LIMITATION ACT, 1963 – WHETHER APPLICABLE TO PROCEEDINGS BEFORE TRIBUNAL AND QUASI-JUDICIAL AUTHORITIES ?

by

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A question has been often been debated as to whether the provisions of Limitation Act, 1963 shall also be applicable to proceedings pending before Tribunals (be it - ITAT, CESTAT, CLB, FERA Board, IPR Board, and other Tribunals & Forums) and Quasi-Judicial Authorities in as much as, strictly speaking, the provisions of Limitation Act, 1963 apply only to Court. The Hon'ble Supreme Court has, in a great length, debated this extremely important issue in a landmark judgment in the case of MP Steel Corporation Vs. Commissioner of Central Excise 2015(319) ELT 373 SC = MANU/SC/0484/2015. Before this celebrated judgments, all other judgments of Hon'ble Supreme Court had consistently held that the provisions of Limitation Act, 1963 shall apply only to Courts and shall not apply to Tribunal and Quasi-Judicial authorities.

2. The Chapter IV of Part V deals with the Supreme Court and Chapter V of Part VI of the Constitution deals with the High Courts and Courts subordinate thereto. When the Constitution uses the expression "court", it refers to the Court system. As opposed to this Court system, there is a system of quasi-judicial bodies called Tribunals. The question is whether the Limitation Act, 1963 extends beyond the court system mentioned above and embraces within its scope quasi-judicial bodies as well.

3. The importance to go into historical background is significant in view of extremely important question which is often debated as to whether the provisions of Section 5 (condonation of delay in filing appeal, application or suit) and Section 14 (exclusion of time undergone in pursuing legal remedy

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before the wrong forum) shall apply to the proceedings before Tribunal (CESTAT, ITAT & other Tribunals) and Quasi-Judicial Authority i.e. Commissioner and Commissioner (Appeal) and Adjudicating Authority of the rank below Commissioner.

HISTORICAL BACKGROUND:

4. In a first such judgment, the distinction has been brought out between courts and quasi-judicial decisions by Four Member Bench Judgment in the case of Bharat Bank Ltd. v. Employees of Bharat Bank Ltd. MANU/SC/0030/1950 : 1950 SCR 459.

5. In the case of Town Municipal Council, Athani v. Presiding Officer, Labour Court MANU/SC/0331/1969 : (1969) 1 SCC 873, a question arose as to whether applications made to Labour Court under Industrial Disputes Act are covered under Article 137 of the Schedule to the Limitation Act (Article 137 defines period of limitation where there is no specific period of limitation prescribed under Limitation Act for initiating legal proceedings – in other words, a Article 137 is a residuary provision) and Apex Court has negative this plea and observed as follows:

> An Industrial Tribunal or a Labour Court dealing with applications or references under the Act are not courts and they are in no way governed either by the Code of Civil Procedure or the Code of Criminal Procedure. We cannot, therefore, accept the submission made that this Article will apply even to applications made to an Industrial Tribunal or a Labour Court to bodies other than courts, such as a quasi judicial tribunal, or even an executive authority..

6: Similarly, in Nityananda, M. Joshi and Ors. v. Life Insurance Corporation and Ors. MANU/SC/0320/1969 : (1969) 2 SCC 199, the Apex Court once again pronounced that Article 137 postulated applications made to Courts and not to Tribunal. The 3 Judge bench judgment in the case of Kerala State Electricity Board v. T.P. Kunhaliumma MANU/SC/0323/1976 : (1976) 4 SCC 634 is an authoritative pronouncement that the Limitation Act applies only to courts and not to quasi-judicial Tribunals. This judgment is an authoritative pronouncement by a 3-Judge Bench that the Limitation Act applies only to courts and not to quasi-judicial Tribunals.

DO THE LIMITATION ACT APPLY TO THE PROCEEDINGS BEFORE SALES TAX AUTHORITIES ?

7: In the case of Commissioner of Sales Tax, U.P., Lucknow v. Parson Tools and Plants, Kanpur MANU/SC/0449/1975 : (1975) 4 SCC 22, a 3-Judge Bench has, intr-alia, observed as follows:-

> The Taxing authorities are instrumentalities of the State. They are not a part of the legislature, nor are they a part of the Judiciary. Their functions are the assessment and collection of taxes and in the process of assessing taxes, they follow a pattern of action which is considered judicial. They are not thereby converted into courts of civil judicature. They still remain the instrumentalities of the State and are within the definition of 'State' in Article 12.
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> The Appellate Authority and the Judge (Revisions) Sales tax exercising jurisdiction under the Sales Tax Act, are "courts". They are merely Administrative Tribunals and "not courts". Section 14, Limitation Act, therefore, does not, in terms apply to proceedings before such tribunals.

DO THE LIMITATION ACT APPLY TO THE PROCEEDINGS BEFORE LAND ACQUISITION ACT:

8: In the case of Officer on Special Duty (Land Acquisition) v. Shah Manilal Chandulal MANU/SC/1554/1996 : (1996) 9 SCC 414, the Supreme Court has held that “Land Acquisition Officer” under the Land Acquisition Act is not a court and, therefore, the provisions of the Limitation Act shall not apply.

9: However, contrary to the line of above judgments, the Two Member bench of Hon’ble Supreme Court in the case of Mukri Gopalan v. Cheppilat Puthanpurayil Aboobacker MANU/SC/0453/1995 : (1995) 5 SCC 5, has held that the Limitation Act would apply to the Appellate Authority constituted under Section 13 of the Kerala Buildings (Lease and Rent Control) Act, 1965 by applying the provision of Section 29(2) of the Limitation Act.

DO SECTION 14 LIMITATION SHALL APPLY TO PROCEEDINGS BEFORE TRIBUNAL OR QUASI-JUDICIAL AUTHORITIES ?

10: The Hon’ble Supreme Court has held in Shakti Tubes Ltd. v. State of Bihar MANU/SC/8471/2008 : (2009) 1 SCC 786 that Section 14 of Limitation Act, 1963 shall have to be liberally construed to advance the cause of justice and would include within it quasi-judicial tribunals as well. The word "court" in Section 14 takes its colour from the preceding words "civil proceedings" - civil proceedings are of many kinds and need not be confined to suits, appeals or

applications but would also include civil proceeding and can even be a revision petition falling before quasi-judicial tribunal under a particular statute.

WHETHER PRINCIPLE OF SECTION 14 WOULD APPLY TO AN APPEAL UNDER SECTION 128 CUSTOMS ACT OR APPEAL UNDER SECTION 35 OF CENTRAL EXCISE ACT TO COMMISIONER (APPEAL) AND UNDER SECTION 35B OF CENTRAL EXCISE ACT, 1944 TO CESTAT.

11: For easy reference, Section 14 of Limitation Act, as is relevant for our purpose, is reproduced below:-

> **14. Exclusion of time of proceeding bona fide in court without jurisdiction.**--(1) In computing the period of limitation for any suit the time during which the Plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the Defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.
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> (2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.
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> (3) Notwithstanding anything contained in Rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of Sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court Under Rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

11.1: The provisions of **Section 128 of Customs Act** are reproduced below for easy reference:-

> 128. appeals **to Commissioner (**appeals**)**.--(1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a Commissioner of Customs may appeal to the Commissioner (Appeals) within [sixty days] from the date of the communication to him of such decision or order:

[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.]

[(1-A) 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:

12: In the judgments cited in the preceding para, it has been held that by the Supreme Court that the Limitation Act including Section 14 would not apply to appeals filed before a quasi-judicial Tribunal and Collector (Appeals) mentioned in Section 128 of the Customs Act. It would be extremely important to note another authority of Supreme Court in the case of Bhudan Singh and Anr. v. Nabi Bux and Anr**.** MANU/SC/0353/1969 : (1970) 2 SCR 10, wherein it has been observed that justice and reason is at the heart of all legislations by Parliament. The court further observed that 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.

13: The Division Bench of Karnataka High Court in the case of Director of Mines & Geology Vs. CCE MANU/KA/2962/2011 : 2013(31) STR 275 (Kar), while dealing with Section 85 of the Finance Act, 1994 (i.e. appeal to Commissioner (Appeals), on the issue of applicability of Section 5 of Limitation Act, 1963, has observed as under:-

"6. A perusal of the aforesaid provision makes it clear that a right of appeal is created in favour of an assessee to challenge an order passed by the Adjudicating Authority subordinate to the Commissioner of Central Excise. The appeal lies to the Commissioner of Central Excise (Appeals). Sub-section 3 of Section 85 provides the period of limitation within which such an appeal is to be filed. It provides three months time to prefer an appeal from the date of receipt of the decision or order of such Adjudicating Authority. A proviso to the said provision makes it clear that if the appeal is not filed within three months as prescribed under sub-Section 3 of Section 85, the Commissioner of Central Excise (Appeals) is vested with the power to condone the delay if sufficient cause is made out for the delay in preferring the appeal. However, the said delay cannot exceed three months in addition to the period of three months prescribed for preferring an appeal. Therefore, the Act provides for a period of limitation as well as the provision for condoning the delay. Therefore, when an

express provision is made for a period of limitation and also for condoning the delay, the said provision override the provisions of the Limitation Act which is the general law governing the law of limitation. In those circumstances, Section 5 of the Limitation Act, which provides for condoning the delay, is not attracted."

13.1: The Division Bench of Karnataka High Court has held that if a maximum period is prescribed within which the Commissioner (Appeals) can grant condonation of delay, he has no power to exceed the maximum time prescribed under the law within which the delay can be condoned.

PRINCIPLE GOVERING APPLICABILITY OF SECTION 14 – LIMITATIO ACT:

14: The Hon'ble Supreme Court in the case of Consolidated Engg. Enterprises v. Principal secy., Irrigation Deptt. MANU/SC/7460/2008 : (2008) 7 SCC 169, has laid down the following conditions for invocation of Section 14 of Limitation Act:-

(*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 the prior proceeding was due to defect of jurisdiction or other cause of like nature;

(*4*) The earlier proceeding and the latter proceeding must relate to the same matter in issue and;

(*5*) Both the proceedings are in a court.

15: Now, comes the land-mark case of the Hon'ble Supreme Court in the case of MP Steel Corporation Vs. CCE 2015(319) = 2015 ELT 373 SC has clearly held that the provisions of Section 14 of Limitation Act, 1963 shall apply.

FACTS OF THE CASE:

On 3.3.1992, the Appellant cleared the vessel on payment of customs duty on the basis of 7009 metric tons and executed a bank guarantee for Rs. 19,90,275/- being the difference in customs duty on 1561 metric tons. On 25.3.1992, the Collector of Customs, Rajkot, directed the Assistant

Collector, Bhavnagar to encash the bank guarantee furnished by the Appellant. On 2.4.1992, the Superintendent of Customs and Central Excise sent a letter to the Appellant communicating the decision of the Collector, as aforesaid. The bank guarantee was duly encashed on 3.4.1992. After protesting against the said illegal action of the Department in encashing the bank guarantee, the Appellant preferred an appeal against the Superintendent's letter dated 2.4.1992 and the Collector's order dated 25.3.1992 before CEGAT. On 23.6.1998, the Appellate Tribunal allowed the appeal and set aside the order of the Collector dated 25.3.1992. In the year 2000, the Department preferred an appeal before this Court. On 12.3.2003, the Supreme Court allowed the appeal. On 23.5.2003, the Appellant filed an appeal before the Commissioner (Appeals) against the order passed by the Superintendent, Customs dated 2.4.1992. On 4.8.2003, an application to condone delay in filing the appeal was made. By an order dated 27.10.2003, the Commissioner of Customs (Appeals) dismissed the appeal on the ground of delay stating that the appeal had been filed beyond the period of 60 days plus 30 days provided for in Section 128 of the Customs Act. Against this order, CESTAT dismissed the appeal of the Appellant stating that the Commissioner (Appeals) had no power to condone delay beyond the period specified in Section 128. Against the order CESTAT, an appeal was filed by the Appellant before Supreme Court and the Supreme Court has ordered exclusion of time from 1992 to 2003, and held that the appeal to Commissioner (Appeals) in the year 2003 in time.

QUESTION FOR CONSIDERATION:

16: The question which fell for consideration before Supreme Court was whether period from 1992 to 2003 (i.e. a period of 11 years), during which appellant was prosecuting his remedy before wrong forum, is entitled to the excluded by virtue of principle enshrined under Section 14 of Limitation Act, 1963.

RATIO LAID DOWN BY SUPREME COURT:

The amended Section 128 has now reduced this period, with effect from 2001, to 60 days plus 30 days, which is 90 days. The order that is challenged in the present case was passed before 2001 and hence, the Supreme Court, un-amended provisions which provide for a period of 180 days (which includes the discretionary period of 90 days) shall apply. A shadow was cast by the abortive appeal from 1992 right upto 2003. This shadow was lifted when it became clear that the proceeding filed in 1992 was a proceeding before the wrong forum. The vested right of appeal within the period of 180 days had not

yet got over after excluding the period of 11 years. While considering exclusion of period from 1992 to 2003, the Hon'ble Supreme Court observed that like Section 34 of the Arbitration Act, Section 128 of the Customs Act is a Section which lays down that delay cannot be condoned beyond a certain period. Like Section 34 of the Arbitration Act, Section 128 of the Customs Act does not lay down a long period. In these circumstances, to infer exclusion of Section 14 or the principles contained in Section 14 would be unduly harsh and would not advance the cause of justice. Accordingly, the Supreme Court, while setting aside the order of CESTAT, directed the CESTAT to hear appeal on merits.

16.1: From the judgment of Supreme Court in the case of M P Steel Corporation (supra), it is also manifestly clear that in case the impugned order has been passed and thereafter the law has been amended, then the un-amended provisions of law shall apply for the purpose of filing an appeal before higher appellate forum.

17: The Supreme Court, in the case of Union of India and another v. Paras Laminates (P) Ltd., MANU/SC/0173/1991 : 1991 SCC (L&S) 208 while dealing with the power and function of the Customs, Excise and Gold (Control) Appellate Tribunal, held as follows:

> "The Tribunal functions as a court within the limits of its jurisdiction. It has all the powers conferred expressly by the statute. Furthermore, being a judicial body, it has all those incidental and ancillary powers which are necessary to make fully effective the express grant of statutory powers. Certain powers are recognized as incidental and ancillary, not because they are inherent in the Tribunal, nor because its jurisdiction is plenary, but because it is the legislative intent that the power which is expressly granted in the assigned field of jurisdiction is efficaciously and meaningfully exercised. The powers of the Tribunal are no doubt limited. Its area of jurisdiction is clearly defined, but within the bounds of its jurisdiction, it has all the powers expressly and impliedly granted. The implied grant is, of course, limited by the express grant and, therefore, it can only be such powers as are truly incidental and ancillary for doing all such acts or employing all such means as are reasonably necessary to make the grant effective. As stated in Maxwell on Interpretation of Statutes (11th edn.) "where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution".

18: The apex Court in Mukri Gopalan v. Cheppilat Puthanpurayil Aboobacker, MANU/SC/0453/1995 : (1995) 5 SCC 5 examined the question, whether the provision of the Limitation Act will apply to the Kerala Buildings (Lease and Rent Control) Act, 1965. The Apex Court held that the Appellate Authority under the Kerala Act acts as a Court and since the Act prescribes a period of limitation, which is different from the period of limitation prescribed under the Limitation Act and since there is no express exclusion of Sections 4 to 24 of the Limitation Act, these provisions of Limitation Act shall be applicable to the Kerala Act.

19: The Full Bench of the Orissa High Court in the case of Akshaya Kumar Parida Vs. Union of India MANU/OR/0022/2015, while explaining the scope of Section 5 of Limitation Act, 1963, (dealing with condonation of delay) has observed as under:-

> 14. The provision regarding period of limitation provided in Rule 17 howsoever peremptory or imperative the language may be, is not sufficient to displace the applicability of Section 5 of the Limitation Act. It is true that the language of Rule 17 is mandatory and compulsive, in that, it provides in no uncertain terms that no application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed. But the same is the language of every provision prescribing a period of limitation. It is because a bar against entertainment of an application beyond the period of limitation is created by a special or local law that it becomes necessary to invoke the aid of Section of the Act in order that the application may be entertained despite such bar.

20: To sum up, in the landmark judgment of MP Steel Corporation (supra), it has been held by the Hon'ble Supreme Court that for the purpose of counting limitation for filing an appeal, the period undergone before the wrong forum where the appellant was pursuing the legal remedy under bonafide mistake, shall be liable to be excluded and the appeal must be entertained despite the upper time limit prescribed under various statutes. For example, where normal period for filing an appeal is 90 days and with an application seeking condonation of delay, further period of 30 days is provided and then, by virtue of above judgment, the appellate forum can condone the delay even beyond 30 days so prescribed upon invoking the provisions of Section 14 of Limitation Act.

The Supreme Court in the case of Collector, Land Acquisition Vs. Mst. Katiji MANU/SC/0460/= AIR 1987 1353/1987 has observed as under:-

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

The Supreme Court in the case of N Balakrishnan Vs. M Krishnamurthy AIR 1998 SC 3222 has held that unless there is a deliberate, malafide or gross negligence, reasonable delay should be condoned in as much as a person does not benefit by filing a petition with delay. Once no malafides or illegal motive can be imputed to a person to file a petition with delay, delay should ordinarily be condoned.

The Supreme Court in the case of S. Ganesharaju vs. Narasamma MANU/SC/0379/2012 : 2012 (4) SCALE 152 has held as under :-

"15. The expression "sufficient cause" as appearing in the S.5 of the Indian Limitation Act 1963 has to be given a liberal construction so as to advance substantial justice.

16. Unless the respondents are able to show malafide in not approaching the court within the period of limitation generally as a normal rule the delay should be condoned. The trend of the courts while dealing with the matter with regard to condonation of delay has titled more towards

condoning delay and directing the parties and contest the matter on merits meaning thereby that such technicalities have been give a go by.

17. Rules of limitation are not meant to destroy or foreclose the rights of the parties they are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly.

18. We are aware of the fact that refusal to condone delay would result in foreclosing the suitor from putting forth his cause there is no presumption that delay in approaching the court is always deliberate.

19. In fact it is always just, fair and appropriate that matters should be heard on merits rather than shutting the doors of justice at the threshold since sufficient cause has not been defined thus the courts are left to exercise the discretion to come to the conclusion whether circumstances exist establishing sufficient cause. The only guiding principle to be seen is whether a party has acted with reasonable diligence and had not been negligent and callous in the prosecution of the matter...."

The Supreme Court in the case of Katari Suryanarayana v. Koppisetti Subba Rao MANU/SC/0545/2009 : (2009) 11 SCC 183 and stated thus:

25. We may state that even if the term "sufficient cause" has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of "reasonableness" as it is understood in its general connotation.

26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.

In Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai MANU/SC/0298/2012 : (2012) 5 SCC 157, the Supreme Court has ruled thus:

23. What needs to be emphasized is that even though a liberal and justice-oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.

24. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.

The Supreme Court in the case of Esha Bhattacharjee Vs. Raghunatha Nafar Academy. MANUSC/0932/2013 = 2013(12) SCC 649 has summarized the principle emerged from all previous decisions of the Supreme Court.

(i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required

to be vigilant so that in the ultimate eventuate there is no real failure of justice.

(vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

In the above aforesaid, the Supreme Court also laid down guide-lines for drafting of an application seeking condonation of delay.

(a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

(b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

(c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

(d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.

The Full Bench of Orissa High Court in the case of AK Parida Vs. Union of India MANU/Ori/0022/2015 = AIR 2015 Orissa 49 has observed that in case, the applicability of provision of Limitation Act, 1963 has not been specifically excluded under any Act, the provisions of Limitation Act, shall apply to proceedings under that law. The Full Bench observed as under:-

20. In view of the authoritative pronouncement of the apex Court in the case of Mukri Gopalan (MANU/SC0433/1995 = 1995(5) SCC 5), a situation wherein a period of limitation is prescribed by a special or local law for an application of review and for which no provision is made in the Schedule to the Act, the second condition for attracting Section 29(2) of the Act is attracted. From the enunciation of law laid down in Mukri Gopalan (supra), it must be held that in view of Section 29(2) of the Limitation Act, the Tribunal has the jurisdiction to entertain the application for condonation of delay filed under Section 5 of the Limitation Act. Rule 17 of the Rules does not take away the jurisdiction of the Tribunal to entertain and dispose of the application under Section 5 of the Limitation Act, since applicability of Section 5 of the Limitation Act has not been expressly excluded thereby.