

**A PLEA FOR RECONSIDERATION OF UNION OF INDIA VS JASIRUDDIN
TALUKDAR (2011)2 GLR 832**

By

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1. INTRODUCTION

The judgment of the Gauhati High Court dated 03.06.2010 indicated in the title of this essay has been recently reported in the April issue of the Gauhati Law Reports. The judgement to be referred hereinafter as JASIRUDDIN deals with a pure question of Law arising in an appeal to the High Court under Section 23 of the Railways Claims Tribunal Act, 1987 (hereinafter the RCT Act). The question is whether the High Court has power to condone the delay in filing such an appeal. JASIRUDDIN answered the question with a categorical negative. Unable to appreciate this answer, a little search, restricted by the limited resource at the disposal of the writer, was undertaken. The result of the exercise is this plea for reconsideration of JASIRUDDIN by a Larger Bench.

2. JASIRUDDIN –THE REASONS

Paragraphs 5 to 8 of JASIRUDDIN list the submissions of and the decisions cited by the learned counsels for the parties. For the appellant Union of India six Supreme Court decisions were cited. On behalf of the respondent four Supreme Court decisions were relied on. Apart from this the High Court on its own considered and relied on STATE OF M.P. AND OTHERS –VS PRADEEP KUMAR AND ANOTHER, (2000)7 SCC 372, SINGH ENTERPRISES –VS COMMISSIONER OF CENTRAL EXCISE, JAMSHEDPUR AND OTHERS, (2008)3 SCC 70 AND COMMISSIONER OF INCOMETAX –VS- WILLIAMSON TEA (ASSAM) LTD. (2010)1 GLR 57. The decision in JASIRUDDIN appears to have been influenced to a substantial extent by the above three judgments found by the High Court. In the process the decisions cited by the learned counsels of the parties could not find its mark. The core of NATIONAL SEWING, AIR 1953 SC 357 and MUKRI GOPALAN (1995) 5 SCC 5 cited by the learned counsel for the appellant both given some space in the judgement appears not to have been reached. The High Court held that in the absence of any procedure for such an appeal in the RCT Act and the Rules thereunder the provisions of Order XLI of the Code of Civil Procedure would apply. However,

the High Court held that Order XLI Rule 3A C.P.C. being purely procedural unless the RCT Act itself provides the power of condonation no such power can be curved out from such a procedural provision. The High Court further held that the period of Limitation provided in Section 23 of the RCT Act that is 90 days being the same as that under the Limitation Act 1963 as well Section 29(2) of the Limitation Act 1963 cannot apply. Apart from the above two principal reasons the High Court in para 29 of JASIRUDDIN derived assurance from the fact that special statutes like Workmen's Compensation Act, 1923, Consumer Protection Act, 1986 and Motor Vehicle Act, 1988 provided the power of condonation of delay in filing appeal and such a power is absent in the RCT Act. Closer analysis and examination of the aforesaid reasons and of the apparent support derived from the decisions considered may now be undertaken.

3. JASIRUDDIN –REASONS ANALYSED AND EXAMINED

The twin route towards a solution of the problem falling for consideration in JASIRUDDIN really lies through NATIONAL SEWING , AIR 1953 S.C. 357 and MUKRI GOPALAN(1995)5 SCC 5. The first one is based on the general principles of Civil Procedure statutory basis whereof can be read in the preamble to the Code of Civil Procedure 1908 (C.P.C. hereinafter), Section 4 C.P.C. and Section 104 C.P.C. This route is the general one and has not at all been trodden in JASIRUDDIN. The second route lying through Section 29(2) of the Limitation Act 1963 has only been tried but no accurately. There is also a common ground between the two routes. The general route may be examined and explained first.

3.1. (A) NATIONAL SEWING (Supra)

The crux of NATIONAL SEWING (Supra) is the principle that when a statute directs that an appeal shall be to an established court without more, the ordinary incidents of practice and procedure of that court attach to that direction of the statute. It is true that NATIONAL SEWING did not deal with a question of limitation as in JASIRUDDIN. However the statute that is the Trade Marks Act, 1940 and the provision of Section 76 (1) thereof is similar. The sweep of the general principle stated above has been further explained by quoting in para 7 of NATIONAL SEWING from SECY OF STATE VS CHELIKANI RAMA RAO, AIR 1916 P.C. 21, ADAIKAPPA CHETTIAR –VS- CHANDRA SEKHARA THEVAR, AIR 1948 P.C. 12 and again in para 16 and 17 of the Judgment the Supreme Court reiterated the same general principle by considering HEMSINGH –VS- BASANT SINGH, AIR 1936 P.C. 93. The long title to the CPC describes the C.P.C as an act to consolidate and amend the

laws relating to the procedure of the courts of civil judicature. Section 4(1) of CPC reads thus :

“In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred or any special form of procedure prescribed by or under any other law for the time being in force.”

Section 104(1) saves appeals from order expressly provided “by any law for the time being in force” like the one in JASIRUDDIN. The above from the CPC provide the statutory base for and linkage with the general principle expounded by the trilogy from the privy council relied on by the Supreme Court in NATIONAL SEWING (supra).

(B) In JASIRUDDIN the High Court felt difficulty in extending the ratio of NATIONAL SEWING (supra) to the extent of embracing the provisions of order XLI Rule 3A CPC. A four Judge Bench of the Supreme Court in SHANKERLAL AGGARWALA -VS- SHANKERLAL PODDAR, AIR 1965 S.C. 507 had an occasion to rule on the sweep of the general principle of Civil judicature which is at the core of the ratio. The Supreme Court was interpreting the provisions of Section 202 of the Companies Act, 1913 which reincarnated as Section 483 of the Companies Act 1956. The Section makes provision for an appeal from any order or decision made or given in the matter of winding up of a company by the Court in the same manner and subject to the same conditions and subject to which appeals may be had from any order or decision of the same court in cases within its ordinary jurisdiction. The provision fell for interpretation before a Division Bench of the Bombay High Court in BECHHRAS FACTORIES -VS- HIRJEE MILLS, AIR 1955 Bombay 355. Chief Justice Chagla wrote for the Bench and the essence of the interpretation is in para 5 of the judgment. In SHANKERLAL (supra) responding to the said interpretation the Supreme Court ruled thus :

“We thus agree with Chagla C.J. that the second part of the Section which referred to “manner” and “the conditions subject to which appeals may be had” merely regulates the procedure to be followed in the presentation of the appeal and of hearing them, the period of limitation within which the appeal would lie and does not restrict the substantive right of appeal which has been conferred by the opening words of the section.”

The same general principle has been referred to and applied in connection with the State Financial Corporation Act, 1951 in paragraphs 24 to 27 of MAHARASTRA STATE FINANCIAL CORPORATION -VS- JAYCEE DRUG etc, (1991)2 SCC 637 and again in another three Judge Bench decision of the Supreme Court namely SUBAL PAL -VS- MALINA PAL (2003) 10 SCC 361 in connection with an appeal under Section 299 of the Indian Succession Act, 1925. In these decisions the Supreme Court referred to NATIONAL SEWING (supra).

A special law may specify or merely indicate the court where the appeal would lie. It may or may not indicate the period of limitation for the appeal. It may or may not mention the CPC. All these varieties of special law will be within the sweep of the General principle rooted in Section 4 of the CPC. Example of a Central Legislation, namely the Companies Act 1913/1956 has already been indicated. Coming to a State Legislation one may mention The Jogighopa (Assam) unit of ASHOK PAPER MILLS LIMITED (Acquisition and transfer of undertaking) Act, 1990. Section 22(8) of this Act reads thus :

“A claimant, who is dissatisfied with the decision of the commissioner may prefer an appeal against such decision to the principal Civil Court of original jurisdiction within the local limits of whose jurisdiction the undertaking of the Government Company is situated.....”

Both under Section 202/483 of the Companies Act 1913/1956 and Section 22(8) of the Assam Act, 1990 since no period of limitation is provided and thus first of condition applicability of Section 29(2) of Limitation Act being absent route via that section is unavailable. Therefore the general principle will take over. In that sense the general principle so far analysed above is the genus and the provisions of Section 29(2) is a specice applicable in cases circumscribed by the conditions mentioned in the section. Both will be unavailable if there is express exclusion of CPC or the provisions as to computation of period of limitation contained in Section 4 to 24 of the Limitation Act, 1963.

It has been indicated above that the sweep of the general principle will embrace limitation, where the special law is silent about limitation. The core question in JASIRUDDIN is not about limitation in as much as Section 23 of the RCT Act prescribes the period of limitation for the appeal to the High Court as 90 days. The key question is whether the general principle would embrace the power of condonation of limitation in particular and the manner of computation in general as provided in the Limitation Act, 1963. This question

can be more appropriately discussed in the next section while dealing with the route lying through MUKRI GOPALAN (supra). However before going into the question it will be useful to mention two significant factors. Firstly perhaps conscious of the general principle the draftsman developed a sort of legislative practice since the nineteenth century to provide in many special statutes for an appeal to a Court without saying anything or much about procedure, limitation etc. attaching to such appeals. A full Bench of the Allahabad High Court on May, 1, 1912 decided DROPODI-VS- HIRA LAL (1912) ILR 34 ALL 496 answering the question whether in an appeal to the District Judge under the Provincial Insolvency Act, 1920 time requisite for obtaining the copy of the order appealed against would be available to the appellant held that it would be although the special law is silent about any such entitlement. Following extract from para 10 of the judgment is very instructive :

“We find it difficult to believe that when the Legislature introduced, as it has, into several Acts, provisions giving a right of appeal and prescribing periods within which the right may be exercised, it intended as a general rule that those provisions should be applied without reference to the general provisions contained in the general Limitation Act. In many, if not most, cases the code of Civil Procedure is made applicable with the result that an appellant must produce a copy of the order against which he is appealing. It is reasonable to suppose that the Legislature intended to give him time to procure a copy of the order. The general provisions of the Limitation Act are founded mainly upon equitable considerations which apply as much to periods of limitation prescribed by special Acts as to periods of limitation prescribed by Limitation Act itself.”

The appeal dealt with in JASIRUDDIN is under Section 23 of the RCT Act, which is silent about time requisite for copy. Copy of the order appealed against is required to be produced with the appeal both under Section 104(1) read with Order XLIII Rule 2 and order XLI and CPC and under the relevant High Court Rules for appeal against original orders. Section 12 of the Limitation Act 1963 is the only repository of power to exclude the time requisite for copy. In such a situation cannot the appellant rely on section 12 of the Limitation Act. DROPAI (supra) also held that such appeals are covered by the expression “under the Code of Civil Procedure” in Article 156 of the Indian Limitation Act which is presently Article 116 of the Limitation Act, 1963.

DROPADI (supra) had been approvingly referred to by the majority in the five Judge Constitution Bench Judgment in VIDYACHARAN SHUKLA –VS- KHUB CHAND BAGHEL, AIR 1964 S.C. 1099 in para 6 and 16 of the Judgment.

The second factor is that in VIDYACHARAN SHUKLA (supra) the Supreme Court discussed the parallel legislative history of the Code of Civil Procedure and the Limitation Act since 1859 and quoted at para 10 of the judgment, the Full Bench of the Madras High Court in KADASWAMI PILLAI – VS- KONNAPPA CHETTY, AIR 1952 Madras 186. The extract reads thus :

“It is well settled that the Limitation Act and the Code are to be read together, because both are statutes relating to procedure and they are in pari materia and, therefore, to be taken and construed together as explanatory of each other.

These pointers would be further explored in the next section.

3.2. MUKRI GOPALAN (supra)

In MUKRI GOPALAN (supra) one can read a near exhaustive statement of law under Section 29(2) of the Limitation Act, 1963. End of para 20 of the judgment reads thus :

“It has to be kept in view that Section 29(2) gets attracted for computing the period of limitation for any suit, appeal or application to be filed before authorities under special or local law if the conditions laid down in the said provision are satisfied and once they get satisfied the provisions contained in section 4 to 24 shall apply to such proceedings meaning thereby the procedural scheme contemplated by these sections of the Limitation Act would get telescoped into such provisions of Special or Local Law . It amounts to a legislative short hand”.

The echo of DROPADI (Supra) earlier quoted is unmistakable. What DROPADI (supra) said in the extract quoted earlier in connection with applicability of Section 12 of Indian Limitation Act 1908 to an appeal under a Special Law to an established Court has been echoed by MUKRI GOPALAN (supra) with regard to applicability of Section 5 of the Limitation Act, 1963, in an appeal to an established Court under a special Law. The conditions for applicability of Section 29(2) of the Limitation Act, 1963 are (1) that the Special or Local Law must provide for a period of limitation for the suit, appeal or application under that act, (2) that the said period of limitation must be

different from that provided in the schedule to the Limitation Act, 1963 and (3) that the provisions of Section 4 to 24 of the Limitation Act must not be expressly excluded by the Special or Local Law which by judicial interpretation (see para 17 of HUKUMDEV NARAIN YADAV -VS- LALIT NARAIN MISHRA, (1974)2 SCC 133) has been expanded to include implied exclusion when the Special Law can be called a complete code.

JASIRUDDIN considered COMMISSIONER OF CUSTOMS, CENTRAL EXCISE -VS- HANGO (2009) 5 SCC 79 which only echoed HUKUM DEV NARAIN (supra) as regards the third condition of applicability of Section 29(2) of the Limitation Act but stopped short of holding that Section 5 of the Limitation Act is impliedly excluded by the provisions of Section 23 of the RCT Act. That Section 17 of the RCT Act provides for condonation of delay and Section 23 does not also has been factored into the conclusion in JASSIRUDDIN that 29(2) of the Limitation Act cannot apply in the appeal under Section 23 of the RCT Act. Thus in JASIRUDDIN one reads only a hint that because of non fulfilment of the third condition in Section 29(2) of the Limitation Act Section 29(2) of the Limitation Act cannot apply. The real reason for the said conclusion writ large in JASIRUDDIN, however, is rooted in the fact that the period of limitation both under Article 116 and that under Section 23 of the RCT Act is the same that is 90 days. In other words the second condition for applicability has not been satisfied by Section 23 of the RCT Act. Before going into this principal reason a few comments about the peripheral reason indicated above seem apposite. Before the RCT Act the subject matter of an application under Section 17 of the RCT Act could be the subject matter of a suit. One has to remember that Section 17 of the RCT Act applied to the Tribunal and Section 23 thereof applies to a regular court that is the High Court. If despite the avowed object of achieving speedy disposal of claims the legislature in its wisdom intended to provide for condonation of delay beyond three years where earlier there is no provision for such condonation for suits, the earlier avatar of the application to the Tribunal under Section 17 of the RCT Act, a Special provision for condonation has to be made because Section 5 read with Article 137 of the Limitation Act applies only to application before Courts. See KERALA STATE ELECRICITY BOARD, AIR 1977 SC 282. For appeal, however, the longstanding legislative practice rooted in the general principle already discussed no specific provision for condonation is needed.

Turning now to the principal reason for the conclusion that Section 29 (2) of the Limitation Act is inapplicable because the relevant periods of limitation are the same under the special law as well as the Limitation Act one finds that MUKRI GOPALAN (supra) itself has spoken about the other meaning of the word "different" in Section 29(2) of the Limitation Act in para 10 of the

Judgment where VIDYA CHARAN SHUKLA (supra) has been mentioned as the source. It would be appropriate to have a look at the relevant paragraphs of VIDYA CHARAN SHUKLA (supra) in this connection. The leading Judgment agreed to by the majority of the constitution Bench in VIDYACHARAN (supra) posed the question at para 20 thus : “the question arises whether sub-section (2) of Section 29 of the Limitation Act would not be applicable if no period was prescribed by the First Schedule for an appeal created by a special law but the special law prescribed a period of limitation for the same”. The same question arises in JASIRUDDIN as well as in that while the special act precisely Section 23 of the RCT Act provides for a period of limitation the First Schedule does not contain any Article prescribing a period of limitation for such an appeal under the Special act. The question was answered at the end of para 23 of the leading Judgment by the categorical statement that Section 29(2) would apply even in a case where the difference occurs by omission to provide a period of limitation in the First Schedule. In between the question and the answer from beginning of para 20 to the end of para 23 the threefold reasons for the answer may be read. The first reason is grounded on the legislative history of the provision of Section 29(2) starting from the Limitation Act of 1859 through that of 1871, 1877, 1908 and 1922. Intention of the legislature culled from the legislative history is to provide for wide application of the “legislative shorthand” and not to restrict it. The second reason is rooted in common sense. When the first schedule did not provide for time limit for an appeal under a special law it can be filed at any time but the special law providing for a period of limitation restricts it to a different period. The third reason is based on decisions of the Division Bench Judgment of the Bombay and Madhya Pradesh High Court reported in AIR 1953 Bombay 35 and AIR 1961 M.P. 75 as well as that of the Supreme Court itself in KAUSHALYA RANI -VS- GOPAL SINGH, AIR 1964 S.C. 260. Extracts of all the three judgments have also been quoted in VIDYACHARAN (supra).

It is also worth mentioning here that an attempt was made by learned counsels in HUKUM DEV NARAIN (supra) to have the above answer reconsidered by a Larger Bench but the three Judge Bench there rebuffed the attempt. The purpose of Section 29(2) aptly described as a “legislative shorthand” is to apply the procedural machinery as to computation of period of limitation under the special statutes within certain conditions without repeating the same procedural provisions for computation in the special statutes. It is therefore to be interpreted as widely as is permissible. This much appears to be implicit in the reasoning in para 20 to 23 of VIDYACHARAN SHUKLA (supra) where the period of limitation provided under the special law for the appeal under Section 116 A of the Representation People Act 1951 is

different in the ordinary sense being thirty days instead of ninety days for an appeal to the High Court under the Code of Civil Procedure. From these reasons it appears that the difference as a condition for applicability of Section 29(2) arising from omission to provide for a period of limitation as discussed above is the more potent and would prevail over any similarity in the period as in JASSIRUDDIN.

3.3. DECISIONS RELIED ON IN JASSIRUDDIN

(A) Having held that in the absence of any procedure for the appeal in the RCT Act and the Rules Order XLI CPC would apply to the appeal the High Court in JASIRUDDIN felt unable to apply the provisions of Rule 3 A thereof to the appeal relying on PRADEEP KUMAR (supra) and WILLIAMSON TEA (supra) mentioned in para 2 of this essay. The first of these cases after noticing the object of the provisions deals with the question whether the application thereunder has mandatorily to accompany the appeal or not. It does throw only peripheral light on the question involved in JASIRUDIN. Unlike WILLIAMSON TEA however, the Supreme Court in PRADEEP KUMAR (supra) does not hold that Rule 3A is purely procedural. Rule 3A has three sub-rules. Sub-rule (1) is purely procedural but sub-rule (2) enacts a right and power in the court to reject the application without issuing notice or to decide the matter of condonation of the delay in presenting the appeal once for all before further proceeding with the appeal. Procedural Law and substantive law cannot be put in sealed compartments. Both are often intertwined in a single provision. Section 5 of the Limitation Act also appears in the procedural enactment that is the Limitation Act. It has already been indicated in para 3.2 that the Limitation Act and the CPC constitutes one system as held by the Supreme Court in VIDYACHARAN SHUKLA (supra). Even if it is assumed that Section 5 of the Limitation Act cannot be applied for any reasons including by reason of its non existence in the Limitation Act Rule 3A by itself is capable procedurally as well as substantively to serve as a statutory basis for condonation of the delay in filing an appeal as in JASSIRUDIN.

The third decision heavily relied on and extensively quoted in JASSIRUDDIN that is SINGH ENTERPRISES (supra) deals with a question of condonation of delay in an appeal before the Commissioner under Section 35 of the Central Excise Act 1944. The extract quoted in JASSIRUDIN itself shows that it was held to be a case of “complete exclusion” of Section 5 by reason of the fact that special law itself

provides for a limited power of condonation of delay upto 30 days. It is obvious that if the special law itself provides for the procedural machinery for computation even to a limited extent that would amount to, it not express exclusion, at least implied exclusion of the machinery in the general provisions of Limitation Act regarding computation of period of limitation.

WILLIAMSON TEA (supra) does not appear to have considered Rule 3 A in its entirety. In **STATE OF ASSAM -VS GOBINDA CHANDRA PAUL, AIR 1991 Gau 104**, one finds the following on Rule 3A : “Besides this rule is not in derogation of Section 5 of the Limitation Act, it is in addition to that” **NIRMALA CHAUDHURY – VS- BISHESHAR LAL, AIR 1979 Delhi 26** unequivocally holds thus :

“The provisions of Rule 3A are both procedural and substantive in nature . It provides procedure as to how and when the application for condonation of delay will be filed and also confers power on the Court to condone the delay if sufficient cause is made out.”

It was also held that the power under Rule 3A is in addition to those under Section 5 of the Limitation Act. Considered in the light of the extract quoted in **VIDYACHARAN SHUKLA (Supra)** at para 3.2 of this essay and on perusal of the full text of Rule 3A of Order XLI C.P.C. the view expressed in **AIR 1991 Gau 104** and **AIR 1979 Delhi 26** on the nature and scope of Rule 3A seems unexceptionable and preferable.

WILLIAMSON TEA (supra) deals with the question whether in an appeal to the High Court under Section 260A of the Income Tax Act 1961 the High Court has power to condone the delay in filing. The High Court preferred the view of the Full Bench decision on the question of the Allahabad High Court to that of the Full Bench of the Bombay High Court on the same question. It was held that there is no power of condonation. By June 2010 when **WILLIAMSON TEA (supra)** was relied on in **JASSIRUDDIN** the parliament by retroactive legislative action by way of amending Section 260A of the Income Tax Act through Section 49 of the Finance Act, 2010, seems to have restored the law enunciated in the Bombay Full Bench decision of **THE COMMISSIONER OF INCOME TAX -VS- VELINGKAR BROTHERS (2007) 289 ITR 382 (Bom)** The amendment clearly says that it “shall be deemed to have been inserted with effect from the 1st day of October, 1998”. It is undoubtedly a declaratory amendment and clarifies the law that the power to condone the delay was there since the insertion of Section 260-A in October 1998 by Finance (No.2) Act, 1998 even without any express mention of such a

power initially in 1998. The parliament had stepped in to clarify the law in this regard relating to Section 35-G of the Central Excise Act 1944 by inserting Sub-section (2A) in Section 35G with effect from 01.07.2003 thereby clearing any confusion regarding existence of the power of condonation of delay for an appeal to the High Court under that Section. To that extent **COMMISSIONER OF CUSTOMS AND CENTRAL EXCISE -VS- HONGO INDIA (supra)** has been affected by the amendment as regards the obiter observations there relating to Section 35-G of the Central Excise Act 1944.

3.4. ASSURANCE FROM OTHER STATUTES

JASIRUDDIN draws additional assurance for the conclusion there by citing three other statutes in para 29 . If despite the long standing legislative practice indicated earlier the special law itself provides for condonation of delay that hardly can be a reason to nullify efficacy of the general principle or that of Section 29(2) of the Limitation Act in other Statutes. Moreover when the Workman's Compensation Act 1923 was enacted the Indian Limitation Act 1908 was in force and Section 5 could not have been applied because Section 29 (2) thereof specifically says that Section 5 is excluded. The Motor Vehicle Act 1988 simply copied the provisions from the Motor Vehicle Act 1939 when again the Indian Limitation Act 1908 was in force.

4. DECISIONS ON THE RCT ACT.

The writer was able to peruse four other decisions of the Gauhati High Court apart from **JASIRUDDIN** dealing with the provisions of the RCT Act. These are :

1. *M/s HULASH CHAND CHORARIA -VS- UNION OF INDIA, AIR 2003 GAU 151.*
2. *JAIN SALT TRADING CO. -VS- UNION OF INDIA, (2003) 3 GLR 250,*
3. *SITARAM SANKAR LAL -VS- UNION OF INDIA (2004) 1 GLR 425*
4. *OSWAL TRADERS -VS- UNION OF INDIA (2004) 1 GLR 440.*

Only the first of the above four cases deal with condonation of delay in filing the appeal under Section 23 of the RCT Act. In para 7 of the Judgment the question has been considered and because of insufficiency of materials the delay in filing the appeal was not condoned implying thereby the existence of the power of condonation. It appears that the Union of India in all these cases was represented by a counsel

bearing the same name. In the circumstances assuming the counsel to be one and the same had AIR 2003 GAU 151 been placed before the High Court in JASIRUDDIN probably the question would have already gone before a Larger Bench if JASIRUDDIN dissented from AIR 2003 GAU 151. No decisions of the Supreme Court or of any other High Court dealing with the exact question decided in JASIRUDDIN could be discovered till now precisely till 21st Day of May, 2011.

5. THE CONCLUSION

Before concluding it would be appropriate to record a word of appreciation and gratitude for the assistance derived from Sri R.A. Tapadar and Sri K. Sarma Pathak two young officers of the Assam Judicial Service who surfed the internet to discover materials to be used in this essay. The essay argues for the following :

- 1. There is neither express exclusion nor implied exclusion of Section 5 of the Limitation Act 1963 in the provision for appeal under Section 23 of the RCT Act.**
- 2. The reliance on the decision under Section 260A of the Income Tax Act 1961 and on Section 35H of the Central Excise Act 1944 on the question arising under the RCT Act has not been appropriate because the two Tax Statutes and the RCT Act are not in pari materia. While Section 268 of the Income Tax Act 1961 and Section 35-0 of the Central Excise Act 1944 provide for exclusion of time taken for obtaining copies of order appealed against RCT Act does not contain any such provision. It is in that sense not a complete Code.**
- 3. Where the special provisions of Section 29(2) of the Limitation Act 1963 cannot be applied the general principle may provide the power of condonation.**
- 4. Rule 3A of order XLI CPC is both procedural and substantive provision for condonation of delay in appeal and application and can provide the power for condonation where special law is silent in this regard.**

The Writer has stirred these points, to sustain a plea for reconsideration of JASIRUDDIN, for a Larger Bench to settle.