
(2001) 08 AP CK 0087

In the Andhra Pradesh High Court

Case No : CMP No. 11808 of 2001 in TRC (SR) No.41563 of 2001 and Batch

Anandi Roller Flour Mills Limited, Hyderabad

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 02-08-2001

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 13, 19(1), 20, 21, 21(1)
Constitution of India, 1950 — Article 265, 32

Citation : (2002) 125 STC 355

Hon'ble Judges : S.R. Nayak, J;S. Ananda Reddy, J

Bench : Division Bench

Advocate : Mr. G. Narendra Chetty and Mr. P. Srinivas Reddy, for the Appellant;
Mr. Bhaskar Reddy, Special Government Pleader for Taxes, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Nayak, J :

1. There is a delay of 463 days in filing TRC (SR) No.41563 of 2001. Hence the petitioner has filed CMP No.11808 of 2001 seeking for condonation of 463 days delay in filing the above TRC against the order of the STAT, Hyderabad dated 21-9-1999 in TA No.5767 of 1997. Similarly there is a delay of 521 days in filing TRC (SR) No. 35745 of 2001. Hence the petitioner has filed CMP No. 11955 of 2001 seeking for condonation of delay of 521 days in filing the TRC against the order of the STAT, Hyderabad in TA No. 1029 of 1996 dated 20-7-1999. Likewise there is a delay of 186 days in filing TRC (SR). No.35743 of 2001. Hence the petitioner has filed CMP No.13512 of 2001 seeking for condonation of delay on 186 days in filing the TRC against the order of the STAT, Hyderabad dated 20-7-1999 in TA No.1028 of 1996.

2. Since common question of law arises in deciding these CMPs, where delay is sought to be condoned in filing the TRCs u/s 22(1) of the APGST Act, 1957 (hereinafter referred to as, the Act, for brevity), we clubbed all the CMPs, heard the learned Counsel and they are being disposed of by this common order.

3. The common question that arises for decision in all these CMPs, is whether mere change of law subsequent to an impugned order without anything more would constitute "sufficient cause" for seeking condonation of delay in filing revisions u/s 22(1) of the Act against such order.

4. In the affidavit filed in support of CMP No.11808 of 2001 wherein delay of 463 days is sought to be condoned in filing the TRC, it is stated--

"I submit that the order of the Tribunal was received by my authorised representative on 18-11-1999.

I submit that as the Tribunal passed its common order following the judgment of the Supreme Court in Pine Chemicals case, I was of the opinion that no TRC could be filed. The Commissioner of Commercial Taxes had also revised the order of the ADC for the earlier year based on which the CTO had granted exemption for this year. In these circumstances no TRC was filed by me in time.

I submit that recently the Hon"ble High Court delivered a judgment reported in 2001 STC 597 (A.P.) for an earlier assessment year i.e., 1991-92 CST, filed against the order of the Commissioner of Commercial Taxes in favour of the dealer by holding that G.O. Ms. No.377 Rev., dated 2-5-1991 grants general exemption and not conditional exemption by distinguishing the judgment of the Supreme Court in Pine Chemicals case.

I submit that immediately after receipt of the order of this Hon"ble Court, I tried to contract my advocate for filing the TRC, but he was not available having left to the USA. As the entire file was with him, I could not engage another advocate for filing the TRC.

I submit that as soon as my advocate returned to Hyderabad, I contacted him and instructed him to prepare and file TRC with condonation of delay in view of the latest judgment of this Hon"ble High Court."

5. In CMP No.11955 of 2001 where delay of 521 days in filing the TRC is sought to be condoned, the explanation offered in the affidavit filed in support of the CMP, is the following :--

"The order of the Tribunal confirming the revision made by the Deputy Commissioner was received by the petitioner on 1-9-1999. As the Tribunal has followed its earlier decision which has been confirmed by the Hon"ble Court, the petitioner was advised that filing of any further appeal would only be a futile exercise. As such, revisions were not filed within the time prescribed under the Act.

When the petitioner's representative contacted its Counsel D. Ravindranath on 24-4-2001 in connection with pending assessment he came to know that Supreme Court has since held the electronic operated washing machines are electronic goods and the judgment was published in March, 2001 in 121 STC page 450. In view of the recent judgment the petitioner is advised to file the tax

revision case seeking condonation of delay in filing it. The petitioner had to gather the necessary papers from the old records and got the tax revision case drafted on 1-5-2001. In view of the summer vacation the tax revision case is being filed on the reopening day.

It is respectfully submitted that non-filing of revision within the time is neither wilful nor deliberate, but only on bona fide belief that filing of tax revision case at that Stage will only be futile exercise as the judgment of this Hon"ble Court was against the petitioner.

It is submitted that a subsequent decision of the Higher Court holding the existing law as incorrect can be sufficient cause for condoning the delay in filing the revision inasmuch as it will be futile to file a tax revision case when the law is against the petitioner. In the circumstances, it is just and necessary that the Hon"ble Court may be pleased to condone the delay in filing the tax revision case. The petitioner has fair chances of success in the revision as the Supreme Court has reversed the earlier decision which was adverse to the petitioner."

6. In CMP No. 13512 of 2001 seeking condonation of delay of 186 days in filing the TRC, the explanation offered in the affidavit filed in support of the CMP is as follows--

"The order of the Tribunal confirming the revision made by the Deputy Commissioner was received by the petitioner on 1-9-1999. As the Tribunal has followed its earlier decision which has been confirmed by the Hon"ble Court, the petitioner was advised that filing of any further appeal would only be a futile exercise. As such, revisions were not filed within the time prescribed under the Act.

When the petitioner"s representative contacted its Counsel D. Ravindranath on 24-4-2001 in connection with pending assessment he came to know that Supreme Court has since held the electronic operated washing machines are electronic goods and the judgment was published in March, 2001 in 121 STC page 450. In view of the recent judgment the petitioner is advised to file the tax revision case seeking condonation of delay in filing it. The petitioner had to gather the necessary papers from the old records and got the tax revision case drafted on 1-5-2001. In view of the summer vacation tax revision case is being filed on the reopening day.

It is respectfully submitted that non-filing of revision within the time is neither wilful nor deliberate, but only on bona fide belief that filing of tax revisions case at the stage will only be futile exercise as the judgment of this Hon"ble Court was against the petitioner.

It is submitted that a subsequent decision of the Higher Court holding the existing law as incorrect can be sufficient cause for condoning the delay in filing the revision inasmuch as it will be futile to file a tax revision case when the law is against the petitioner. In the circumstances, it is just and necessary that the

Hon"ble Court may be pleased to condone the delay in filing the tax revision case. The petitioner has fair chances of success in the revision as the Supreme Court has reversed the earlier decision which was adverse to the petitioner."

7. Mr. P. Srinivasa Reddy, learned Counsel appearing for the petitioners in CMP Nos.11955 of 2001 and 13512 of 2001 who led the arguments would contend that the question whether subsequent change of law would constitute a "sufficient cause" to condone the delay is no longer res-integra and the judgment of this Court in State of Andhra Pradesh Vs. Venkataramana Chuduva and Muramura Merchant and Another, , is a binding authority to state that subsequent change of law would constitute "sufficient cause" to condone the delay in preferring appeal or revision or any other legal action, as the case may be. Learned Counsel would point out that the judgment of the Supreme Court in M/s. B.P.L. Ltd. Vs. State of A.P., , which altered the position of law was delivered by the Apex Court on 9-1-2001 and the said judgment was published in March part of STC 2001 and the petitioners without further loss of time presented the above two TRCs on 28-6-2001 and 21-7-2001 in this Court.

8. Sri Nagendra Chetty, learned Counsel appearing for the petitioner in CMP No.11808 of 2001 while adopting the argument of Sri P. Srinivasa Reddy would point out that the judgment of this Court in Anandi Roller Flour Mills Ltd. Vs. Commissioner of Commercial Taxes, , altered the position of law and the said judgment was published only in June, 2001 and the petitioner without any further loss of time presented the TRC along with the CMP to condone the delay on 25-6-2001 and, therefore, in the light of the judgment of this Court in Venkataramana Chuduva's case (supra), it is eminently a fit case to condone the delay in preferring the TRC. Learned Counsel would also place reliance, in support of his submission, on an unreported judgment of this Court dated 26-10-1994 in M/s. Golden Wine Agencies, Hyderabad v. Sales Tax Appellate Tribunal, Hyderabad and others, unreported judgment in WP No. 18747 and 18748/1994 dated 26-10-1994, and another decision of this Court in Surya General Traders v. CTO, Palakole 25 APSTJ 85.

9. Mr. Bhaskar Reddy, learned Special Government Pleader for taxes placing strong reliance on the Nine Judge Bench judgment of the Supreme Court in Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others, , would submit that the subsequent changes of law would never be a good ground nor it constitute "sufficient cause" to condone the delay. Learned Government Pleader would also place reliance on the judgment of this Court in Hyderabad Wire and Allied Products v. Commercial Tax Officer, Hyderabad 28 APSTJ 82.

10. Dealing with the specific case set out in CMP No.11808 of 2001 in TRC (SR) No.41563 of 2001, he learned Special Government Pleader would point out that this Court delivered judgment in M/s. Anandi Roller Flour Mills case (supra) on 2-2-2001 whereas the TRC along with the CMP to condone the delay preferring the revision was filed before this Court only on 25-6-2001 and even assuming that the change of law itself would constitute "sufficient cause" for condoning the

delay, and taking the date 2-2-2001 as the date on which limitation began to run, still there is 142 days of unexplained delay in preferring the TRC. Learned Special Government Pleader would also point out that the explanation offered by the petitioner in the CMP is otherwise vague and cannot be verified, for the petitioner did not give the dates as to when he contacted his advocate etc. Learned Government Pleader would point that the judgment reported in M/s. Anandi Flour Mills case (supra) was delivered in the petitioner's own case and, therefore, the petitioner cannot plead ignorance of that judgment and he could have filed the TRC without any further loss of time. The learned special Government Pleader would also point that the very petitioner even before the judgment in M/s. Anandi Roller Flour Mills's case (supra) was delivered, chose to file an appeal against the provisional assessment order and, therefore, the plea of the petitioner that when the impugned order was passed on 21-9-1999, it thought it futile to file the TRC in the light of the earlier judgment holding the field, cannot be accepted.

11. By way of reply, Sri P. Srinivasa Reddy, learned Counsel for the petitioners would contend that the judgment of the Supreme Court in Mafatlal Industries case (supra) is distinguishable on facts of this case.

12. In Venkataramana Chuduva's case (supra), the assessee, dealers in puffed and parched rice, were assessed under the Act, subjecting the turnover relating to puffed and parched rice to tax at 4% u/s 5(1) of the Act. No appeals were preferred by the assessee against the order of assessment within the prescribed period in view of the judgment of the High Court in Nooka Agaiah v. Government of A.P.(1977) 39 STC 521, holding that puffed and parched rice were not the same commodity as rice and therefore were liable to be taxed as "general goods" u/s 5(1). The Supreme Court reversed the High Court's decision in Alladi Venkateswarlu and Others Vs. Govt. of Andhra Pradesh and Another, and it was only after the Supreme Court's decision that the assessee preferred appeals before the Assistant Commissioner accompanied by petitions for condoning the delay in filing the appeals. The Assistant Commissioner refused to condone the delay and dismissed the appeals as barred by limitation. The Tribunal in second appeal condoned the delay holding that the assessee were justified in not filing the appeals soon after receiving the assessment orders in view of the High Court's judgment, that when the Supreme Court reversed the judgment of the High Court and the assessee came to know of the Supreme Court judgment and filed the appeals within a few months, there was sufficient cause for the assessee not to file appeals within the prescribed time. On revision against the above order of the Tribunal, this Court held that one of the remedies open to the assessee was to prefer an appeal or revision, as the case may be, along with the petition for condoning the delay, on the ground that in view of the position of law obtaining as on the date of receipt of the impugned order it decided not to file an appeal, but that since the subsequent decision of the Supreme Court established that assumption to be incorrect and further that tax had been illegally collected from them, they were subsequently preferring appeal and that that should

constitute a "sufficient cause" within the meaning of the proviso to sub-section (1) of Section 19 or sub-section (2) of Section 21 or the proviso to sub-section (1) of Section 22 of the Act, as the case may be. The Court further held that in view of Article 265 of the Constitution of India, a subsequent decision of the High Court or the Supreme Court which changed the position, interpretation or the understanding of the law, constituted a "sufficient cause" for condoning delay in filing the appeal or revision, as the case may be, where it was established that on the date of receipt of the impugned order the filing of an appeal or revision would be an empty formality, having regard to the position of law then obtaining. In so opining, the Division Bench of this Court, placed reliance on the following observations of the Apex Court in *Kamala Mills Ltd. Vs. State of Bombay*, .

"Let us, therefore, examine the question as to whether the Act with which we are concerned in the present appeal, provides for a remedy to claim a refund of tax alleged to have been illegally recovered. Section 13 of the Act expressly provides for refunds. It lays down that the Commissioner shall, in the prescribed manner, refund to a registered dealer applying in this behalf any amount of tax paid by such dealer in excess of the amount due from him under this Act. The proviso to this section prescribes a period of limitation of twenty-four months from the date on which the order of assessment was passed or within twelve months of the final order passed on appeal, revision or reference in Section 21 which provides for the remedy of an appeal; and Section 22 which provides for a revisional remedy. It is significant that though Section 21(1) prescribes a period of sixty days for appeal and Section 22 prescribes a period of four months for revision, u/s 22-B the prescribed authority is given power to extend the period of limitation if it is satisfied that the party applying for such extension had sufficient cause for not preferring the appeal or making the application within such period. Section 23-A provides for rectification of mistake. It is thus clear that the appellant could have either appealed or applied for revision and prayed for condonation of delay on the ground that the mistake which was responsible for the recovery of the tax illegally levied, was discovered on the 6th September, 1955 because such a plea would have been perfectly competent u/s 22-B. In other words, if the appellant had pursued a remedy available to it u/s 21 or Section 22 read with Section 22-B, its case would have been considered by the appropriate authority and the validity of the grounds set up by it for the refund of the tax in question would have been legally examined....."

The Division Bench also referred to the judgments in *Andal Sweet Stall and Tiffin Dining Hall v. State of Tamil Nadu* (1981) 48 STC 551, *V.V. Kudva v. ESI Corporation* AIR 1972 Mys. 204, *Ajit Singh Thakur Singh and Another Vs. State of Gujarat*, , on which reliance was placed on behalf of the Department.

13. It is true that if we go by the ratio of the above decision of this Court, it suggests that the change in the position of law from the position of law obtaining on the date of receipt of the adverse order would constitute "sufficient cause" within the meaning of the proviso to sub-section (1) of Section 19, or sub-section

(2) of Section 21 or the proviso to sub-section (1) of Section 22 of the Act, as the case may be. The only difference in the cases on hand and the case dealt with by the Division Bench in Venkataramana Chuduva's case (supra) is that in that case the Tribunal itself had opined that the change in position of law constitutes "sufficient cause" and on the basis the Tribunal had condoned the delay and when that action of the Tribunal was assailed before this Court, this Court affirmed the judgment of the Tribunal. However, that difference would not make any difference as regards the application of the ratio decidendi of the judgment in Venkataramana Chuduva's case (supra). But the question is whether the said judgment of this Court is still good law in the light of the nine Judge Bench judgment of the Supreme Court in Mafatlal Industries case (supra). In that case the Supreme Court while opining that where a refund is claimed on the ground that the provision of a statute under which it was levied is or has been held to be unconstitutional, such a claim, being a claim outside the purview of the enactment, can be made either by way of a suit or by way of a writ petition, placing reliance on the ratio of the opinion of Hidayatullah, CJ in Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, , made an exception to the said principle. It reads:

"This principle is, however, subject to an exception; where a person approaches the High Court or the Supreme Court challenging the constitutional validity of a provision but fails, he cannot take advantage of the declaration of unconstitutionality obtained by another person on any other ground; this is for the reason that so far he is concerned, the decision has become final and cannot be reopened on the basis of a decision of any other person's case....."

14. Although the said exception was made in a different context of that case, the ratio decidendi of the above statement of law is that a litigant who has acquiesced to the decision of the Tribunal or the Court, as the case may be, without pursuing further legal remedies provided under the statute and the law, cannot be permitted to re-agitate or reopen the correctness of such decision on the basis of a subsequent decision obtained by another person.

15. Though it is stated by the petitioners in the affidavits filed in support of the CMPs, that in view of the law obtaining on the date of the impugned orders, they bona fide thought that filing of the TRCs would be a futile exercise and the same plea was highlighted at the time of hearing by the learned Counsel for the petitioners, that plea would not impress us. It is not that the judgments or the orders made by the Tribunal or for that matter that of this Court are final under the Constitution for they are not the final Courts of law. In a given case, a litigant without assailing the correctness of the order of the Tribunal or the High Court, as the case may be, acquiesces in it, it is not open or permissible for such litigant to agitate the grievance in respect of such order or orders in which lie has acquiesced, at later point of time, solely on the basis of change in position of law brought about at the behest or instance of some one else in the light of the judgment of the Supreme Court in Mafatlal Industries case (supra).

16. The judgment of this Court in Hyderabad Wire and Allied Products case (supra) also in a way supports the contention of the learned Special Government Pleader for Taxes. In that case the Court dealing with the question whether the appellate authority committed an illegality or impropriety in condoning the delay in appeal relating to the assessment years 1983-84 and 1984-85 on the ground that the judgment of the Supreme Court in K. Anwar and Company v. State of T.N. 108 STC 258, has shaken the authority of the earlier judgment of the Supreme Court in Telangana Steel Industries and others Vs. State of Andhra Pradesh and others, , had to observe thus :

"These appeals relate to the assessment years 1983-84 and 1984-85. The condonation of delay in regard to the appeals filed for these years, is in our view, wholly unwarranted and amounts to abuse of the discretionary power vested in the appellate authority, and these need not be remanded. The Special Appeals deserved to be dismissed straightaway.

For the said years, assessments were made and appeals were filed after the decision of the High Court to which the appellant was a party and during the pendency of the appeals filed by the appellants and others in the Supreme Court, no petition for condonation of delay was filed nor any reasons set out for the belated filing of the appeals. The condone delay petitions supported by affidavits were filed only after the decision of the Supreme Court, in Telangana Industries case (supra). It is surprising how the unnumbered appeals were kept pending for so long a time even without a petition for condonation of delay that had occurred by the date of filing of the appeal. Even in the affidavit filed, no explanation was attempted to be given as to why the appeals were filed in April, 1990 with a delay of three years and having filed the appeals, why they were not pursued and allowed to remain in cold storage for four long years thereafter. If the appellant thought that there was no use in filing the departmental appeals during the pendency of the appeals in the Supreme Court and that it is a frivolous exercise there is no reason why it should have thought of filing the appeal in the year 1990 and why the appeals should not have been filed earlier. No such explanation is forthcoming in the affidavits filed in April, 1994. The conduct of the assessee, to say the least is not bona fide and apart from the fact that filing of appeals in the year 1990 does not fit in with the explanation of the appellant that it could not prefer appeals in view of the adverse decision of the High Court and the pendency of the appeals in the Supreme Court. The explanation sought to be given by the learned Counsel for the appellants in the course of arguments that the two appeals for those two years were filed by way of abundant caution cannot be accepted, more so, when there is no such averment in the affidavit filed to explain the delay and for four long years, the appellants did not think it fit to explain the delay at all....."

17. The unreported judgment of this Court in WP Nos. 18747 and 18748 of 1994 dated 26-10-1994 and the judgment in 25 AP STJ 85 in no way support the contention of the learned Counsel for the petitioners. In Ms. Golden Wines

Agencies, Hyderabad v. STAT, Hyderabad and others (unreported judgment of this Court dated 26-10-1994 in WP No. 18747 and 18748 of 1994, the petitioners were the assesseees under the Act and they were assessed to tax for the assessment years 1983-84 and 1985-86. The Deputy Commercial Tax Officer found the assessments prejudicial to the Revenue inasmuch as the excise duty, freight charges, sales tax collection etc., were not brought to tax and so opining and after complying with the requirements of the Act in terms of procedure, invoked jurisdiction u/s 20 of the Act and assessed the disputed turnover to tax by his order dated 10-2-1989. The assesseees instead of filing appeal before the Tribunal against the said orders approached the Supreme Court questioning the correctness of the said orders directly by filing writ petitions u/s 32 of the Constitution of India. Those writ petitions were dismissed by the Supreme Court on 12-11-1992. Thereafterwards the appeals along with TMPs were preferred with delay of more than 4 years 11 months and 14 days before the Tribunal. The Tribunal dismissed the TMPs and consequently the appeals also on the ground that delay was not satisfactorily explained. When that order of the Tribunal was assailed in the above writ petitions before this Court, the Division Bench held--

"There is no doubt that there is a delay of more than 4 years in filing the appeal against the order of the Deputy Commissioner passed in exercise of the revisional power on 10-12-1989, but the petitioner had been prosecuting remedy against the said order before the Supreme Court. The writ petitions filed against the said order before the Supreme Court were eventually dismissed in December, 1992 and the appeals were filed on 11-3-1994. The reasons given for condoning the delay is that the partner had undergone Coronary by-pass surgery. This reason, however, was not accepted as sufficient cause as the date of the surgery was in June, 1992 before the dismissal of the writ petitions filed by the petitioner in the Supreme Court. There is no doubt that the reasons given by petitioners are not wholly satisfactory and there is some element of remis in prosecuting the matter, but having regard to the principles enunciated by the Supreme Court, viz.,

"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.

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

in Collector, Land Acquisition v. MST Katiji 1987 (66) STC 228.

In view of the fact that the respondent-Revenue can be adequately compensated for the delay caused in filing the appeal, the delay can be condoned on payment of costs which is our view, would meet the ends of justice. Accordingly, we condone the delay in filing the appeals in these cases on condition of the petitioner paying Rs.5,000/- to Mr. G. Suresh, the Government Pleader within 10 days from today."

The above cases are distinguishable on facts. Admittedly, the assessee in that case was agitating their grievance before the Supreme Court by filing writ petitions under Article 32 of the Constitution. Secondly, in terms of merit it was pleaded that the partner of the firm had undergone Coronary by-pass surgery.

18. The judgment of this Court in *Staya General Traders* case (supra) also is of no help to the petitioners. In that case, the assessment of the petitioner for the year 1987-88 regarding classification of fire wood was pending the STAT. On the assumption that whatever order would be passed for that year would automatically apply for the subsequent year, the petitioner did not file any appeal against the assessment for the subsequent year 1988-89. However, subsequently, on legal advice the petitioner-assessee filed an appeal with delay of one year, five months and nine days. The Tribunal dismissed the application seeking for condonation of delay. When that order of the Tribunal was assailed before this Court in WP No.6143 of 1997, this Court opined that the Tribunal erred in not condoning the delay. The Court held that the State should not stand by technical plea of limitation if a citizen's case was otherwise meritorious.

19. In the present cases, the only cause shown to condone the delay is the subsequent change of law, nothing else. These cases do not involve appreciation of any other circumstances or factors so as to see whether the circumstances or factors would constitute "sufficient cause" to condone the delay in preferring the TRCs. Be that as it may, as already pointed out supra, the mere ground of change of law without any other mitigating circumstances or satisfactory explanation would not constitute "sufficient cause" to condone the delay.

20. It is also pertinent to note that the plea of the petitioners that they thought it futile to file TRCs before this Court immediately after the impugned orders were made in the light of the law then prevailing is also not acceptable to us. Should it be noticed at the threshold that the orders made by the Tribunal or the High Court are not final under the Constitution. The order made by the Tribunal is subject to the revisional power of this Court u/s 22 of the Act. Similarly the judgments and orders made by this Court are subject to further judicial review by the Supreme Court. If a litigant knowing fully well about this position does not question the order of the Tribunal before this Court or an order of this Court before the Supreme Court and acquiesces to such orders, he cannot be permitted to later reagitate against the order in which he has acquiesced solely on the basis of change of law brought about at the behest of some one else.

21. In the result and for the foregoing reasons, we do not find any merit in these CMPs and they are accordingly dismissed. Consequently, the tax revision cases also stand dismissed. No costs.