

01.04.2025

**Order on application of Appellant Establishment dated 05.03.2024.**

The Appellant Establishment has filed this application for condonation of delay in filing the present appeal with affidavit. The Respondent side has preferred oral objections. I have heard Learned Counsel for Appellant Establishment Mr. Jaydeep Bansal and Mr. Prafull Sharma for Respondent Authority. I have gone through the record.

The Appeal is directed against order of Respondent Authority dated 16.10.2023 passed under Section 14B of the Act, filed on 31.07.2024. Grounds taken are that, the Appellant Establishment is a Government Organization, due to transfer, no one was left in the Law Department of the Establishment, it was only when new person joined the department, it came out that there was an order which required to be appealed against. Much time was consumed in taking legal advices and drafting of the appeal. Learned Counsel for Respondent Authority has submitted that the **Employees Provident Fund Tribunal Procedure Rules, 1997** (in short the 'Rules') provides a specific period of limitation with respect to filing of appeals. He has referred to Rule 7(B) which is being reproduced as follows:

*"Any person aggrieved by a notification issued by the Central Government or an order passed by the Central Government or any other authority under the Act, may within 60 days from the date of issue of the notification/ order prefer an appeal to the Tribunal:*

*Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the prescribed period, extend the said period by a further period of 60 days;*

*Provided further that no appeal by the employer shall be entertained by a Tribunal unless he has deposited with the Tribunal a Demand Draft payable in the Fund and bearing 75 per cent of the amount due from him as determined under Section 7A.*

*Provided that the Tribunal may for reasons to be recorded in writing, waive or reduce the amount to be deposited under Section 7-O."*

Learned Counsel further submits that since there are specific provisions for limitation, hence limitation Act, 1963 will not apply and the application for condonation of appeal requires to be dismissed.

On the other hand, Learned Counsel for Appellant Establishment has referred to judgment of *Hon'ble High Court of Calcutta, in the Case of M/s C.D. Steel Pvt. Ltd. and Others V.s. Assistant Provident Fund Commissioner WPA No. 20721/2021 reported in (2022) 5 CAL CK 0034*. In this judgment the Hon'ble High Court has held that this Tribunal has an Authority to invoke Section 5 of Limitation Act, to condone delay, if at all, in preferring the appeal. The relevant paragraphs of this judgments are being reproduced as follows :-

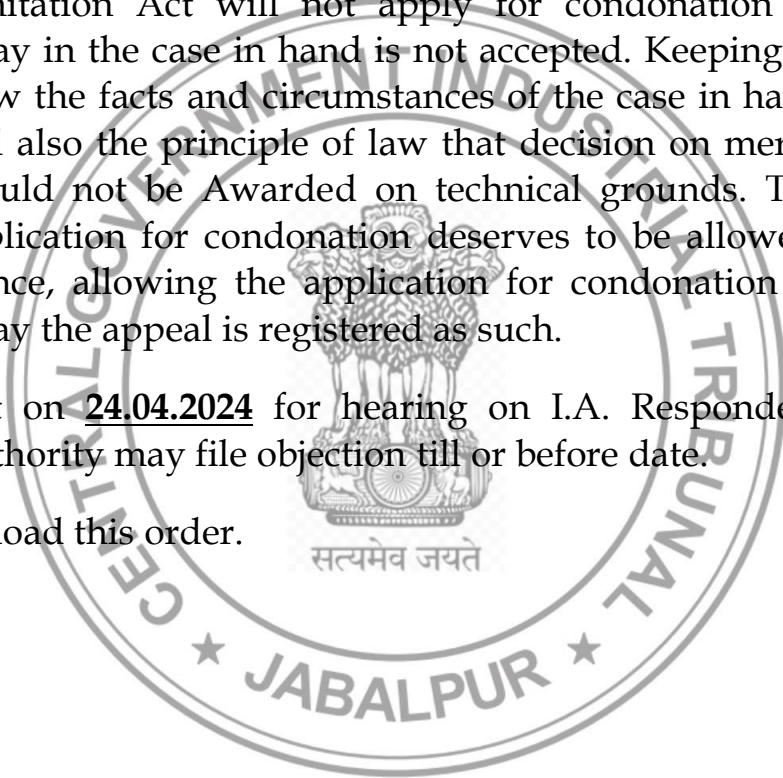
**17. Bar to the Tribunal to condone the delay beyond the period prescribed under Rule 7(2) of the Rules of 1997 and applicability of section 29(2) of the Act of 1963 have been strenuously argued by learned counsels for both the parties. Placing reliance on the authority in Commissioner of Customs and Central Excise (supra), learned counsel for the respondents has submitted that in absence of any clause condoning the delay in filing an application under a Special Act, there is complete exclusion of section 5 of the Limitation Act and the interpretation of limitation given in the Special Act cannot be diluted by the Court.**

**18. In Superintending Engineer/Dehar Power House (supra), the Hon'ble Supreme Court has observed that because of the provisions of the Central Excise Act, it was held that the time limit prescribed for making a reference to the High Court was absolute and unextendable by the Court under section 5 of the Limitation Act.**

**19. The Excise Act being a fiscal statute cannot be equated with the Act of 1952 which is a beneficial legislation and should be dealt with leniently.**

**20. At this juncture, reference to section 29(2) of the Limitation Act, 1963 may be relevant.**

**"29(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24(inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local**

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| <p>law."</p> <p><i>21. In other words, the provisions of the <b>Limitation Act</b> shall apply to any suit, appeal or application under any special or local law to the extent to which they are not expressly excluded by such law. This proposition of law has been endorsed by the Hon'ble Supreme Court in the authorities in <i>Superintending Engineer/Dehar Power House (supra)</i> and <i>Mukri Gopalan (supra)</i>. In this case, there being no express exclusion of the <b>Limitation Act 9</b> in the Rules of 1997, the proceeding will attract <b>section 29(2)</b> of the Limitation Act and consequently <b>section 5</b> of the Limitation Act shall apply to the proceeding before the Tribunal. <u>The Tribunal, therefore, has the authority to invoke <b>section 5</b> of the Limitation Act to condone the delay, if at all, in preferring the appeal.</u></i></p> <p>In the light of the aforesaid judgment, the objection from the side of Respondent Authority with Limitation Act will not apply for condonation of delay in the case in hand is not accepted. Keeping in view the facts and circumstances of the case in hand and also the principle of law that decision on merits should not be Awarded on technical grounds. The application for condonation deserves to be allowed. Hence, allowing the application for condonation of delay the appeal is registered as such.</p> <p>List on <b>24.04.2024</b> for hearing on I.A. Respondent Authority may file objection till or before date.</p> <p>Upload this order.</p> <div></div> <p>Presiding Officer</p> |
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