretch the period of limitation prescribed in Section 16 of the NGT Act, 2010 even by taking aid of the Principles under Section 14 of the Limitation Act, 1963. The application must therefore, fail. M.A. No. 673/2015 is therefore, dismissed. Resultantly, Appeal No. 65/2015 and pending M.A No.

828/2015 therein cannot be entertained and stands dismissed accordingly.

Hon'ble Mr. Justice U.D. Salvi
Judicial Member

Hon'ble Mr. Ranjan Chatterjee
Expert Member



NGT