

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI
(APPELLATE JURISDICTION)**

**IA NO.348 OF 2016
IN
DFR NO.1184 OF 2016
AND
IA NOs.571 AND 598 OF 2016**

Dated: 04th November, 2016.

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble B.N. Talukdar, Technical Member**

IN THE MATTER OF:

**HINDUSTAN PETROLEUM)
CORPORATION LTD)
8, Shoorji Vallbhdas Marg, Post)
Box No.155)
Mumbai-400 001)
)
....Appellant/Applicant**

Versus

**1. PETROLEUM AND NATURAL)
GAS REGULATORY BOARD)
First Floor, World Trade Centre,)
Babar Road, New Delhi-110001.)
)
**2. P.K. GUPTA)
Executive Director(Mktg))
GAIL JUBILEE TOWER, b-35-36,)
SECTOR-1, NOIDA, 201 301,)
INDIA) **....Respondent(s)******

Counsel for the
Appellant/Applicant

... Mr.Manu Seshadri

Counsel for the
Respondent(s)

...Mr. Rajinder Kaul
Ms. Aparna Vohra for **R.1**

Mr. Ajit Pudussery
Ms. Shruti Sarma Hazarika for
R.2

ORDER

PER HON'BLE (SMT.) JUSTICE RANJANA P. DESAI – CHAIRPERSON:

1. In this appeal, the Appellant/Applicant Hindustan Petroleum Corporation Ltd., has challenged order dated 18/03/2011 and what is described as decision dated 15/07/2015 of the Petroleum and Natural Gas Regulatory Board (“**the Board**” for short). There is 245 days’ delay in filing this appeal. Hence, in this application the Applicant has prayed that the said delay be condoned.

2. In the application it is submitted that the order dated 15/07/2005 was not communicated to the Applicant. The Applicant came to know about it from the website consequent to

which it made repeated representations to the Board with respect to the said order. The Applicant was in constant communication with the Board seeking review of the order dated 15/07/2005. According to the Applicant it sent representations dated 18/08/2015 and 01/10/2015 to the Board. The Board sent its response dated 09/10/2015 to the Applicant. After perusing the same the Applicant made further submissions under cover of its letters dated 27/10/2015, 16/12/2015 and 29/01/2016. It is further stated that the Board vide decision dated 18/03/2016 advised that revision of the tariff order dated 15/07/2015 was not required. It is submitted that the delay in filing the appeal against the order dated 15/07/2015 was neither wilful nor wanton. The Applicant was under a *bona fide* belief that pending consideration of its representations and inter se exchange of communications with the Board, there was no reason to prefer an appeal. The delay was caused on account of repeated exchanges and communications taking place with the Board. According to the Applicant only upon being informed of the decision dated 18/03/2016 that it became apparent that the Applicant will have to challenge the decision dated 18/03/2016 which stands merged in the earlier Tariff Order dated 15/07/2015. It is

submitted that the appeal challenging the decision dated 18/03/2016 has been preferred within time. It is submitted that the main criterion for consideration in condonation of delay is the acceptability of explanation and not the length of delay. Laws are intended to achieve ends of justice and not to shut the doors of justice to the parties. It is submitted that delay deserves to be condoned in the interest of justice. In support of the submissions reliance is placed on **State of Punjab and Anr. v. Shamlal Murari and Anr**¹.

3. Mr. Manu Seshadri learned counsel for the Applicant has reiterated the above submissions. Counsel strenuously contended that the Applicant is not guilty of any negligent conduct. It has *bona fide* corresponded with the Board, hoping that its case would be considered. There is no inaction or inertia on the part of the Applicant. In any case, the appeal challenges decision dated 18/03/2016 also. That challenge is within the period of limitation. Counsel submitted that in the interest of justice delay may be condoned.

¹ (1976) 1 SCC 719

4. Mr. Rajinder Kaul, learned counsel for Respondent No.1 and Mr. Ajit Pudussery, learned counsel for Respondent No.2 have strongly resisted the condonation of delay application. Written submissions have also been filed. We have carefully perused the same.

5. It is true that while condoning delay the court has to see the acceptability of explanation and not length of delay. We must therefore see whether the explanation offered by the Applicant is acceptable.

6. The Applicant has stated that order dated 15/07/2015 was not communicated to it. The Applicant came to know about it from the Board's website. Pertinently, the Applicant has not mentioned the date of its knowledge. The first representation sent by the Applicant is dated 18/08/2015. Therefore the Applicant certainly had knowledge of order dated 15/07/2015 soon after it was passed.

7. Apart from stating that the Applicant went on making representations to the Board in respect of the Tariff Order dated 15/07/2015, the Applicant has not given any explanation as to why the appeal was not filed within time. The Applicant's belief that the Board will consider its case cannot provide sufficient cause for not filing the appeal within time. Repeated representations do not extend the period of limitation. In the entire application not a word is said about any deliberations amongst officers, movement of files or consultation with lawyers or any other reason which would inspire confidence. The Applicant went on sending representations to the Board. By no stretch of imagination such explanation can be called acceptable.

8. To get over the delay in filing appeal against order dated 15/07/2015, the Applicant has also challenged the so called decision dated 18/03/2016. It is contended that decision dated 18/03/2016 has merged in order dated 15/07/2015 and the appeal is within time if the date of decision is taken into account. We have no hesitation in rejecting this submission. Letter dated 18/03/2016 is not a decision. It is merely a response to Applicant's letter No.LPG/SN dated 29/01/2016. As rightly

pointed out by counsel for Respondent No.1 this letter merely reiterates that the Board has determined the transportation of tariff for Vizag-Secunderabad LPG pipeline of GAIL as per the PNGRB (Determination of Petroleum and Petroleum Products Pipeline Transport Tariff) Amendment Regulation 2014 and the said tariff has been determined for each entry and exit point based on the 'goods tariff table' of 20/05/2015 (applicable from 20/12/2014 to 21/03/2015) and of 01/04/2015 (applicable from 01/04/2015 onwards). The appeal lies from the order dated 15/07/2015 and not from letter dated 18/03/2016. The Applicant had no reason to send representations after representations and wait till 18/03/2016 when the Board sent its reply. Letter dated 18/03/2016 is not a fresh decision which will entitle the Applicant to file an appeal.

9. We are mindful of the fact that the party seeking condonation of delay is not expected to explain every day's delay. But there has to be some explanation covering such a huge delay of 245 days. There is none. In the circumstances this application for condonation of delay will have to be dismissed and

is dismissed as such. Consequently the appeal stands dismissed as not having been filed within the period of limitation.

10. Needless to say that IAs No.571 and 598 of 2016 also stand disposed of.

11. Pronounced in the Open Court on this **04th day of November, 2016.**

(B.N. Talukdar)
Technical Member (P&NG)

(Justice Ranjana P. Desai)
Chairperson

✓ **REPORTABLE / ~~NON-REPORTABLE~~**