

**HIGH COURT OF GUJARAT (D.B.)****PRINCIPAL COMMISSIONER***Versus***ESSAR OIL LTD****Date of Decision:** 01 December 2016**Citation:** 2016 LawSuit(Guj) 2503**Hon'ble Judges:** [M R Shah](#), [B N Karia](#)**Eq. Citations:** 2017 347 ELT 432**Case Type:** Civil Application (Oj); Stamp Number**Case No:** 96 of 2016; 89 of 2016**Subject:** Civil, Limitation**Acts Referred:**[Limitation Act, 1963 Sec 5](#)**Final Decision:** Application allowed**Advocates:** [Sudhir M Mehta](#), [Priyank Parikh](#), [Nanavati Associates](#)**Cases Referred in (+): 1****M.R. Shah, J.**

**[1]** Present application has been preferred under Section 5 of the Limitation Act requesting to condone the delay of 539 days caused in preferring the Tax Appeal.

**[2]** Shri Sudhir Mehta, learned counsel appearing on behalf of the applicant submitted that as such, there was no deliberate negligence on the part of the applicant/department in not filing the appeal within the period of limitation. It is submitted that from the very beginning, it was decided to prefer an appeal against the order impugned, however, for the reasons stated in the application, the same could not be filed. It is further submitted that in fact against the concerned Superintendent, Central Excise, who actually did not take any action to file an appeal; though he was supposed to see that appeal is filed and because of whose deliberate act of omission, the appeal was not filed, departmental action has been initiated. Therefore, it is requested to condone the delay and give an opportunity to submit the case of merit,

rather non suit the applicant on the ground of technical delay. It is further submitted that as such applicant has a very meritorious case and if the delay is not condoned, in that case, the Revenue is likely to suffer.

**[3]** Present application is vehemently opposed by Ms. Priyank Parikh, learned advocate appearing for M/s. Nanavati Associates appearing on behalf of the respondent. An affidavit-in-reply is also filed opposing the present Application. It is submitted that merely because the department was sitting on the papers, appeal is not filed within the period of limitation and/or at the earliest, by itself cannot be a ground to condone the huge delay. Relying on the decision of the Hon'ble Supreme Court in the case of [Post Master General vs. Living Media India Limited](#), 2012 207 Taxman 163 and a decision of Division Bench of this Court rendered in case of Commissioner of Customs v. Karan Monomers P. Limited, 2013 297 ELT 500, it is requested to dismiss the present Application.

**[4]** Heard learned advocates for the respective parties at length.

**[5]** It is true that there is a delay of 539 days in preferring the Tax Appeal. However, considering the submissions made in support of the application to condone the delay, we are of the opinion that the delay has been explained sufficiently. From the averments made in the application, it appears that from the very beginning, the Department took a decision to challenge the decision of CESTAT, however, because of in-action on the part of one of the officer, the Department could not file Tax Appeal within the period of limitation. Thus, because of deliberate in-action of the concerned Officer in not filing the appeal, though the decision was taken and it was approved and even a draft appeal was also prepared, the benefit cannot be given to the assessee. In the application, the delay has been sufficiently explained in para 2.1 to 2.3. Considering the aforesaid averments made in para 2.1 to 2.3 of the application, the correspondence which are produced on the record, we are of the opinion that sufficient cause has been shown to condone the delay.

**[6]** Under the circumstances, when sufficient cause has been shown, the delay is required to be condoned. In so far as reliance placed upon a decision of the Hon'ble Supreme Court in case of Post Master General v. Living Media India Limited [Supra] by the learned advocate appearing for the respondent is concerned, it is required to be noted that on facts, the Apex Court found that sufficient cause has not been shown, and therefore, the Court did not condoned the delay. Similar is with respect to the Order passed by the Division Bench of this Court in case of Commissioner of Customs v. Karan Monomers P. Limited [Supra].

**[7]** In view of the above and for the reasons stated above and in the aforesaid facts and circumstances, we are of the opinion that one opportunity is required to be given to the applicant to submit the case on merits rather than non suiting the applicant on the ground of technical delay, particularly when it is observed that the delay has been sufficiently explained. If the delay is condoned, in that case, the respondent will have an opportunity to submit the case on merits. On the other hand, if the delay is not condoned, in that case, though sufficient cause has been shown, the applicant will be deprived of submitting the case on merits.

**[8]** In view of the above and for the reasons stated above, the present Civil Application is allowed. Delay caused in preferring the Tax Appeal is hereby condoned. Rule nisi made absolute with no order as to costs.

