

(2012) 07 GUJ CK 0056
In the Gujarat High Court

Case No : Civil Application No. 525 of 2011 and Stamp No. 2959 of 2011

Commissioner of Customs

APPELLANT

Vs

Karan Monomers P. Ltd.

RESPONDENT

Date of Decision : 31-07-2012

Acts Referred:

Citation : (2012) 37 STT 527

Hon'ble Judges : V.M. Sahai, J;N.V. Anjaria, J

Bench : Division Bench

Advocate : A.Y. Kogje, for the Appellant; Jayesh A. Kotecha and R.T. Songara, for the Respondent

Judgement

N.V. Anjaria, J.—The present application is filed seeking condonation of delay of 933 days in filing Tax Appeal to challenge the order dated 26.08.2008 of the Central Excise and Service Tax Tribunal in Appeal No. C/561/2004. As per the averments made in the application, after the Tribunal's order dated 26.8.2008, the Department received the certified copy thereof on 23.9.2008, which was forwarded by the tribunal on 9.9.2008. The appeal was required to be preferred on 20.3.2009 so as to be within limitation. However, the same was filed on 11.10.2011 resulting into delay of 933 days.

2. For explaining the delay, learned advocate for the applicant referred to and relied on the following averments made in paragraph Nos. 4 and 5 of the application:

4. The applicant submits that the Jr. Standing Counsel was allotted a specific assignment on account which he was unable to attend the Hon'ble High Court and therefore the Department had issued a communication to transfer the matters to another Standing Counsel. The matters sought to be transferred included this matter as well, however on account of some misunderstanding the present matter was left out and was not transferred and therefore further action which was necessary could not be taken. It is therefore requested to construe

the delay liberally and condone the same.

5. The applicant submits that the applicant department was vigilant. The applicant immediately made the follow up action. However, the Jr. Standing Counsel allotted with this work was still engaged in the specifically assigned matter till 1st March 2011 the Jr. Standing Counsel was not able to attend to this matter. In this regards the department has made communication with the Jr. Standing Counsel on 4.3.2009, 26.6.2009, 4.2.2011, 28.2.2011 therefore the department was continuously following it up with the Jr. Standing Counsel

2.1 On the above basis, it was submitted that the delay was not deliberate. It was further submitted that communication gap was the cause for delay. Learned advocate then submitted that there was a sufficient cause and that the phrase "sufficient cause" was required to be liberally construed.

3. The explanation sought to be put forward is that the Junior Standing Counsel of the Department who was to file appeal was given assignment of some other work, due to which the Department asked him to transfer all the matters to another counsel. As per the Department, all other matters with him were transferred except the present one, which was left out on account of some misunderstanding. Be that as it may. In any case, even while going by the said reason, the same at the best furnishes some explanation with regard to the initial stage only. Thereafter, there is a long lapse of period. No explanation for that has been forthcoming.

3.1 What really fails to convince the court is that the period of 933 days was whiled away. The case is that the Department had taken follow up action does not become acceptable in as much as it is not possible to fathom that for almost three years the affairs at the end of the Department remained at a standstill. If that be so, it was only a gross negligence. There cannot be any absolving excuse for the Department and the officers in charge for not taking the needful steps by pursuing the matter with the office of the advocate with whom the case papers were stated to have been. Apparently, the Department did not show any interest and evidently, no further steps which were necessary were taken. In the facts and circumstances of the case, it is not possible to countenance the plea that the Department was following up continuously. Had it been vigilant in following up, this much period would not have elapsed. In the circumstances, there is no bona fide explanation for passage of time resulting into inordinate delay of 933 days.

3.2 The expression "sufficient cause" may be required to be construed liberally, provided adequate and proper reasons exist. Liberal approach is advocated in condoning the delay and not being liberal to sufficiency of the cause where it does not exist.

4. In CWT v. Amateur Riders club [1994] Supp. 2 SCC 603, the Apex Court refused to condone delay of 264 days in filing Government SLP In the facts of that case, however, by observing as under:

It is true that Government should not be treated as any other private litigant as, indeed, in the case of the former the decisions to present and prosecute appeals are not individual but are institutional decisions necessarily bogged down by the proverbial red-tape. But there are limits to this also.

4.1 In *Lanka Venkateswarlu v. State of Andhra Pradesh* [2011] 4 SCC 363 the Supreme Court has observed:

Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally.

4.2 More recently in *Maniben Devraj Shah v. Municipal Corpn. of Brihan* [2012] 5 SCC 157, the Supreme Court clarified the ambit of expression "sufficient cause" and manner of its interpretation with reference to the object of the Limitation Act and also the extent of leniency to be shown in respect of plea for condonation of delay raised for the State instrumentalities. It was observed thus:

What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the Court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay. (para 24)

In cases involving the State and its agencies/instrumentalities, the Court can take note of the fact that sufficient time is taken in the decision making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and/or its agencies/instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest" (para 25)

4.3 In *Post master General v. Living Media India Ltd.* [2012] 207 Taxman 163/20 taxmann.com 347 (SC) while not condoning the delay of 427 days by the Postal Department in filing the Special Leave Petition, it was observed that it is the right time to inform all the Government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process.

5. In light of above discussion, no satisfactory explanation for inordinate delay of 933 days is tendered by the applicant and the applicant has failed to make out sufficient cause for condoning the delay. Accordingly, the present application is

dismissed. Rule is discharged.