(1998) 07 OHC CK 0033

In the Orissa High Court

Case No : O.J.C. No. 13165 of 1996

Singal Trading Co. APPELLANT

Vs

Orissa Sales Tax Tribunal and Another RESPONDENT

Date of Decision : 02-07-1998

Acts Referred:
Limitation Act, 1963 — Section 5

Citation : (1999) 1 OLR 507

Hon'ble Judges : S.C. Datta, J;A. Pasayat, J

Bench : Division Bench

Advocate : D. Agrawala, N. Agrawala and S.P. Dalai, for the Appellant; S.C. Lal, Senior Standing Counsel (C.T.), for the Respondent

Final Decision : Allowed

Judgement

A. Pasayat, J.—Delay in presentation of second appeal filed by the Revenue having been condoned by the Orissa Sales Tax Tribunal (in short, the ''Tribunal''), the assessee has filed this writ application for interference. According to it, no reason whatsoever much less possible, was indicated to warrant such condonation.

2. Sans unnecessary details factual position which is almost disputed is as follows :

Petitioner filed appeals before the Assistant Commissioner of Sales-tax, Cuttack I Range, Cuttack against the order of assessment made for the assessment year 1991 -92. By order dated 16.1.1994 the Assistant Commissioner adduced the demand from Rs. 50,716/- to Rs. 3,316/-. The order was issued by the Assistant Commissioner on 29.3.1994, and same was received in the Office of the Commissioner of Sales-tax on the same day. The last date for filing the second appeal was 28.5.1994. But the appeal was actually filed on 24.9.1994. Thus, there was a delay of 120 days in presentation of the appeal. It is to be noted here that there was no application for condonation of delay filed along with the appeal. It was filed subsequently. On 28.2.1995 Registrar of the Tribunal found that there was delay and issued notice to rectify the detects. It was also pointed out that there was delayed presentation of the appeal. Fifteen days from the date of receipt of the notice was granted to rectify the defects. On 15.5.1995 a petition was filed by the Revenue to allow time to rectify the defects. Time till 27.5.1995 was granted. The defects were not rectified on 27.5.1995, and therefore, the Registrar directed the mater to be placed before the Chairman. Notice in Form XX of the Orissa Sales Tax Rules, 1947 (in short, the ''Rules'') was issued on 7.2.1996 fixing 8.3.1996 for rectification of defects. The order of the Chairman dated 8.3.1996 shows that the notice issued in Form XX had been duly served and the Revenue removed all the defects except relating to limitation. An application for condonation was filed on 18.6.1 996. The matter was directed to be placed for hearing on the question of limitation.

From the records of the Tribunal it appears that on 23.5.1996 the Chairman directed to place the petition for condonation of delay before the Division Bench for hearing on the question of limitation. The matter was heard by a Division Bench of the Tribunal on 1 8.6.1996, and impugned order condoning delay was passed.

3. The ground indicated by the Revenue seeking condonation reads as follows :

"1. That the State has preferred second appeal in this case and has filed the same on 24.9.1994.

2. That delay in filing of the appeal is non-deliberate. The delay was due to process of decision making in Government Office."

Delay was condoned by the impugned order dated 18.6.1996 with the following observations :

"The delay, as explained by the learned Addl. S.R. was due to delay in the process of decision making in the office which is not unusual in Government offices and therefore prayed to condone the delay and admit the appeals. The learned Advocate for the dealer, on the other hand, contended that the delay must be explained for each day. It is now a settled law that ''every days'' delay must be explained'' does not imply a pedantic approach. The doctrine must be applied in a rational common sense in pragmatic manner. Delay in Govt. Offices for decision making is not uncommon and unusual now a days, which has unfortunately happened in the present case as is evident from the administrative record produced before us. Therefore, the delay being not intentional or deliberate in filing the second appeal, is now condoned and appeals admitted."

4. According to learned counsel for the petitoner, no reason is shown for condonation of delay and the order condoning the delay is outcome of non-application of mind. Learned counsel for Revenue submitted that liberal approach is to be taken while dealing with the question relating to condonation of delay in respect of matters filed by the State.

5. Normally a liberal view is taken in the matter of condonation of delay. But considering the fact that delay in presentation of appeals by the Revenue has become a regular feature and there are alarming number of cases where casual petitions have been filed without giving any reason whatsoever in support of the application for condonation, we have entertained this application for hearing on merits.

6. At this juncture it is necessary to take note of settled position in law so far as limitation matters are concerned. Delay in making a motion can be condoned if sufficient cause is shown.

What constitutes sufficient cause cannot be laid down by hard and fast rule. In New India Insurance Co. Ltd. Vs. Smt. Shanti Misra, Adult, , Apex Court held that direction given by Section 5 should not be defined or crystallised so as to convert a discretionary matter into a rigid rule of law. The expression ''sufficient cause'' should receive a liberal construction. In Inder Singh v. Kanshi Ram : AIR 1917 PC 156, it was observed that true guide for a Court to exercise the discretion u/s 5 is whether the appellant acted with reasonable diligence in prosecuting the appeal. In Shakuntala Devi Jain v. Kuntal Kumari : (1989) 1 SCR 1006, Apex Court held that unless want of bona fides of such inaction or negligence as would deprive a party of the protection of Section 5 is proved, the application must be thrown out or any delay cannot be refused to be condoned.

7. In Concord of India Insurance Co. Ltd. Vs. Smt. Nirmala Devi and Others, , which is a case of negligence of the counsel which misled a litigant into delayed pursuit of his remedy, the default in delay was condoned. In Mata Din Vs. A. Narayanan, , Apex Court had held that there is no general proposition that mistake of counsel by itself is always sufficient cause for condonation of delay. It is always a question whether the mistake was bona fide or was merely a device to cover an ulterior purpose. In that case it was held that the mistake committed by the counsel was bona fide and it was not tainted by any mala fide motive.

8. In O.P. Kathpalia Vs. Lakhmir Singh (Dead) and Others, , Apex Court has held that if the refusal to condone the delay results in grave miscarriage of justice, it would be a ground to condone the delay. Delay was accordingly condoned. In Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, , Apex Court considered the question of the limitation in an appeal filed by the State and held that Section 5 was enacted in order to enable the Court to do substantial justice to the parties by disposing of matters on merits. The expression ''sufficient cause'' is adequately elastic to enable the Court to apply the law in a meaningful manner which subserves the ends of the justice - that being the lift - purpose for the existence of the institution of Courts. Apex Court observed that the expression ''every day''s delay must be explained'' does not mean that a pedantic approach should be made. The doctrine must be applied in a rational common sense pragmatic manner. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in

injustice being done, because of a non-deliberate delay. 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. Judiciary is not respected 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. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according to step-motherly treatment when the State is the applicant.

9. In Rama Kishen v. U.P.S.R.T.C. , Apex Court had held that although the story put forward by the applicant for not filing the application for compensation under the Motor Vehicles Act within the period of limitation was not found convincing, but keeping in view the facts and circumstances and cause of justice, the delay was condoned and the appeal was set aside and the matter was remitted to the Tribunal to dispose of it on merits. In Warlu Vs. Gangotribai and another, Apex Court condoned the delay of 11 years in filing the special leave petition.

10. The factual backdrop and few relevant facts need to be noted. It is an accepted position that the file was endorsed to the Addl. State Representative for opinion on 26.4.1994, and he passed an order on 18.5.1994, and thereafter the Addl. C.C.T.-cum-S.R: passed order on 19.9.1994 for filing of second appeal. No cause has been indicated as to why the Addl. S.R./S.R. took such a long time, and what transpired during that period. In fact no explanation whatsoever has been offered. Tribunal''s reasoning is that there was delay in decision making process and that was considered to be sufficient cause. The conclusion does not stand to reason. On the contrary, it shows non-application of mind to the germane issue. Even though a liberal approach had to be adopted, that does not mean that any plea without any plausible or acceptable basis, and not even bearing semblance of rationality has to be accepted, and delay has to be condoned. That shall be against the very spirit of law. Prescription of time-limit for filing appeals would become meaningless in such event. Merely because State is involved, that does not mean that any lethargic or supe inaction has to be condoned or ignored, and even if no reason is indicated that would be inconsequential. The subject-matter was not very complex and rather the grounds of appeal filed appear to be of very routine nature. As has been observed by this Court in Hindustan Aeronautics Limited, Koraput Division v. State of Orissa : (1976) 38 STC 538, delay caused by the concerned officer in giving his opinion, without any explanation whatsoever does not constitute sufficient ground for condonation of delay.

11. As indicated above, there has been a very casual approach adopted in filing appeals and reference applications. It has been fairly accepted by learned counsel for the Revenue that the number of such cases is quite high and runs to several hundreds and similar petitions for condonation of delay are filed. In Radharaman Store v. Orissa Sales Tax Tribunal and Anr. : (1998) 108 STC 284,

an identical matter was considered. Legislature in its wisdom has fixed a period of limitation. That does not appear to have been taken note of by the Revenue. Otherwise such casual approach could not have been adopted by it.

12. In the aforesaid premises, the inevitable conclusion is that the Tribunal has not applied its judicial mind to the question whether delay was to be condoned.

13. Learned counsel for the Revenue submitted that fresh application shall be filed giving all the details for consideration by the Tribunal. Order dated 18.6.1996 passed by the Tribunal in Second Appeal No. 4340 of 1994-95 is set aside, matter is remitted back to the Tribunal for fresh consideration. If any application is filed by the Revenue explaining the delay within three weeks from today, same shall be considered by the Tribunal on its own merits.

14. The writ application is allowed. In the circumstances there is no order as to costs. The records be sent back forthwith.

S.C. Datta, J.

I agree.

