

APPEALS BARRED BY TIME:
IS THERE LIFE BEYOND 4 MONTHS

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AIFTP – WEST ZONE



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IS THERE LIFE BEYOND 4 MONTHS ?

Appeals Barred by Time

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APPEALS BARRED BY TIME: THE LIMITATION ACT, 1963

Preamble of The Limitation Act, 1963:

"An Act to consolidate and amend the law for the limitation of suits and other proceedings and for purposes connected therewith."

This Act replaced the earlier **Limitation Act of 1908** and came into force on **1st January 1964**. It governs the time limits within which lawsuits must be filed in civil courts.

The law of limitation finds its roots in the Two maxims:

Interest Reipublicae Ut Sit Finis Litium which means that in the interest of the state as a whole there should be a limit to litigation and

Vigilantibus non dormientibus Jura subveniunt which means the law will assist only those who are vigilant with their rights.

Practical Importance of Limitation Period:

Judicial Efficiency: Encourages timely resolution of disputes.

Prevents Stale Claims: Ensures that legal disputes are fresh and evidence is intact.

Balances Interests: Protects defendants from perpetual legal threats while giving plaintiffs sufficient time to seek legal remedies.

Appeals Barred by Time: The Limitation Act, 1963

“Extension of prescribed period in certain cases”

Section 5 of The limitation Act,1963 “*Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted **after the prescribed period** if the appellant or the applicant **satisfies** the court that he had **sufficient cause** for not preferring the appeal or making the application within such period.*”

Explanation: “*The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.*”

Discretionary power: Courts may condone delays in filing appeals/applications (excluding certain execution proceedings under CPC Order XXI) if the applicant shows a “sufficient cause”.

“**Sufficient cause**” is not defined; it's interpreted **liberally**, considering *fairness and genuine reasons* such as illness, misleading court practice or procuring official documents etc.

Courts should have a “**liberal, substantial justice-oriented**” approach, *not letting technicalities obstruct justice*—unless there's negligence, mala fide or inaction

Appeals Barred by Time: Time Period in GST

Prescribing the **Limitation** is rooted in **public policy**—rights should only expire after prescribed periods. GST being a **compliance based law**, so it must also have **more disciplined approach**.

Appeals to Appellate Authority

107. (1) *Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within **three months** from the date on which the said decision or order is communicated to such person.*

107.(4) *The Appellate Authority may, if he is satisfied that the appellant was prevented by **sufficient cause** from presenting the appeal within the aforesaid period of three months or six months, as the case may be, **allow it to be presented within a further period of one month.***

There is **no explicit provision** for condoning delay beyond that 4-month period.

However, there is also **no non-obstante clause** in Sec 107(1) or (4) obstructing application of Section 5 of the Limitation Act, 1963.

NON-OBSTANTE CLAUSE vis-à-vis GST LAW

Meaning: A Non-Obstante Clause is a legislative device used to **give overriding effect** to certain provisions of a statute over contrary provisions in the same or other statutes. It typically begins with the phrase: **“Notwithstanding anything contained in...”**

This clause is used to indicate that the section containing it will **prevail over anything** to the contrary in the **rest of the law or in any other law**.

Purpose and Usage of Non-Obstante Clause :

To **override conflicting provisions** in the same statute or in different statutes.

To grant **exclusive authority or priority** to a specific provision.

No such clause has been provided in **Section 107 or any other provision** in the relevant Chapter XVIII pertaining to **APPEALS AND REVISIONS** under GST Law.

The underlying principle is that **if a specific law has its own limitation rules**, they will generally take precedence over the general rules of the Limitation Act. However, if there is a **conflict or ambiguity**, courts may need to interpret the relevant provisions to determine which law should prevail.

Courts must balance justice while respecting limitation policy. **Collector, Land Acquisition, Anantnag v. Katiji, 1987 (28) E.L.T. 185 (S.C.)**

APPEALS BARRED BY TIME: APPLICATION OF NON-OBSTANTE CLAUSE

Aginiti Industrial Parks Pvt. Ltd. vs. Superintendent of CGST and Central Excise (2024) 15 Centax 121 (Mad.)

Para 8.3 A reading of Section 88 of the Finance Act and Section 238 of the IBC would reveal that Section 88 of the Finance Act, creates a statutory first charge in respect of the tax dues under the Finance Act, 1994, on the property of the assessee or the person as the case may be. However, the first charge is made subject to the provisions of IBC as evident from the set of expressions "save as otherwise provided in Insolvency and Bankruptcy Code, 2016" employed in Section 88 of the Finance Act, 1994.

Section 238 of IBC contains an non-obstante clause thereby giving it an overriding effect in the event of conflict with any other law for the time being in force.

The clause 'notwithstanding anything contained in any law for the time being in force', is normally appended to a section in the beginning, with a view to give the enacting part of the section, in case of conflict, an overriding effect over the other provision or Act. Union of India v. G.M. Kokil 1984 (Supp) SCC 196, AIR 1984 SC 1022; Chandavarkar Sita Ratna Rao v. Ashalata S. Guram (1986) 4 SCC 447, AIR 1987 SC 117.

APPEALS BARRED BY TIME: APPLICATION OF NON-OBSTANTE CLAUSE

Vishin N. Kanchandani v. Vidya L. Khanchandani (AIR 2000 SC 2747)

*Para 11.There is no doubt that by **non obstante clause** the Legislature devices means which are usually **applied to give overriding effect to certain provisions** over some contrary provisions that may be found either in the same enactment or some other statute. In other words such a clause is used to avoid the operation and effect of all contrary provisions. The phrase is equivalent to showing that the Act shall be no impediment to measure intended. To attract the applicability of the phrase, the whole of the section, the scheme of the Act and the objects and reasons for which such an enactment is made has to be kept in mind.*

Aswini Kumar Ghose v. Arabinda Bose (1952):

*“Para 27.the **non obstante clause** can reasonably be read as overriding "anything contained" in any relevant existing law which is inconsistent with the new enactment, although the draftsman appears to have had primarily in his mind a particular type of law as conflicting with the new Act. The enacting part of a statute must, where it is clear, be taken to control the non obstante clause where both cannot be read harmoniously; for, even apart from such clause, a later law abrogates earlier laws clearly inconsistent with it.”*

Absence of Non-Obstante Clause – Decisions In favor of Assessee

The Hon'ble High Court of Calcutta in the case of *SK Chakroborty & Sons v Union of India*, M.A.T. 81 of 2022, 2024 (88) G.S.T.L. 328 (Cal.) observed that:

In the GST Law the applicability of Limitation Act has not been expressly excluded. Therefore, it cannot be said that there would be no applicability of the Limitation Act, 1963 in the GST Laws.

Note: The operation of the said Judgment has been however presently stayed by the Hon'ble Supreme Court in the SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 20272/2024, (2025) 27 Centax 203 (S.C.)

Arvind Gupta v. Assistant Commissioner of Revenue State Taxes, (2024) 14 Centax 295 (Cal.) (Calcutta HC, Jan 4, 2024) - relied upon the Judgment of SK Chakroborty & sons v Union of India, M.A.T. 81 of 2022 and have held as under:

10. The Hon'ble Division Bench further observed that since the provisions of Section 5 of the Act of 1963 have not been expressly or impliedly excluded by Section 107 of the Act of 2017 by virtue of Section 29(2) of the Act of 1963, Section 5 of the Act of 1963 stands attracted. It follows therefrom that the appellate authority is left with the discretion to allow an appeal to be presented within a period of one month after expiry of the period of limitation stipulated from the date of communication of the order upon sufficient cause being shown. Since the applicability of the 1963 Act has not been expressly or impliedly excluded, the appellate authority has the power to condone delay in preferring the appeal beyond the limitation specified in Section 107 of the said Act in view of the decision in S.K. Chakraborty (supra).

APPEALS BARRED BY TIME: CONDONATION OF DELAY

- The Constitution of India provides right to carry on trade and profession under Article 19 which shall not be curtailed or subjected to hurdles in trade and profession by imposing statutory limits of time period in filing appeals under the GST Laws.
- The concept of *condonation of delay* refers to the **discretionary power** vested with **quasi-judicial authorities** to allow a taxpayer to file concern appeal/application provided sufficient cause is demonstrated in accordance to the general principles with the law recognises as relevant for the purpose of *condonation of delay*.
- However, this power is limited by the scope and intent of the governing statute as has been unfortunately prescribed in the GST law. Unlike constitutional courts, quasi-judicial authorities are bound strictly by the provisions of the statute under which they operate and cannot travel beyond it.
- While the courts may entertain petitions for *condonation of delay* under constitutional remedies—specifically under Article 32 or Article 226 of the Constitution of India—such reliefs are not generally available through quasi-judicial forums unless expressly permitted by the statute.

APPEALS BARRED BY TIME: CONDONATION OF DELAY

- Section 5 of the Limitation Act, 1963 does not automatically apply to tax statutes such as the GST Law, unless the statute explicitly incorporates it as being interpreted by the Courts even though its application has not explicitly put out of bounds of the provisions of GST law. However, Section 5 of the Limitation Act is comfortably applicable in civil matters as well as was applicable in erstwhile provisions of Trade Tax or Commercial Tax or VAT since beginning.
- GST being a compliance-based law, every obligation have been fixed upon the taxpayer, no-doubt it is primarily the responsibility of the taxpayer to ensure compliance with statutory requirements within the prescribed timelines, especially where the statute explicitly provides for a limited condonable period of basic three months and additionally just one month without allude to aspects such as sufficient cause or other similar factors which may have prevailed and led to the appeal not being lodged within the prescribed time.
- Extensions or Relaxations are generally granted only in exceptional circumstances—such as natural calamities or events beyond the control of taxpayers—through notifications or orders issued by the Central Board of Indirect Taxes and Customs (CBIC). Such relaxations may pertain to filing of returns, payment of taxes, submission of refund claims, applications for revocation of registration cancellation, or even filing of appeals.

JUDICIAL PRECEDENTS

Appellate Authority is statutorily empowered to condone up to 1 month after the 3-month limit under Sec 107(4).

Beyond that, High Courts have stepped in via Article 226 or through the Limitation Act to provide relief in exceptional circumstances—like illness, procedural hurdles, or pre-deposit issues.

These rulings reflect a liberal, justice-oriented judicial stance against strict technical rejection in GST appeals.

The Judgments analyzing provisions of those special laws where there is absence of non-obstante clause would also be applicable in GST as there is no non-obstante clause present in entire GST Law in respect to obstructing the scope of Section 5 of the Limitation Act.

APPEALS BARRED BY TIME: CONDONATION OF DELAY

In favor of Assessee

Tvl. Suguna Cut Piece Centre v. Appellate Deputy Commissioner (ST-GST) 2022 (61) G.S.T.L. 515 (Mad.) The Hon'ble High Court of Madras in the said case observed that:

- The provisions of the GST enactments cannot be interpreted so as to deny the right to carry on Trade and Commerce to a citizen and subjects.
- The constitutional guarantee is unconditional and unequivocal and must be enforced regardless of the defect in the scheme of the GST enactments.
- The right to carry on trade or profession also cannot be curtailed. Only reasonable restriction can be imposed.
- To deny such rights would militate against their rights under Article 14, read with Article 19(1)(g) and Article 21 of the Constitution of India.

APPEALS BARRED BY TIME: CONDONATION OF DELAY In favor of Assessee

Contd: Tvl. Suguna Cut Piece Centre v. Appellate Deputy Commissioner (ST-GST) 2022 (61) G.S.T.L. 515 (Mad.)

- Fit case for exercising the power under Article 226 of the Constitution of India in favour of the petitioners by quashing the impugned orders and to grant consequential relief to the petitioners.
- By doing so, the Court is effectuating the object under the GST enactment of levying and collecting just tax from every assessee who either supplies goods or service.
- Legitimate Trade and Commerce by every supplier should be allowed to be carried on subject to payment of tax and statutory compliance.

APPEALS BARRED BY TIME: CONDONATION OF DELAY In favor of Assessee

SRM Engineering Constrcution Corporation Ltd. v. Assistant Commissioner (2023) 10 Centax 286 (Mad)

Where business of company was closing due to loss and it had lack of employees to log in GST portal regularly and notice adjudication order, same was reasonable explanation for delay in filing appeal; such delay was to be condoned.

Green Field Agrotech v. State of West Bengal (Calcutta HC, 2024)

Delay beyond four months was dismissed initially.

The High Court emphasized that Section 5 Limitation Act is operative, and condonation under both statutory and judicial principles is permissible.

TATA STEEL V RAJ KUMAR BANERJEE & ORS., CIVIL APPEAL NO. 408 OF 2023, DATE OF JUDGMENT: 07.05.2025

This Judgment is the latest case law on the subject of *condoning the delay* by the statutory bodies, wherein the Hon'ble Apex Court have totally negated the 'condonation of delay' by the statutory bodies. The key takeaways are as under:

- Where a statute expressly limits (*Section 238 of IBC Law specifically provided non-obstinate clause over all Laws*) the period within which delay may be condoned, an Appellate Tribunal cannot exceed that limit. In other words, the NCLAT being a creature of statute, operates strictly within the powers conferred upon it. Unlike a civil suit, it lacks inherent jurisdiction to extend time on equitable grounds.
- Once the prescribed and condonable periods (i.e. 30 + 15 days) expire, the NCLAT has no jurisdiction to entertain appeals, regardless of the reason for the delay.
- Time is of the essence in statutory appeals, and the prescribed limitation period must be strictly adhered to. Even a delay of a single day is fatal if the statute does not provide for its condonation. As held by us, the NCLAT has no power to condone delay beyond the period stipulated under the statute. Allowing condonation in such cases would defeat the legislative intent and open the floodgates to belated and potentially frivolous petitions, thereby undermining the efficacy and finality of the appellate mechanism.

JUDGMENTS AGAINST ALLOWING THE CONDONATION OF DELAY

- *Singh Enterprises vs. Commissioner of C. Ex., Jamshedpur* 2008 (221) E.L.T. 163 (Supreme Court)
- *Garg Enterprises vs. State of U.P.* (2024) 15 Centax 510 (Allahabad High Court)
- *Addichem Speciality LLP v Special Commissioner*, W.P.(C) 14279/2024 (Delhi High Court)
- *Yadav Steels v Additional Commissioner*, WRIT TAX No. - 975 of 2023 (Allahabad High Court)

In *Singh Enterprises* the issue that Section 35 of the Excise Act whether affects the jurisdiction of the High Court under Article 226 of the Constitution was neither considered nor the absence of ‘non-obstinate clause’ with respect of Section 5 of Limitation Act in erstwhile Section 35 of Central Excise Act or now in Section 107 of the CGST Act has been considered. On perusal of the above Judgments which are based on the Judgment of *Singh Enterprises*, it comes out that ‘condonation of delay’ is not permissible beyond statutory prescribed period in the general law. But in some cases, it was also observed that condonation could be provided if the case fall in any of the exceptional categories where gross injustice is satisfactorily demonstrated. Thus, the importance of ‘sufficient cause’ for genuine delay by the appellant cannot be ignored.

Further, the above referred Judgments have not discussed about the legal applicability of the ‘non-obstante clause’ as discussed in the Judgment of **Vishin N. Kanchandani (SC)** and further have not discussed about the violation of Article 19 as discussed in the Judgment of **Tvl. Suguna Cut Piece Centre (Mad.)**.

TRADE RIGHTS VS. STATUTORY LIMITS

- **Fundamental rights** provided under **Article 19** (to practise any profession, or to carry on any occupation, trade or business) and **Article 21** (Protection of life and personal liberty) shall not be violated through statutory time limits.
- While **Article 19(1)(g)** ensures the right to conduct business, GST law's **express timelines** which are kept for **creating discipline** with **better compliance** should be respected as far as possible.
- Section 107's **limited extension window** reflects clear legislative intent to ensure **tax certainty and administrative finality** but without providing any **explicit restriction** for imparting Justice **considering the sufficient cause** for some delayed actions on the part of the taxpayer.
- Quasi-judicial forums **should apply broader principles** as provided in Section 5 of the Limitation Act **wherever no explicit restriction** has been placed **in the special enactment**.
- **Constitutional courts** may still intervene in **rare and exceptional** cases; however, they too generally respect statutory time-bars unless **fundamental rights are infringed** or **gross injustice is imparted** by the Revenue.

CONCLUSION – WAY AHEAD

- Procedural laws shall not become the hindrance for **substantial relief**.
- **Power of Condoning Delay** should be **expressly vested** with the statutory bodies as sometimes the situation & circumstances are totally against the Assessee in observing the prescribed timelines.
- In **Writ Petitions under Articles 226/32**, some High Courts may grant relief— but this remains **exceptional**, especially where the **statute is viewed as self-contained**.
- Courts are **reluctant to interfere** unless the **facts are extraordinary** and **equity demands intervention**.
- **Constitutional Courts** could follow **liberal approach** while granting Condonation wherever **sufficient cause** for the delay exists.

THANK YOU

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