

(2012) 09 RAJ CK 0072

In the Rajasthan High Court

Case No : (Sales Tax) Revision Petition No. 556 of 2011

M/s. Binani Cement Limited

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 26-09-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Evidence Act, 1872 — Section 114(g)
Limitation Act, 1963 — Section 14, 3, 5
Rajasthan Value Added Tax Act, 2003 — Section 83, 84, 84(1)

Citation : (2013) 57 VST 138

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Sudhir Gupta, with Mr. Vivek Singhal and Sachin Mehta, for the Appellant; G.S. Bapna, Advocate General with Mr. Sarvesh Jain, for the State of Rajasthan, Ms. Tanvi Sahai on behalf of Mr. R.B. Mathur, for the Respondent

Final Decision : Dismissed

Judgement

Alok Sharma

1. By this revision petition u/s 84(1) of the Rajasthan Value Added Tax Act, 2003 (hereinafter "the Vat Act") read with Section 86 of the Rajasthan Sales Tax Act, 1994 (hereinafter "the 1994 Act") a challenge has been laid to the order dated 24-10-2011 passed by the Rajasthan Tax Board, Ajmer (hereinafter "the Board") dismissing the petitioner company's application for condonation of delay filed along with an appeal filed by the petitioner on or about 16-9-2011 under Clause 6 of the Rajasthan Sales Tax New Incentive Scheme, 1989 against an order dated 21-10-2011 passed by the State Level Screening Committee. Consequently the appeal was not entertained as hit by limitation. The facts of the case are that the State Government notified on or about 6-7-1989 the Rajasthan Sales Tax New Incentive Scheme, 1989 (hereinafter "the 1989 Scheme"). The petitioner company is stated to have established a new industrial unit in state of Rajasthan covered under the 1989 Scheme for manufacturing cement and clinker

by investing Rs. 632.67 crores as fixed capital investment. The unit commenced commercial production on 25-5-1997. The 1989 Scheme provided for exemption from payment of tax in varying percentages dependent on the extent of eligible fixed capital investment (hereinafter "the EFCI") certified by the State Level Screening Committee (hereinafter "the SLSC"). The EFCI was to be calculated as provided for in the 1989 Scheme. The petitioner company is stated to have made an application to the SLSC on or about 29-10-1997 under the 1989 Scheme claiming for a grant of eligibility certificate for EFCI of Rs. 532.52 crores. In the first instance the SLSC vide order dated 15-1-1998 accepted EFCI only to an extent of Rs. 55.35 crores, further holding that the petitioner company was entitled to an exemption of 25% of its tax liability for a period of 7 years.

2. Dissatisfied with the order dated 15-1-1998, passed by the SLSC, the petitioner company filed a review petition before the SLSC in terms of clause 5A of the 1989 Scheme against the decision dated 15-1-1998 claiming EFCI of Rs. 396.72 crores and percentage exemption on tax @ 75% based on a circular dated 12-10-1995 relevant to the 1989 Scheme as issued by the Director, Industries Department, Government of Rajasthan.

3. An appeal was also simultaneously filed with reference to clause 6 of the 1989 Scheme by the petitioner company before the Tax Board against the aforesaid order dated 15-1-1998 passed by the SLSC. The Board allowed the appeal under its order dated 18-12-1998 holding that the company was entitled to 75% exemption on tax on approved EFCI remanded the matter for consideration by the SLSC on due EFCI. The SLSC thereafter vide its order dated 5-3-99 recomputed the EFCI to 280.47 crores. Revision petition against the order dated 18-12-1998 passed by the Tax Board was filed by the State Government, before this Court which however was rejected by the Single Bench of this Court vide order dated 2-7-2001 upholding the order dated 18-12-1998 where the Tax Board held the petitioner company entitled to 75% exemption from payment of tax as a prestigious unit. A SLP against the order dated 2-7-2001 passed by the High Court was filed by the State Government before the Hon"ble Supreme Court in which leave was granted, and consequently appeal No. 336/2003 is stated to be pending before the Hon"ble Supreme Court.

4. The matter before the Hon"ble Supreme Court however pertains only to the percentage of tax exemption entitlement of the petitioner company on the permissible EFCI. The issue of quantum of EFCI is however a separate issue. On this issue of computation of EFCI following the order of remand by the Board on 18-12-1998, the SLSC passed an order dated 5-3-1999 enhancing the EFCI, to which the petitioner company was entitled, from Rs. 55.35 crores to Rs. 280.47 crores. The petitioner company still dissatisfied with the computation of EFCI under the 1989 Scheme under order dated 5-3-1999 passed by the SLSC, challenged the same before the Tax Board. The Tax Board under its order dated 16-11-1999 again remanded the matter to the SLSC directing it to re-consider the EFCI to which the petitioner company claimed to be entitled to.

5. The SLSC however on consideration of the matter subsequent to the last remand by the Board, vide order dated 21-10-2000 maintained its earlier order dated 5-3-1999 approving the EFCI's computation at Rs. 280.47 crores. The order dated 21-10-2000 passed by the SLSC was admittedly conveyed to the petitioner company under covering letter dated 20-11-2000.

6. An appeal was filed on 16-9-11 under clause 6 of the 1989 Scheme to the Tax Board against the order dated 21-10-2000, as conveyed under covering letter dated 20-11-2000. The said appeal was accompanied by an application for condonation of delay. The application for condonation of delay has been dismissed by the Tax Board. The Tax Board has held that from the record before it, the application for condonation of delay was liable to be dismissed in view of the fact that even while the petitioner company had been able to explain the delay in filing the appeal on 16-9-2011 since 21-5-2008 when writ petition No. 5167/2008 was filed before the High Court till dismissal thereof on 5-9-2011 (with liberty to file an appeal and seek condonation of delay in filing thereof for the pendency of the period of the pendency of the writ before the High Court), for the period 20-11-2000 (when SLSC order dated 21-10-2000 was conveyed) to 21-5-2008 there was no credible explanation to make out "sufficient cause" for condonation of delay in filing the appeal. So holding vide order dated 24-10-2011, the Board has dismissed the appeal filed by the petitioner company.

7. Hence this revision petition u/s 84(1) of the VAT Act read with Section 86 of the 1994 Act against the order dated 24-10-2011 passed by the Board.

8. Heard Mr. Sudhir Gupta, learned Senior Advocate appearing with Mr. Vivek Singhal & Sachin Mehta, on behalf of the petitioner and Mr. G.S. Bapna, learned Advocate General appearing with Mr. Sarvesh Jain as also Ms. Tanvi Sahai appearing on behalf of the Commercial Taxes Department, and perused the material available on record.

9. It is the case of the petitioner company that against the order dated 21-10-2000 passed by the SLSC, a review petition had been filed on 13-12-2000 addressed to the Secretary, Industries, Government of Rajasthan who was the Chairman of the SLSC, seeking review under clause 5A of the 1989 Scheme. For facility of reference, clause 5A of the 1989 Scheme is reproduced here under:

5A. Review and Reconsideration.- (i) The industrial unit, the Commissioner, or any office authorised by him in this behalf, or assessing authority may, before the expiry of the period prescribed for preferring appeal, apply to the Screening Committee, for reconsideration or review of the order passed by the Screening Committee.

(ii) When an application is made for reconsideration or review it shall be disposed of by the appropriate Screening Committee within a period of 90 days from the date of receipt thereof;

Provided that where the appropriate Screening Committee is not able to dispose

of the application within the aforesaid period, the Chairman of the appropriate Screening Committee, may for sufficient cause, to be recorded into writing, extend the period or periods but not exceeding 90 days in aggregate.

(iii) The appropriate Screening Committee, may after making or causing to be made such enquiry as it considers necessary and after giving reasonable opportunity of being heard to the Industrial Unit, the assessing authority and Commissioner or any officer authorised by him in this behalf, pass such orders thereon as the circumstances of the case justify, including an order confirming, amending, suspending or cancelling the order or reopening the case and directing for fresh decision of the case.

10. The petitioner company states that as per past practice no receipt of filing of the review application dated 13-12-2000 was given to or obtained by the petitioner company. It is thereafter an admitted case that for a period of about six years till 1-12-2006, no steps were taken by the petitioner company to pursue its purported review application dated 13-12-2000 before the SLSC--albeit not addressed to the SLSC but purportedly to the Principal Secretary Industries who was the ex-officio Chairman of the SLSC. On 1-12-2006, the petitioner company states to have submitted a representation before the Commissioner Industries-Member Secretary SLSC inviting his attention to petitioner company's alleged representation/review and requesting that the SLSC consider the case of the petitioner company sympathetically and enhance the EFCI as claimed. It is submitted that along with the representation dated 1-12-2006 copy of the earlier application for review purportedly filed on 13-12-2000 was annexed, albeit no reference to the application dated 13-12-2000 was made in the body of the representation dated 1-12-2006.

11. In response to representation dated 1-12-2006, the Commissioner Industries- Member Secretary SLSC vide his letter dated 8-2-2007 informed the petitioner company that the application for review/re-consideration having been submitted beyond 60 days of the order dated 21-10-2000, it could not be considered.

12. The case of the petitioner company is that vide its letter dated 8-3-2007 it informed the Commissioner Industries that if a proper screening of the file of the petitioner company's case were to be made it would be evident that the review application as claimed has been filed within sixty days of the order sought to be reviewed. Nothing happened or was done by the petitioner company for one full year thereafter.

13. The further case of the petitioner company is that vide letter dated 7-3-2008, it informed the Commissioner Industries-cum-Member Secretary SLSC that it had filed a review petition No. MLP/2000-2001/(A) (letter number being disclosed first time) dated 13-12-2000 addressed to the Secretary to the Government of Rajasthan, Industries Department--ex officio Chairman SLSC with a copy to the office of the Commissioner Industries cum Member Secretary SLSC. It was

requested in this letter of 7-3-2008 that the case of petitioner for review against the order of 21-10-2000 be considered at an early date as the sanctioned EFCI limit of Rs. 280.47 crores was soon to expire and in the event the review application were not considered without further delay it would cause financial problems for the petitioner company.

14. The petitioner company states to have thereafter addressed another letter dated 13-5-2008 for the consideration of its request for review of the order dated 21-10-2000 allegedly filed on 13-12-2000.

15. As the matter thus stood, the petitioner company was visited with a demand letter dated 14-5-2008 issued by the Commercial Tax Officer stating that the sanctioned EFCI Rs. 280.47 under SLSC's order dated 5-3-1999 having been exhausted by the petitioner company, it would henceforth be under an obligation to commence depositing the full amount of tax due with effect from 1-5-2008. The demand letter dated 14-5-2008 was followed by demand notice dated 19-5-2008 under the Rajasthan VAT Act, 2003.

16. Aggrieved of the demand letter dated 14-5-2008 and demand notice dated 19-5-2008, the petitioner company filed a writ petition No. 5167/2008 before the Rajasthan High Court at Jaipur Bench. The case of the company in the writ petition was that in spite of filing of an application for review dated 13-12-2000 against the decision of the SLSC dated 21-10-2000, the respondents continued to dither and delay addressing the said review petition in spite of petitioner company's reminders dated 1-12-2006, 8-3-2007, 7-3-2008 and 13-5-2008. According to petitioner company's case, the non-address of its review application dated 13-12-2000 entailed its deemed acceptance resulting in an crystallised claim to an EFCI of 396.72 Crores. In the aforesaid context the petitioner company claimed that the demand notice, for payment of tax overlooking deemed to be approved EFCI and the exemption due under the Incentive Scheme, 1989 was liable to be quashed. The petitioner company states that the department accepted in its reply to writ petition No. 5167/2008 that the application for review the order dated 21-10-2000 passed by the SLSC was indeed filed on 13-12-2000. For this purpose in the present proceedings reliance has been placed on paras 5, 6 and 7 of the reply to writ petition No. 5167/2008 by the State. For the facility of ready reference the paras 7 and 8 of the reply to writ petition filed by respondent State are reproduced here under:

7. That aggrieved of this, the petitioner company filed an application on 13-12-2000. A perusal of the application filed by the petitioner company would clearly indicate that it was nothing more than an effort to keep the issue alive. The application was devoid of any substance and was not based on any cogent ground.

8. That it seems that the petitioner unit was not satisfied with the communication dated 20-11-2000 and resultantly they preferred to file an application, which was filed under a wrong premise. The so called application filed by the petitioner

suffered from a number of irregularities and defects. A perusal of the application (filed as annexure-12 along with the writ petition) indicates that it has been addressed to Secretary, Industries Department, whereas if the aforementioned application was at all a review application then it ought to have been sent/ addressed to the Commissioner Industries, who is the Member Secretary of SLSC. Not only this, a perusal of the application clearly indicates that it nowhere states that it is a review application under clause 5A of the Scheme. In the entire body of the writ petition the petitioner unit has been harping about its application remaining pending since the year 2000 and because of the fact that no decision has been taken on the application, therefore, it is to be deemed that the application stands allowed. It is most respectfully submitted that the application not only suffers from glaring defects, the same is hopelessly misconceived as well, for the reason that the petitioner unit ought to have challenged the decision dated 20-11-2000 by way of filing an appeal before the Tax Board. Since the application was misplaced filed under a wrong pretext and addressed to the wrong authority, therefore no decision could be taken on the aforementioned application. The petitioner unit is now attempting to benefit out of a wrong committed by them more than seven years ago. In the entire body of the writ petition the petition unit has not indicated any reason whatsoever, which prevented them from approaching the appropriate authority in view of the fact that no decision had been taken on the so called review application. Since the SLSC had already reviewed the matter of EFCI not once but twice and that too after giving a reasoned order well supported by the conclusions and basis thereof, the petitioner if aggrieved, was left with only option to approach the appellate authority i.e. the Rajasthan Tax Board.

17. It is submitted that during pendency of writ petition No. 5167/2008, the Joint Director Industries issued a notice to petitioner company calling upon it to avail of a personal hearing on its alleged claim for enhanced EFCI under the 1989 Scheme. It is stated that in response to notices dated 24-2-2011 and 4-3-2011 in this regard, the representatives of the petitioner company appeared before the SLSC seeking to agitate the company's claim for enhancement/revision of EFCI beyond Rs. 280.47 crores as per their reading of the 1989 Scheme with the Government Circular dated 3-8-1999. It is submitted that however overlooking the purported admission of the receipt of the application for review dated 13-12-2000 in the reply to writ petition No. 5167/2008, the SLSC required the petitioner company to produce any receipt or acknowledgment or any other proof of review application under clause 5A of the 1989 Scheme allegedly submitted on 13-12-2000. It is admitted that the representative of the petitioner company there upon stated that no acknowledgment/receipt had been taken or received by the petitioner company either from the Secretary, Government of Rajasthan, Industries Department, to whom the application was purportedly addressed, or from the Commissioner of Industries-Member Secretary SLSC, to whom copy of the application is said to have been sent. The petitioner company is stated to have argued before the SLSC that the issue of submission of proof with regard to

submission of review application dated 13-12-2000 was a non-sequitur as the respondent State had itself admitted to the filing of application for reconsideration on 13-12-2000 qua the order dated 21-10-2000 in its reply to the writ petition No. 5167/2008 and that consequently the State was estopped by its own admission from seeking to re-agitate the matter at the hearing with regard to petitioner's entitlement to enhancement of EFCI. It is submitted that however, vide letter dated 29-4-2011, the petitioner company was informed that in the meeting of SLSC held on 17-3-2011, which was attended by the representative of the petitioner company it was found on the basis of the report from the Industries department, to which the review application dated 13-12-2000 had allegedly been sent, that no such application for reconsideration/review had been filed by the petitioner company and that consequently, it was not possible to reconsider the request of the petitioner company for re-computation and enhancement of the EFCI. The petitioner company again vide letter dated 3-6-2011 is stated to have made an application for reconsideration of the decision of the SLSC on 17-3-2011 communicated to it under letter dated 29-4-2011.

18. Following the decision of the SLSC taken during the pendency of writ petition No. 5167/2008 before this court at its meeting of 17-3-2011 and conveyed as aforesaid vide letter dated 29-4-2011, a misc. application was filed by the respondent State in the pending writ petition No. 5167/2008 on or about 19-7-2011 stating that in the facts as they then transpired, relief prayed in the writ petition premised on the purported undecided application for review filed allegedly on 13-12-2000 could not be granted and consequently the writ petition filed by the petitioner company be dismissed as infructuous.

19. Writ petition No. 5167/2008 was there upon taken up by this court for hearing on 5-9-2011. The learned Judge took a view that in the facts of the case as then obtained before him there was no merit in the writ petition and the writ petition was liable to be dismissed. The learned Single Judge rejected the case of the petitioner company claiming deemed acceptance of its review application in view of no such deeming provision having been provided for in the 1989 Scheme. The court appeared to take the view that for whatever be the truth of the filing of the application of review on 13-12-2000 (as claimed), it could in no event be addressed in the year 2011 because under the 1989 Scheme, the SLSC when not deciding a review application within 180 days of its receipt was rendered functus officio and the only remedy with the petitioner company would be to lay an appeal to the Tax Board against the order dated 21-10-2000 passed by the SLSC. The court however directed that "in case petitioner files an appeal under para 6 of the Scheme before the learned Tribunal, the petitioner would be entitled to seek condonation of delay, on account of pendency of the proceedings before this court." The petitioner company did not challenge the order in writ petition No. 5167/2008 passed on 5-9-2011 and the order attained finality.

20. In the aforesaid background, the petitioner company filed an appeal under

clause 6 of the 1989 Scheme before the Tax Board on or about 16-9-2011. On the matter coming up before the Tax Board, in the first instance vide order dated 20-9-2011 the Tax Board without addressing the issue of limitation or the merits of the appeal directed that the petitioner company deposit 50% of the tax under demand under notice/s dated 14-5-2008 and 19-5-2008 and furnish bank guarantee for the remainder tax under demand whereupon remainder recovery would be stayed. The matter was adjourned to 11-10-2011.

21. On 11-10-2011, it was contended before the Tax Board on behalf of the respondent State by the Dy. Government Advocate that the appeal had been filed after an inordinate delay and interim order by the Board on 20-9-2011 had been passed without determining the question of limitation. It was stated that in view of the order dated 5-9-2011 passed by the High Court in writ petition No. 5167/2008, the petitioner company was only entitled to condonation of delay on its application for the purpose only for the period of the pendency of the writ petition No. 5167/2008 before the High Court i.e. 21-5-2008 to 16-9-2011. It was submitted that the issue of condonation of delay in filing the appeal prior to filing of writ petition before the High Court be first considered on the application for condonation of delay before the address of the appeal against SLSC's order dated 21-10-2000 on merits. On the aforesaid submission of the Dy. Government Advocate and also as warranted u/s 3 of the Limitation Act, 1961, the matter was posted for 12-10-2011 before the Division Bench of the Board, for hearing.

22. The case of the petitioner company before the Board was that the objection with regard to limitation in filing of the appeal under clause 6 of the Incentive Scheme, 1989 against the SLSC's order dated 21-10-2000 was not maintainable in view of the direction passed by this court on 5-9-2011 in writ petition No. 5167/2008, wherein it was stated that the petitioner company in the event of filing an appeal before the Tax Board would be entitled for condonation of delay for the period of pendency of the writ petition before the High Court. It was submitted that the petitioner company was entitled to condonation of delay on this count alone and hearing on the question of limitation on the application for condonation of delay was absolutely unwarranted and contrary to the spirit of the order dated 5-9-2011 in writ petition No. 5167/2008. Alternatively it was submitted on behalf of the petitioner company that the order dated 21-10-2000, passed by the SLSC had been put up for reconsideration/review with reference to clause 5A of the 1989 Scheme on 13-12-2000 and during the pendency of consideration thereof, limitation was in abeyance. It was submitted that the status of the pending application continued till the filing of the writ petition No. 5167/2008 and on this ground no delay be found in filing the appeal. It was submitted that in the alternative, sufficient cause be found for condoning the delay in filing of the appeal in the facts of the case. It was submitted that even though the writ petition was dismissed by the High Court on 5-9-2011, yet the High Court had allowed the petitioner company to agitate its grievance against the order dated 21-10-2000 passed by the SLSC under clause 6 of the 1989 Scheme. Consequently in the context of the order dated 5-9-2011, the petitioner

company claimed to be entitled to condonation of whole of the delay and not only condonation of delay, for the period during which SBCWP No. 5167/2008 was pending before the High Court, in filing the appeal before the Board. Reference was made to Section 85 of the 1994 Act as also Section 83 of the VAT Act which inter alia provided that appeals to Tax Board be filed within a period of 90 days, but in the event of delay in filing of an appeal, on sufficient cause, being shown, appeal before Board could be entertained. It was submitted that in the facts of the case on record, there was no delay whatsoever in filing of appeal, as the cause of action for filing the appeal would have arisen only on communication of SLSC's decision on the application dated 13-12-2000, which was never done till the letter dated 29-4-2011 communicating the decision of the SLSC holding that the application dated 13-12-2000 had never been received by the SLSC. It was submitted that the application dated 13-12-2000 for reconsideration of the order dated 21-10-2000, having been kept dormant and not considered by the SLSC for years in spite of several reminders, the petitioner company could not be said to be negligent or lethargic in pursuing its remedies for vindication of its rights. In this view of the matter, it was argued before the Tax Board that the delay if any found ought to be condoned and the appeal ought to be heard by the Tax Board on merits or else the petitioner company would suffer grave irreparable loss on count of its remedy against a very substantial injustice being foreclosed.

23. Per contra, on behalf of the State it was submitted that the appeal filed on 16-9-2011 against the order dated 21-10-2000, as conveyed under covering letter dated 20-11-2000 had been filed after an inordinate delay of 11 years, of which only the period 21-5-2008 to 5-9-2011 when the matter was pending in writ petition No. 5167/2008 could be condoned under orders of the High Court. It was submitted that under the 1989 Scheme any aggrieved person was to lay an appeal against an order of SLSC within a period of sixty days of communication of such order. It was submitted that the SLSC had taken the decision on 21-10-2000 that the petitioner company was entitled only to EFCI of Rs. 280.47 crores, and the said order was conveyed to the petitioner company by a letter dated 20-11-2000 under registered post receipt of which has not been denied. It was submitted that the case set up by the petitioner company (appellant before the Board) that an application for reconsideration had been filed on 13-12-2000 was absolutely false and completely incorrect, as no such application for reconsideration of the order dated 21-10-2000 was ever filed. It was further submitted that in the meeting of SLSC on 17-3-2011, during pendency of the writ petition No. 5167/2008 before this court, the matter was considered and in spite of the petitioner company being asked to establish and furnish proof of filing of the alleged application dated 13-12-2000 with reference to clause 5A of the 1989 Scheme, no proof had been furnished and in fact it was admitted by the petitioner company that it had no proof at all of the filing as claimed. It was submitted that it was found as a fact by the SLSC from the record including that of the Industrial Department that no application dated 13-12-2000 for reconsideration of the order dated 21-10-2000, had indeed ever been filed. It

was further submitted that under the order dated 5-9-2011 in writ petition No. 5167/2008, the learned Single Bench of this Court had merely directed the petitioner company to pursue its case in appeal under clause 6 of the 1989 Scheme and being entitled for condonation of delay only for the period during which the writ petition was pending before this court i.e. from 21-5-2008 to 5-9-2011. It was also submitted that even excluding the period 21-5-2008 to 5-9-2011, when writ petition No. 5167/2008 was pending before this court, the appeal was vitiated by an unexplained seven years inordinate delay and facts on record did not constitute sufficient cause for the Board to condone the delay in filing the appeal and to consider the appeal on merits.

24. The State also submitted before the Board that the application dated 1-12-2006 filed by the petitioner company recording dissatisfaction with order dated 21-10-2000 passed by the SLSC fixing EFCI at Rs. 280.47 crores and requesting review thereof was grossly delayed, and consequently vide letter dated 8-2-2007 the petitioner company was informed that the application for reconsideration of the order dated 21-10-2000 having been filed beyond the period of sixty days as provided under clause 5A of the 1989 Scheme, it was not deserving of consideration. It was further submitted that the order dated 8-2-2007 would have on its own also occasioned a clear cut cause of action to the petitioner company to take its remedy by way of an appeal under clause 6 of the Incentive Scheme, 1989 before the Board, and yet admittedly no such resort was taken against the communication dated 8-2-2007. It was submitted that in the obtaining circumstances, the petitioner company had not been able to make out a sufficient cause whatsoever for condonation of about 7 year delay in filing the appeal, consequent to which the application for condonation of delay in filing the appeal was liable to be dismissed appeal held to be not maintainable and thereupon dismissed.

25. On consideration of the matter on the submission of counsel for the parties as also perusal of the record of the SLSC, the Board came to a finding of fact that no application for reconsideration of the order dated 21-10-2000, as claimed by the petitioner company, was filed on 13-12-2000. The Board also noticed the fact that the SLSC in its meeting of 17-3-2011, result whereof was communicated to the petitioner company on 29-4-2011, had specifically required the petitioner company to produce proof of filing the alleged application for reconsideration of the order dated 21-10-2000 on 13-12-2000 but no such proof was filed. The Tax Board thus came to a conclusion that the entire foundation of petitioner company's case was mendacious and without any basis. The Board also noted the factum of petitioner company's application dated 1-12-2006 for reconsideration of the SLSC's dated 21-10-2000 having been specifically rejected by the SLSC vide order dated 8-3-2007 and yet no steps challenging the same were taken by the petitioner company till the filing of the writ petition No. 5167/2008 before the High Court after over seven years on 21-5-2008. The Tax Board on consideration of the order dated 5-9-2011 in writ petition No. 5167/2008, held that the order merely entitled the petitioner company to

consideration of condonation of delay during the pendency of the writ petition No. 5167/2008 before the High Court. In the facts and circumstances of the case, the Board held that there was no material before it filed by the petitioner company for it to come to a conclusion that the petitioner company had sufficient cause for not having filed the appeal under clause 6 of the Incentive Scheme, 1989 within a period of sixty days of the communication of the impugned order dated 21-10-2000 as mandated in clause 6 of the 1989 Scheme. In the Board's consideration, the petitioner company having thus failed to explain the inordinate delay of about 7 years from 20-11-2000 to 21-5-2008 (period prior to the matter being put to consideration of the High Court in SBCWP No. 5167/2008) in challenging the order 21-10-2000 passed by the SLSC, the petitioner company was not entitled for condonation of delay in filing the appeal. The appeal thus stood dismissed as having been filed beyond limitation.

26. Mr. Sudhir Gupta, learned Senior Advocate appearing along with Mr. Vivek Singhal and Sachin Mehta on behalf of the petitioner company has submitted that the impugned order dated 24-10-2011 passed by the Board is liable to be quashed and set aside by this court as the said order is erroneous, arbitrary, perverse and more importantly in defiance and contrary to the directions of this court in writ petition No. 5167/2008 decided on 5-9-2011. It is submitted that the Hon'ble Apex Court and this Court have consistently held that a liberal approach should be adopted while considering applications for condonation of delay as the object of administration of justice is adjudication on merits of the matter and not denial of petitioner's rights on technical/procedural grounds resulting from invoking limitation. It is submitted that the petitioner company had placed before the Tax Board all requisite record and material and duly demonstrated that the delay in filing of appeal against the order dated 21-10-2000 was not malafide, deliberate or intentional, but ex-facie bonafide occasioned entirely on account of pendency of proceedings, first before the SLSC under application for review filed on 13-12-2000 and thereafter a writ before this court which was numbered 5167/2008. It was submitted that there was thus "sufficient cause" for not presenting the appeal within 60 days limitation provided for under clause 6 of the 1989 Scheme against the order dated 21-10-2000 passed by the SLSC. It was further submitted that the Tax Board has arbitrarily ignored/overlooked and disregarded relevant facts warranting condonation of delay in filing the appeal before the Tax Board for reasons which are extraneous, untenable and unsustainable. It has been then submitted that the conclusions of the Tax Board with regard to non filing of application on 13-12-2000 are wholly perverse, more particularly in the context of admission of such an application dated 13-12-2000 being filed as made by the State in its reply to writ petition No. 5167/2008. Counsel submitted that while arriving at the conclusion that no application for review under clause 5A under 1989 Scheme was filed on 13-12-2000, the Tax Board has relied upon facts, documents and orders which were not placed on record before the Tax Board by the petitioner company or even by the respondent State. Mr. Gupta would also submit that the issue as to

whether any review application had been filed on 13-12-2000 was not or ought not to have even been an issue before the Tax Board, in view of admission of the State in its reply to writ petition No. 5167/2008 and that annexures 15A to 15G filed by the petitioner company before the Tax Board ought to have been sufficient for the Tax Board to arrive at a conclusion that the application for review against the order dated 21-10-2000 had been filed on 13-12-2000--the non-address whereof was ultimately the cause of filing an appeal on 16-9-2011 before the Tax Board against SLSC's order dated 21-10-2000.

27. Mr. Sudhir Gupta, learned Senior Advocate has relied upon a judgment in the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, wherein the Hon'ble Apex Court has emphasised on the purpose of Section 5 Limitation Act, 1963 being to enable the courts to do substantial justice to parties in disposing the matter on merits. Dealing with the expression "sufficient cause", the Hon'ble Apex Court has held that the expression "sufficient cause" is adequately elastic to facilitate the courts to apply the law in a meaningful manner to sub serve the ends of justice. Expounding on the need to take a liberal view in construing "sufficient cause" it has been held that the courts should exercise their discretion liberally to condone the delay in filing appeal, because refusing to condone delay could result in a meritorious matter being thrown out at the very threshold and the cause of justice being defeated. It is submitted that the Hon'ble Supreme Court has also held that where substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred as the party opposing the application for condonation of delay does not have a vested right in injustice being done. Cases of deliberate and inordinate delay may however be excepted cases. It has been submitted that the Hon'ble Apex Court has held that there can be no presumption in a delayed availing of a remedy by a litigant, or the appellant's culpable negligence, or for that matter malafides, as the litigant does not stand to benefit from such action. It is submitted that the Hon'ble Apex Court has thus mandated that the courts should not legalize injustice on technical grounds of limitation, but should have a justice-oriented approach while addressing applications for condonation of delay.

28. Mr. Sudhir Gupta, learned Senior Advocate has also relied upon a judgment in the case of N. Balakrishnan Vs. M. Krishnamurthy, wherein the Hon'ble Apex Court has again held that the expression "sufficient cause" should be construed liberally and in the absence of any malafides or dilatory strategy, the courts should normally condone the delay and where warranted compensate the opposite party with costs. It is submitted that the Hon'ble Apex Court has reiterated that the Rules of limitation are not meant to destroy the rights of parties, but only to ensure that parties do not resort to dilatory tactics, but seek their remedy promptly. It is emphasized by Senior counsel that condonation of delay is a matter of discretion of the court but on "sufficient cause" being found (which is not to be predicated on the length of the delay, but on the sufficiency of the cause for the delay) delay in availing remedy should be condoned. It is

submitted that the courts must show utmost consideration to the issue of condonation, and where there is a reasonable ground to think that the delay was not occasioned deliberately to gain time, the court should lean against rejection of the explanation of delay. Reliance has also been placed on *Apangshu Mohan Lodh and Others Vs. State of Tripura and Others*, wherein the Hon"ble Apex Court has reiterated that the power u/s 5 of the Limitation Act is discretionary with the object to address the matter on merits, hence the power to condone delay should be liberally exercised.

29. Per contra, Mr. G.S. Bapna, the learned Advocate General appearing along with Mr. Sarvesh Jain on behalf of the State would submit that the impugned order dated 24-10-2011 passed by the Tax Board is a well considered order rooted in a specific finding of fact by the Tax Board that admittedly the petitioner company had no proof of filing any application for review on 13-12-2000. It has been submitted that the Tax Board has also itself gone through the record of the case before the SLSC and considered the letter of the Industries Department and thereafter come to a specific finding of fact that no application under clause 5A of the 1989 Scheme for review of the order dated 21-10-2000 was ever filed by the petitioner company. It has been further submitted that contrary to the petitioner company's case that the State had admitted to the filing of application for review on 13-12-2000 in its reply to writ petition No. 516/2008, a holistic reading of the reply would indicate that the on the contrary the State had specifically denied the filing of any such review application on 13-12-2000. Learned Advocate General further submitted that in reply to writ petition No. 5167/2008 decided by this court under order dated 5-9-2011, it has been specifically mentioned that the purported application 13-12-2000 for review of the order dated 21-10-2000 was not addressed to the Commissioner Industries, who was the Member Secretary of the SLSC and even assuming that the purported application allegedly filed on 13-12-2000 was addressed to the Secretary Industries (which was denied in para 20 of the reply) it was not at all on its face a review application, nor did it indicate to be so with reference to clause 5A of the 1989 Scheme. It has been submitted that in para 14 of the reply to writ petition No. 5167/2008 it was submitted that "even if for argument sake it is assumed that the letter was received then also a bare perusal of the letter dated 13-12-2000 clearly indicates that it can in no way be called/treated a review application under clause 5A of the Scheme". Referring to para 20 of the reply to writ petition No. 5167/2008, the learned Advocate General has submitted that in the said paragraph it was categorically averred that "no review/reconsideration application dated 13-12-2000 has been found filed by the petitioner before the Member Secretary, SLSC, therefore the question of disposal of the same does not arise". It has been further submitted that thus no unequivocal admission of application for review under clause 5A of the 1989 Scheme having been filed can be culled out from the reply to the writ petition No. 5167/2008. Learned Advocate General submitted that it is for this reason that when this court disposed of the writ petition No. 5167/2008 under order dated 5-9-2011 it only observed that the petitioner

company would be entitled for the condonation of delay in filing the appeal only for the duration of pendency of writ petition before the high court (i.e. from 21-5-2008 to 5-9-2011) and not for the whole of the length of time in issue--for filing of the appeal before the Tax Board.

30. Learned Advocate General has also drawn the attention of this court to the preliminary objections, more particularly para No. 2, in reply to writ petition No. 5167/2008 pertaining to the maintainability of the writ petition, wherein it was stated by the State that submissions made by the petitioner regarding filing of representation dated 13-12-2000 were seriously disputed, as the SLSC had never received any such application for alleged grievance/review against the order dated 21-10-2000 and that there was thus no occasion for the SLSC to adjudicate upon the said representation/application dated 13-12-2000. It has been further submitted that thereafter the SLSC in its meeting dated 17-3-2011 (occasioned by allegations in writ petition No. 5167/2008 about filing of a purported review application dated 13-12-2000) had specifically asked the petitioner company for any proof available with it of having submitted the application dated 13-12-2000, but the representative of the petitioner company had failed to submit such receipt or proof of submitting the alleged review application dated 13-12-2000.

31. Learned Advocate General has then submitted that indeed a letter dated 13-12-2000 was received by the Secretary, Industries, government of Rajasthan, copy whereof was endorsed to Secretary, Finance, Government of Rajasthan and Special Secretary, Finance, which however pertained to another issue and was with regard to giving effect to judgment of Tax Board dated 18-12-1998 pertaining to the entitlement of petitioner company to 75% tax exemption on the EFCI allowed by the SLSC and not about seeking a review of the SLSC's order dated 21-10-2000 on EFCI computation. Learned Advocate General submitted that the letter dated 13-12-2000 addressed to Secretary Industries by the petitioner company pertaining and limited to the implementation of the order of Tax Board with regard to petitioner company's entitlement of 75% tax exemption on the EFCI approved, was subsequently sought to be used, with some tampering as an afterthought, for belatedly setting up a case of having applied for review of the order dated 21-10-2000 and enhancement of EFCI. It has been submitted that thus with the sleight of hand and alteration in subject matter of the letter dated 13-12-2000 with regard to implementation of 75% tax exemption on EFCI, the petitioner company has tried to falsely demonstrate contrary to the record of SLSC and even the Industries department that an application for review with regard to EFCI claim beyond Rs. 280.47 crores permitted under order dated 5-3-1999 was also filed. It has been reiterated that no such application for review of the order dated 21-10-2000 pertaining to dissatisfaction with EFCI of Rs. 280.47 crores and for reconsideration and its re-computation was ever filed.

32. Learned Advocate General further submitted that the petitioner company is a

big corporate organisation presumably with a full time legal department. It is submitted that the petitioner company had earlier in the year 1998 filed two review applications under clause 5A of the 1989 Scheme, and each of the two review applications were properly submitted and addressed to the competent authority cum Commissioner Industries i.e. Member Secretary of the SLSC and a specific mention of clause 5A of 1989 Scheme was made therein. The said two applications have been annexed as Exhibit-RA-6 and RA-7, respectively, along with the additional affidavit filed on behalf of the State. It has been submitted that even subsequently the petitioner company filed an application for review against the order dated 17-3-2011 conveyed to petitioner company vide letter dated 29-4-2011 holding that the no application dated 13-12-2000 had been received. It is submitted that even in this review application reference was clearly made to clause 5A of the 1989 Scheme and it was addressed to Commissioner Industries-Member Secretary SLSC. In the aforesaid facts, the learned Advocate General has submitted that while both before 13-12-2000 and after 13-12-2000 proper review applications with reference to clause 5A of the 1989 Scheme were filed before the Commissioner Industries-cum-Member Secretary SLSC, it is inconceivable that in respect of the alleged application dated 13-12-2000 neither any proper reference was made to clause 5A of the 1989 Scheme, nor was it addressed to Commissioner Industries-cum- Member Secretary SLSC, but to the Secretary Industries, Government of Rajasthan--as claimed falsely by the petitioner company.

33. Learned Advocate General further submitted that for a company as litigious as the petitioner company, as evident from several review applications/appeal filed by it since 1998 under the 1989 Scheme, it should also be inconceivable for this court to imagine that, in the normal course of human conduct, the purported application for review dated 13-12-2000 seeking EFCI enhancement of crores of rupees would not be pursued by the petitioner company for a period of about 6 years till 1-12-2006. It is submitted that the said letter dated 1-12-2006 was promptly replied by the SLSC vide communication dated 8-2-2007 stating therein that the review application against the order dated 21-10-2000 was not maintainable having been filed beyond a period of 60 days from the order dated 21-10-2000. This communication dated 8-2-2007 would have on its own provided a cause of action to the petitioner company to lay an appeal under clause 6 of the 1989 Scheme. Yet this was not done. It is then submitted by the learned Advocate General that correspondence subsequent to letter dated 8-2-2007 was of no avail as even under 1989 Scheme a dismissal of review application on grounds of limitation--for whatever its legal consequence--as conveyed to petitioner company under order dated 8-2-2007 ought to have at least been appealed against under clause 6 of the 1989 scheme. This was not admittedly done and no attempt made to explain why so. Limitation of 60 days for filing the appeal even if computed with reference to communication dated 8-2-2007 expired long before the appeal under Clause 6 of the 1989 Scheme was filed on 16-9-2011--argued the learned Advocate General.

34. Learned Advocate General has emphatically argued that in the obtaining facts of this case this court should not exercise its limited power of revision u/s 84 of the Rajasthan VAT Act. It is submitted that this court can exercise its revisional power only on a question of law and the revision petition as filed by the petitioner company involves no question of law as the issue of the petitioner company's entitlement to condonation of delay on sufficient cause being found is a question of mere fact. The learned Advocate General has submitted that no perversity in the finding of fact arrived at by the Tax Board with regard to non filing of application on 13-12-2000 and absence of "sufficient cause" can be found in the impugned judgment dated 24-10-2011. It is submitted that the Tax Board has come to a factual conclusion based on record and facts pleaded before it as also on scrutiny of the record before it as to lack of sufficient cause for filing an inordinate delayed appeal after about 7 years as the petitioner company could not even establish that it had filed review application under clause 5A of 1989 Scheme on 13-12-2000. It is submitted that similarly the conclusion of the Tax Board that from the record of SLSC no application for review under clause 5A of the 1989 Scheme appeared to have been filed was also a finding of fact based on record of the case and in the exercise of limited revising power statutorily confined to questions of law, this court ought not to interfere in the impugned findings of fact as to lack and absence of "sufficient cause" arrived at by the Tax Board in its impugned order dated 24-10-2011.

35. Learned Advocate General has also further relied upon a judgment in the case of Binod Bihari Singh Vs. Union of India, wherein the Hon'ble Apex Court has held that even though it may not be desirable for the government or the public authority to take shelter under the plea of limitation to defeat a just claim of a citizen, yet where a claim is barred by limitation and such plea is raised specifically, the said plea cannot be ignored by the court on the ground that such plea is ignoble. It is submitted that the Hon'ble Apex Court has held that the bar of limitation may be considered even if such a plea has not been specifically raised, because of the mandate of by Section 3 of the Limitation Act, 1963 which is a statute of repose and bars a delayed cause of action more so when inordinate delayed is being agitated in a court of law. Learned Advocate General has reiterated that the law of limitation is founded upon the well accepted principle of jurisprudence and public policy, and where there is an inordinate delay and a false stand is taken by the petitioner seeking condonation of delay to get rid of the bar of limitation, the court should be slow in entertaining such a litigant seeking to avail of a benefit on a false plea and reject the plea for condonation of delay raised by the petitioner. Learned Advocate General has also relied upon a judgment in case of The State of West Bengal Vs. The Administrator, Howrah Municipality and Others, wherein the Hon'ble Apex Court has held that the expression "sufficient cause" cannot be construed too liberally where negligence or inaction or lack of and want of bonafides is attributable to a party seeking the exercise of discretion vesting in the court to condone delay. Learned Advocate General further submits that in the case of Vedabai @

Vaijayanatabai Baburao Pateil Vs. Shantaram Baburao Patil and Others, the Hon''ble Apex Court has held that in the exercise of discretion u/s 5 of the Limitation Act, the court should adopt a pragmatic approach making a distinction where the delay is inordinate and where the delay is only of a few days. It is submitted that the Hon''ble Apex court has held that where the delay is inordinate, consideration of prejudice to the other side are a relevant factor. It is submitted that the Hon''ble Supreme Court in Manindra Land and Building Corporation Ltd. Vs. Bhutnath Banerjee and Others, has held that a finding of fact as to existence of sufficient cause or otherwise in presenting an application for condonation of delay is finding of fact, which cannot be interfered with in exercise of powers of revision--in that case u/s 115 CPC.

36. Having heard learned counsel for the parties and having perused the impugned judgment dated 24-10-2011 passed by the Tax Board, I am of view that the fulcrum of petitioner company's case turns on the question as to whether the application under clause 5A of the 1989 Scheme for review of order dated 21-10-2000 passed by the SLSC was indeed filed by the petitioner company on 13-12-2000? The lynchpin argument of petitioner company lies in the purported admission by the respondent State to the factum of the filing application for review on 13-12-2000 in its reply to writ petition No. 5167/2008. The revision petition substantially turns on the determination of the question as to whether the order dated 24-10-2011 passed by Tax Board coming to a finding of fact with regard to non filing of application 13-12-2000 is perverse and/or suffers from a misdirection in law entailing a question of law for determination in the present revision petition u/s 84(1) of the Rajasthan VAT Act read with Section 86 of the Rajasthan Sales Tax Act.

37. In my considered opinion there is no material before this court to come to the conclusion that the order dated 24-10-2011 is a perverse order or vitiated by a misdirection in law entailing a question of law to be determined in the present revision petition. The issue of condonation of delay in filing appeal beyond limitation and finding of sufficient cause is a question of fact, which needed to be established from the evidence led by the petitioner company as appellant before the Tax Board to draw on its discretion for condoning delay of about 11 years in filing an appeal against SLSC's order dated 21-10-2000. This was the Burden of the petitioner company.

38. It is an admitted fact that the petitioner company did not produce any proof of filing of the application dated 13-12-2000, before the SLSC at any time or even on 17-3-2011 when the matter was considered in view of the allegation in this regard in writ petition No. 5167/2008. The reliance of the petitioner company on reply filed by the State to writ petition No. 5167/2008 is also of no avail. It is trite that an admission has to be unequivocal to be relied upon. A perusal of the reply filed by the State to writ petition No. 5167/2008, while it unfortunately is a garbled reply with an initial impression of admission of the filing of the application for review on 13-12-2000 soon corrected, shows that the

State had completely and unambiguously denied the receipt of the application for review dated 13-12-2000 by the SLSC or the Industries department. Aside of the failings in the reply to writ petition No. 5167/2008 filed by the State, in my considered opinion there is in no event an unequivocal admission therein that the application for review of the order dated 21-10-2000 under clause 5A of the 1989 Scheme was filed and reviewed on 13-12-2000. The best evidence with regard to filing of the purported application on 13-12-2000 before the Commissioner Industries-cum Member Secretary SLSC should have come from the petitioner company. It did not. Adverse inference u/s 114(g) of the Evidence Act thus operates against the petitioner company. It has been at all times the petitioner company's admitted case as before the SLSC's meeting on 17-3-2011 as also before the Tax Board in the course of consideration of application for condonation of delay and also before this court in present revision petition, that it has no proof of filing of application on 13-12-2000. Escape from the obligation to produce the best evidence is sought on the pretext of the SLSC never giving receipts of application filed before it. That however is a tenuous argument at the company's own peril. More importantly this court cannot overlook the fact that the petitioner company had filed at least two applications for review before the SLSC in 1998 where under it had addressed the applications such as on 15-4-1998 and 12-10-1998 (Annexure-RA-6 and RA-7 to the affidavit of Omkar Singh Ashiya) to the Commissioner Industries-cum Member Secretary SLSC and made specific reference to clause 5A of the 1989 Scheme. However the purported application dated 13-12-2000 for review was oddly addressed to the Secretary Industries not the Member Secretary SLSC and even makes no reference to clause 5A of the 1989 Scheme. Further detrimental to petitioner company's case is the factum of complete quietude of petitioner company for a period of about six years till 1-12-2006 thereafter. No attempt was made to pursue the purported application filed on 13-12-2000 by the petitioner company. This delay on its own is extremely odd and unworthy of credence in view of the fact that the petitioner company had earlier been prompt in moving and pursuing its application before the SLSC. What aggravates the incredibility of the situation is the inaction of the petitioner company in pursuing its purported application for review filed on 13-12-2000 for enhancement of EFCI by a large sum of over hundred corers for six years until its letter dated 1-12-2006.

39. Further this court is also to take into consideration the fact that even the communication dated 8-2-2007 under the hand of Commissioner Industries-cum-Member Secretary SLSC rejecting the request for review under the company's letter dated 1-12-2006 was on its own a cause of action (for whatever its worth) for filing an appeal before the Tax Board. Yet the petitioner company again adopted quietude and did not file an appeal challenging the order dated 21-10-2000, along with the communication dated 8-2-2007. Instead the petitioner company continued to engage in sterile-dead end correspondence with the respondents until the demand notice by the department issued on 14-5-2008 and 19-5-2008 resulted in the petitioner company filing S.B. writ petition No.

5167/2008 on 21-5-2008. This writ came to be decided on 5-9-2011 in the manner earlier detailed in this judgment.

40. In the case of Sita Ram Bhau Patil Vs. Ramchandra Nago Patil (Dead) by Lrs. and Another, the Hon''ble Apex Court has held that an admission to be binding must be clear and unequivocal and not ambiguous. No such situation obtains in the present case with regard to the filing of the review application on 13-12-2000 on the basis of the reply of the State to SBCWP No. 5167/2008. This court while dismissing S.B. writ petition No. 5167/2008 on 5-9-2011 allowed the petitioner company to lay an appeal against the order dated 21-10-2000 passed by the SLSC to the Tax Board accompanied by an application for condonation of delay with a limited direction for condoning the delay in filing of the appeal for the duration of the pendency of writ petition No. 5167/2008 between 21-5-2008 to 5-9-2011. There was no direction from the learned Single Judge to condone whole of the delay. The matter was to be considered by the Board on its own facts and supporting material. In my considered opinion the public policy underlying the limitation Act, 1963 has to be respected and upheld. Section 3 of the Act aforesaid specifically provides that every suit instituted or appeal preferred after the prescribed period of limitation should be dismissed, even where limitation has not been advanced as a defence. Escape from the otherwise inexorable effect of Section 3 of the 1963 Act lies in Section 5 thereof, which inter alia provides that appeals may be admitted after the prescribed period if the appellant satisfies the court that he had "sufficient cause" for not preferring the appeal within time prescribed.

41. The Hon''ble Apex Court and various High Courts including this court have held that exercise of power u/s 5 of the Limitation Act is a matter of discretion of the court, even when "sufficient cause" for delay in filing of appeal has been explained. But before the question of the exercise of discretion by the courts arises on an application u/s 5 of the 1963 Act, "sufficient cause" has indeed to be established. What constitutes "sufficient cause" has not been defined under the Limitation Act, 1963, yet has been construed by the Hon''ble Apex Court and this Court in catena of decisions. "Sufficient cause" fundamentally entails situations credible to the court where availing of remedy, such as of appeal, is not vitiated by gross negligence, inaction, malafides and indolence etc. "Sufficient cause" can only be found where the person/party seeking condonation of delay u/s 5 of the 1963 Act has been vigilant, efficient focused and active as also alive to rights in law and has not by its conduct contraindicated its aforesaid obligations.

42. No doubt the Hon''ble Supreme Court in the case of Collector, Land Acquisition Anantnag (supra) has held that the courts should adopt a justice oriented approach and liberally construe the expression "sufficient cause" such that a litigant is not denied his right and adjudication of his case on merits. Yet, the Hon''ble Apex Court has at all times attached a caveat to the recommended "liberal approach" in addressing/determination of sufficiency of the cause for the purpose of exercise of the discretion in condoning the delay in availing a remedy

otherwise available in law. Two of the foremost caveats to "liberal approach" are the rule against "false pleas" as enunciated in Binod Bihari Singh (supra) and "inordinate delay" indicative of lack of vigilance, lethargy and reckless negligence. In the instant case there was an inordinate delay of about 11 years in filing the appeal before the Tax Board on 16-9-2011 under clause 6 of the 1989 Scheme against the SLSC's order dated 21-10-2000. However in terms of direction of this court in writ petition No. 5167/2008 decided on 5-9-2011, the petitioner company was entitled to condonation of delay for the period of between 21-5-2008 and 5-9-2011, when S.B. writ petition No. 5167/2008 was pending before this court. Even otherwise u/s 14 of the Limitation Act, the petitioner company would have been entitled to the same relief. The question however remains as to whether the petitioner company was able to set up a case before the Tax Board for condonation of delay beyond the period of 60 days following the receipt of SLSC's order dated 21-10-2000 till filing of writ petition No. 5167/2008 on 21-5-2008.

43. As has been noticed above, the petitioner company states that it has no proof of filing of review application on 13-12-2000. This admission is fundamentally destructive of petitioner's case for condonation of delay of about seven years till filing of the writ petition No. 5167/2008 on 21-5-2008. Another arrow to the petitioner's bow string to support its case of an application for review having been filed on 13-12-2000 was reliance on the reply of the State to writ petition where the State purportedly admitted the filing of such an application. This is also without foundation. A perusal of the reply to the writ petition No. 5167/2008 shows quite the contrary situation--as in para No. 20 of the reply to writ petition 5167/2008 where it has been categorically and unambiguously stated that no application dated 13-12-2000 seeking review under clause 5A of the 1989 Scheme was filed. Other surrounding circumstances of the case such as the purported application dated 13-12-2000 allegedly under clause 5A of the 1989 Scheme being differentially addressed and formulated as against earlier applications under clause 5A of the 1989 Scheme filed in 1998 make, to my mind, the case of the petitioner company incapable of belief and acceptance more so in this revision petition of statutorily limited jurisdiction. Further even after the communication dated 8-2-2007, informing the petitioner company that its application was belated and therefore not tenable for review, the petitioner company took no steps whatsoever and was goaded into filing of writ petition No. 5167/2008 on 21-5-2008 only following the demand notice 14-5-2008 & 19-5-2008 to commence paying value added tax as applicable in view of exemption granted under order dated 21-10-2000 having been utilised/completed its tenure.

44. In the case of Lanka Venkateswarlu (D) by L.Rs. Vs. State of A.P. and Others, the Hon'ble Supreme Court has held that the recommended "liberal approach" in considering the sufficiency of cause for condonation of delay in taking legal proceedings beyond statutorily prescribed limitation should not override the substantial law of limitation, specially when courts find no justification for the

delay. It has been held that the courts, including the Supreme Court, no doubt have recommended "liberal approach" in considering applications for condonation of delay, yet the concepts such as "liberal approach" "justice oriented approach" and "substantial justice" cannot be employed to jettison the substantial law of limitation--Especially when on facts the authority before which application u/s 5 of Limitation Act is filed, finds no justification for the delay. It has been held that while considering the application u/s 5 of the limitation Act, the courts do not enjoy unlimited and unbridled discretionary powers and the discretion has to be exercised within reasonable bounds. It has been further held that the discretion u/s 5 of the Limitation Act has to be systematically exercised duly informed by reasons and where whims or fancies, prejudices or predilections cannot and should not form the basis of exercising the discretionary powers to condone delay. In the case of Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation and Another, the Hon''ble Supreme Court has held that even while a "liberal approach" is desirable in condoning the delay of short duration, stricter approach is required to be applied in cases of inordinate delay. Finally in view of the observations of the Hon''ble Supreme Court in case of Binod Bihari Singh (supra), I find that as the petitioner company to overcome a bar of limitation appears to have taken a false stand of filing review application on 13-12-2000, the application for condonation of delay deserved dismissal. In my considered opinion, even otherwise in view of overall facts of the case this court can't find any perversity in the impugned judgment dated 24-10-2011 passed by the Tax Board and come to a positive finding that an application for review was filed on 13-12-2000 non consideration of which entitled the petitioner company to a condonation of delay in filing appeal on 16-9-2011 challenging the SLSC's order dated 21-10-2000. The case of application dated 13-12-2000 has not been proved on petitioner company's own admission that it had no proof of filing such an application. There is no other material with the court to hold that the application for condonation of delay was wrongly rejected by the Tax Board overlooking material evidence. The order of this court dated 5-9-2011 in writ petition No. 5167/2008 contained no direction to the Tax Board to condone the delay for the whole period of 11 years, but was confined to the petitioner company's entitlement for condonation of delay from 21-5-2008 to 5-9-2011. For the remainder period from 21-10-2000 to 21-5-2008, the burden was on the petitioner company to satisfy the Tax Board that it had sufficient cause for filing an inordinately delayed appeal against the SLSC's order dated 21-10-2000 on 16-9-2011, and for hearing the appeal on merits. The findings of the Tax Board are findings of fact. The scope of revisional jurisdiction in interfering with findings of fact entailing a decision by the concerned court on an application for condonation of delay is extremely narrow as would be evident from the judgment of the Hon''ble Apex Court in case of Manindra Land and Building Corporation Ltd. (supra). Within the narrowness of the revisional jurisdiction of this court u/s 84(1) of the RVAT 2003 read with Section 86 of the Rajasthan Sales Tax Act, 1994, I cannot find any legal ground to allow this revision petition.

45. Consequently, I find no force in the revision petition and the same is dismissed. Stay application also stands dismissed.