

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL Diary No(s).28900/2020

(Arising out of impugned final judgment and order dated 13-05-2019 in STA No. 11657/2013 passed by the Customs Excise Service Tax Appellate Tribunal, West Zonal Bench at Ahmedabad)

C.C.E. AND S.T., SURAT I

Appellant(s)

VERSUS

BILFINDER NEO STRUCTO CONSTRUCTION LTD.

Respondent (s)

(WITH IA No.7353/2021-CONDONATION OF DELAY IN FILING and IA No.7355/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.7354/2021-EX-PARTE STAY)

Date : 15-02-2021 This appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE M.R. SHAH

For Petitioner(s)

Mr. Tushar Mehta, SG
Mr. Balbir Singh, ASG
Mr. A.K. Panda, Sr. Adv.
Mr. S.A. Haseeb, Adv.
Mr. Shyam Gopal, Adv.
Mr. B.V. Balramdas, Adv.
Mr. B. Krishna Prasad, AOR

For Respondent(s) Ms. Charanya Lakshmikumaran, AOR
Mr. Aditya Bhattacharya, Adv.
Ms. Apeksha Mehta, Adv.
Ms. Mounica Kasturi, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1 Mr Tushar Mehta, learned Solicitor General has fairly responded to the request made by this Court in the previous order dated 10 February 2021. A detailed note has been placed on the record after deliberations have taken place with senior officials of the Union government, including the Finance Secretary, Union

Law Secretary and the Chairpersons of the Central Board of Direct Taxes and Central Board of Indirect Taxes and Customs. The contents of the note are reproduced below:

“NOTE ON REDUCING DELAY IN FILING OF SLP

1. During the course of hearing in Civil Appeal No.28900/2020 the Hon’ble Supreme Court of India observed that “Repeatedly, it has come to the notice of this Court that appeals in revenue matters involving indirect taxation are being filed with a gross delay”. The Court stated that “The Union government, in the Department of Revenue must find an answer to this state of affairs by ensuring that matters which are required to be litigated are litigated with all necessary dispatch and matters not worthy of being pursued are set to rest”.

2. This issue was discussed internally in two meetings chaired by Finance Secretary on 12.02.2021 and the matter was discussed in detail in a meeting held on 13.02.2021 which was attended by Ld. Solicitor General of India, Union Finance Secretary, Union Law Secretary, Chairmen of Central Board of Direct Taxes and Central Board of Indirect Taxes and Customs and Members from both Boards looking after judicial matters.

3. A background note was circulated for the meeting outlining the current process and the people involved in filing of a Special Leave Petition before Hon’ble Supreme Court of India subsequent to an order of a High Court. It was explained that both Boards have issued instructions outlining the timelines for different levels for processing of a case for filing an SLP to ensure that SLP is filed within the stipulated timeframe of 90 days. It was explained that broadly following are the six stages in filing of an SLP:

- a. Analysis of the order of High Court by the field office concerned and preparation of proposal to file an SLP, wherever found necessary, which is sent to Directorate in-charge for litigation matters (Directorate (Legal and Research) in case of CBDT and Directorate for Legal Affairs in case of CBIC).
- b. The Directorate analyses the proposal sent by the field office and seeks the opinion of Department of Legal Affairs (DoLA), Ministry of Law and Justice.
- c. Department of Legal Affairs gives its opinion on whether it is a fit case for filing an SLP.
- d. Once it is decided to file an SLP, the same is forwarded to Central Agency Section for drafting of the SLP.
- e. The draft SLP is sent to the field office concerned for verification of facts and figures.
- f. After vetting by the field formation, the SLP is filed.

4. As an initial proposal, a stage-by-stage timeline as in Annex-A to ensure timely filing of SLP was put for consideration. Ld. SGI observed that one reason for the delay is due to the liner process being followed currently and even if we have a detailed timeline, it may be difficult to avoid delay unless steps in filing

of SLP were merged. He suggested that instead of files going from one desk to another in the office of Commissioner in the field, then in Directorate, in CBDT/CBIC and then Ministry of Law and likewise again in the return journey, it should be examined whether an Inter-ministerial standing committee would be administratively possible. After a detailed deliberations, it was felt the following mechanism would be helpful in right decisions within the defined timelines:

- a. The Government Advocate representing Government in the High Court or tribunals as the case may be should apply for the certified copy of the order on the same day as the date of pronouncement of the judgement and should download the order from the website as soon as it is posted. There should not be any delay in ensuring these two action points.
 - b. The field formations would require sufficient time to analyse the order and form an opinion about filing an SLP. It should be done with a definite time period. However, it should be made mandatory that if they need more time than what is stipulated, they should record the reasons for doing so.
 - c. Once the proposal from the field office is received in the Directorate, processing it on a file through a hierarchy of officers is prone to delay and adds little value. There should, instead, be a Committee in each Board (CBDT and CBIC) consisting of—
 - i. Member (Judicial) -chairman
 - ii. Director General of the Directorate incharge for litigation management- convener
 - iii. Commissioner (Judicial) ,
 - iv. Legal Advisor for Department of Legal Affairs, and
 - v. Central Government Standing Counsel.
 - d. The Committees of the both Boards should meet every week at a fixed time (say, every Tuesday at 5 pm) one after another and take the final decision on whether to file an SLP or not and only in exceptional cases of disagreement, matter could be processed on file between Department of Revenue and Department of Legal Affairs and even SG/ASG.
 - e. There should be a large panel of Counsel to prepare the draft SLP so that they are not overburdened with the work of drafting. The Counsels should prepare the draft in close coordination and consultation with the field offices concerned so that there is no need of vetting the petition after being drafted. Once ready, the petition could be filed and even if the department feels that some new facts or argument needs to be presented, an additional affidavit could always be filed.
5. Based on the above suggestions, a tentative timeline as per Annex-B was discussed. It was decided that the same could be refined further. It was decided that these facts could be placed before the Hon'ble Supreme Court on 15th February, 2021.
6. Finance Secretary explained that there are around 20-22 SLPs being filed between both the Boards every week and the Committee should be able to take quick decisions cutting down

movement of files through various levels. Law Secretary also pointed out that it is movement of files within various levels in the departments that consumes most of the time. He also suggested that the cases should be monitored through a software with alert mechanisms and timestamps so that delays are avoided.

7. Chairman CBIC said that the above mechanism will ensure timely action. Chairman, CBDT pointed out that this would be a good mechanism for speedy decision on filing of SLP, there is a need to handle legacy cases as well.

8. Ld. Solicitor General stated that this proposal should be presented before the Hon'ble Court on 15th Feb and would be fine-tuned further, incorporating direction of the Court, if any, and finalised within next two weeks for which time could be sought from the Court.

Annex-A

Sr.No.	Activity	Number of Days	Cumulative Days
1.	Date of pronouncement of the Judgment	0	
2.	Making application for certified copy of the judgment by the standing counsel	3	
3.	Obtaining copy of the judgment from web site	4	4
4.	Scrutiny of the judgment by the CIT to take a view to contest or accept the same	7	11
5.	CCIT's view & specific comment	3	14
6.	Preparation of proposal with annexure	3	17
7.	Transit (L&R) to Directorate of Income tax	4	21
8.	Directorate of Income Tax (L&R)	1	36
	Inspector	5	
	ADIT/DDIT	2	
	JDIT/Addl. DIT	5	
	ADG/CIT	3	
	DGIT	2	
	DGIT	3	
9.	Member (A&J)	3	39
10.	Transit to MOL	2	41
11.	Advice section of MOL	5	46
12.	Transit to CAS	2	48
13.	Marking to Law officer	2	50
14.	Advice by Law officer	7	57
15.	Transit to CAS	1	58
16.	IT unit of CAS (opening of file)	2	60
17.	Transit to drafting counsel	2	62
18.	Drafting of SLP	1	72
		0	
19.	Transit to the Directorate	2	74

20.	Vetting in Directorate	7	81
21.	Transit back to CAS	2	83
22.	Paper book preparation	5	88
23.	Affidavit/AOR	1	89
24.	Filing in Registry	1	90

Annex-B

SN.	Activity	Number of Days	Cumulative Days
1.	Date of pronouncement of the judgement. The Government advocate applies for the certified copy on the same day without any delay and the order copy is downloaded from the website.	0	0
2.	The field office analyses the order to take a view on filing an SLP or otherwise and prepares a proposal for filing an SLP, if decided so and sends it to the Directorate incharge of litigation with the comments of CCIT enclosing all the annexures.	21	21
3.	Immediately on the receipt of the proposal, the Directorate circulates the proposal to all the members of the Committee consisting of Department officers, Legal advisor from DoLA and Government Counsel	2	23
4.	Committee members meet and take a decision in the next meeting, or maximum two meetings.	14	37
5.	Decision of the Committee and the proposal of the field office is handed over to the drafting Counsel for drafting the SLP.	2	39
6.	The SLP is drafted by the drafting counsel in two weeks	14	53
7.	The draft SLP is circulated for any corrections/edits for a week with a presumption that if no comments are received, the petition will be filed	7	60

8.	Comments, if any received, are incorporated and the petition is filed	3	63"
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- 2 During the course of the hearing, various suggestions have been discussed including the need to incorporate technological innovations in the process of monitoring litigation involving the revenue arm of the Union government. In order to facilitate further deliberations by the authorities of the Union government, we post the further hearing on 15 March 2021. We would request that a consolidated proposal also incorporating technological modalities be placed before the Court on the next date of listing. The Solicitor General has agreed to interact with the Director General, National informatics Centre.
- 3 Since sufficient cause has been shown in condoning the delay, delay in filing the appeal is condoned.
- 4 Counter affidavit shall be filed within three weeks from today.
- 5 Learned counsel appearing on behalf of the appellant and the respondent shall file brief notes of submissions to facilitate final disposal of the matter.

(SANJAY KUMAR-I)
AR-CUM-PS

(SAROJ KUMARI GAUR)
COURT MASTER