



Basic provisions of Limitation Act, 1963 which are relevant in the context of Excise, Customs & service Tax

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It is very often that the Tribunals while deciding tax related disputes considers various legal issues emerging out of various allied laws like Law of Limitation, Foreign Exchange Management Act, 1999 & Indian Evidence Act, 1872 etc. Therefore while practicing and presenting the case before Tribunals the Advocates & Chartered Accountants need to have knowledge on various provisions of allied laws. In this article i am highlighting some of provisions of Limitation Act which are very much relevant to our profession.

As administrative, recovery & appeal mechanism are very much same in Excise, Customs & Service Tax this discussion applies to Excise, Customs & as well as Service Tax.

The Limitation Act to put it in simple words prescribes the period of limitation for filing the appeal or Suit before Court or Tribunals. The law of limitation fixes a lifespan for legal remedy for the redressal of the legal injury so suffered. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time. Accordingly the schedules to Act prescribed the time limit within which the Suit or Appeal should be filed with the Court or Tribunal. An important provision in this Act would be Section 5-'**Extension of prescribed period in certain cases**'.

As per this Section any appeal filed after the expiry of time limit prescribed **may be admitted** if the Appellant shows the **sufficient cause** which prevented him filing the appeal within time prescribed. The Court has discretion to condone or refuse to condone the delay as is evident from words '*may be admitted*'.

In construction of Section 5, the Court will always keep in mind that discretion in this Section has to exercise to advance the substantial justice. The same wording of Section 5 has been incorporated in Section 35B of Central Excise Act, 1944, Section 86 of Finance Act, 1994 and Section 129A of Customs Act, 1962. There is no upper time limit to condone the delay in all of these cases.

The number of days delay may not be that much relevant and what is relevant is whether such delay is on account of sufficient cause or not. As per this Sections Tribunal also

empowered to condone the delay if there is sufficient cause prevented the Appellant in filing the appeal.

There is plethora of decisions in case of indirect taxes wherein Supreme Court & High Court considering the intent of Section 5 condoned the delay in filing the appeal to advance the substantial justice. Some of decisions are

- Hindustan Unilever Ltd. Commissioner Of C. Ex., Dibrugarh 2015 (315) E.L.T. 398 (Gau)
- Dwarkadhish Sakhar Karkhana Ltd Commr. Of Central Excise 2014 (308) E.L.T. 47 (Bom)
- Universal Paper Mills Ltd Vs Commr. Of Central Excise, Haldia 2014 (306) E.L.T. 395 (Cal)

Section 3

Section 3 of the Limitation Act empowers the Court to dismiss Appeal or application, if it is filed beyond the prescribed period of time limit. However the dismissal of appeal is **subject to Section 5** and other provisions of Limitation Act, 1963

Section 4

This Section explain if due date for filing the appeal expires on a day when the Court is closed, the Court can accept the application/appeal if it files on succeeding working day. The same provision is also provided in Section 10 of The General Clauses Act, 1897.

There are couple of cases in which accepted the payment of taxes or filing of the appeals on next succeeding working day if the due date prescribed happens holiday. It shall be treated as compliance on due date. Some of cases are as

- Kurto-O-John Shoe Components (India) Pvt. Ltd Vs Union Of India 2014 (304) E.L.T. 652 (All.)
- Indian Seamless Steel And Alloys Ltd Vs Union Of India 2003 (156) E.L.T. 945 (Bom.)

Section 12

Section 12 says that date of receipt of order to be excluded from computation of time limit for filing the appeal. The similar provision was already there in Section 9 of General Clauses

Act, 1887. This provision can be applied in situation of payment of duty within time & filing of the appeal/application.

Section 12 further says that the time requisite for obtaining a copy of the order/decreed from the date of pronouncement of order requires to be excluded from computation of limitation. Some of case laws wherein the above proposition discussed are as follows.

- Punjab Breweries Ltd Vs Cce 1985 (20) E.L.T. 420 (Tribunal)
- CCE Vs S.A.I.L., Rourkela Steel Plant 1992 (61) E.L.T. 732 (Tribunal)
- CCE Vs International Business Forms 2011 (264) E.L.T. 551 (Tri. - Chennai)

Section 14

As per Section 14 the time spent in prosecuting remedy before a **wrong forum/Court** under **bona fide** belief would be excluded for computing the time limit for filing the Appeal before right forum. The following conditions required to be satisfied to get exclusion of time spent for computing the period of limitation.

- The appeal has been filed in wrong Court not having the jurisdiction.
- The prior appeal has been filed & prosecuting with due diligence & in Good faith.
- The subject matter in issue involved in both the appeals is very much same.
- The Appeal has been dismissed by the earlier Court for want of jurisdiction or other cause of like nature.
- Both the proceedings are in Court or Trapping of Court or Court within meaning of Section 14.
- Both the proceedings are civil proceedings and prosecuted by the same party.
- All the above conditions are cumulative.

There is a clear distinction between the delay which can be condoned upon sufficient cause being shown under Section 5 and the period which should be excluded for considering limitation under Section 14. The former one is discretionary and later one is mandatory. Therefore period spent in wrong Court shall be excluded for computing the period of limitation before right Court.

In calculating the time spent in earlier proceedings before wrong Court the day on which the proceedings initiated & the day on which proceedings ended shall both be counted. Some of case laws wherein provisions of Section 14 are dealt as follows.

- Union Of India Vs EPCOS India Pvt. Ltd. 2013 (290) E.L.T. 364 (Bom.)

- Sonia Overseas Pvt. Ltd Vs Union of India 2015 (316) E.L.T 578 (P & H)
- CCE Vs Cairn Energy India PTY. Ltd 2015 (316) E.L.T 612 (A.P)

Section 17

Section 17 is having the four integers. Out of four, one integer is important & relevant which says that the limitation provided in statute will not be counted in a case where application or appeal is filed for relief from the consequences of a mistake till the date of mistake is discovered with reasonable diligence.

To put it on understandable way duty was paid on goods which are not exigible to Excise/Customs as the case may be, but subsequently tax payer came to know his mistake that duty is not at all leviable (unconstitutional levy).

Now he can file the application for refund on the ground that tax was paid due to mistake of law. Till the time of discovering the mistake with due diligence, period of limitation shall not begin. Such period will not be computed for calculating the period of limitation. Therefore in cases of unconstitutional levies there is chance of filing refund claims under 72 of the Contract Act (Rule of Equity) along with Section 17(1)(c) of the Limitation Act, 1963.

The other three integers are talking about filing of appeals in case of commission of fraud. There are various circumstances wherein the department invoked Section 17(a),(b),(c) of the Limitation Act, 1963 in cases where assessee committed the fraud. It is based on cardinal principle which is enshrined in Section 17 of the Limitation Act that fraud nullifies everything.

Section 29

It says if any special or local law prescribes the limitation for filing the appeal, the provisions of Limitation Act will apply as if such limit is prescribed by Limitation Act in its schedule. Section 29 further says that for the purpose of determining period of limitation for the purpose of Special law or local law the provisions of Sections 4 to 29 of Limitation Act shall apply unless their applicability expressly excluded by provisions of such special law or Local law.

If none of provisions from Section 4 to Section 29 are excluded, then all Sections would be applicable. The time limit for filing the appeal before Appellate Commissioner in the case of Excise & Customs is 60 days from date of receipt of order in original. Appellate Commissioner can condone delay in filing appeal **up to 30 days** provided that there is sufficient cause prevented the Appellant for filing the appeal within time.

Therefore the maximum condonable period in hands of Appellate Commissioner is **up to 30 days** thereby it expresses intention of legislature in case of Excise & Customs to exclude applicability of Section 5 of Limitation Act, 1963 to condone delay beyond 30 days. Therefore if any Appellant files the Appeal for beyond condonable period of 30 days whatsoever the cause prevented him in filing the appeal, such appeal will not be entertained. The adjudication order passed by authority will attain the finality.

This legal position has also clarified by the Apex Court in the case of Singh Enterprises Vs Commissioner Of C. Ex., Jamshedpur 2008 (221) E.L.T. 163 (S.C.) and there are various other judgments also to this effect. This legal position will also apply to applications under Section 35EE of Central Excise Act, 1944 wherein the revision authority cannot condone the delay beyond the period of 3 months.

Whenever we are applying the particular provision of Limitation Act to cases of Excise or Customs we need to ensure whether operation of such provision is excluded by express provision in Excise or Customs as case may be. Example application of Section 14 of Limitation Act not expressly excluded either in Excise or Customs Law & Section 14 is mandatory in nature therefore even Appellate Commissioner has to exclude such period while calculating the period of limitation.

To the extent of my knowledge apart from maximum condonable limit in hands of Appellate Commissioner or Revision authority there is no other provision either in Excise Act or in Customs Act expressly excluding the application of any of provisions of Limitation Act, 1963. Further the operation of provisions of Limitation Act, 1963 to Special or local law not to be judged from terms of Limitation Act but should be decided from provisions of special laws like Excise & Custom in our case.