(2011) 12 AP CK 0010

In the Andhra Pradesh High Court

Case No : T. Rev. C.M.P. No. 101 of 2011 and T. Rev. C (SR) . No. 2278 of 2011

State of A.P. APPELLANT

Vs

Mayuri Film Distributors RESPONDENT

Date of Decision : 26-12-2011

Acts Referred:
Limitation Act, 1963 — Section 5

Citation : (2012) 53 VST 333

Hon'ble Judges : V.V.S. Rao, J;B.N. Rao Nalla, J

Bench : Division Bench

Advocate : P. Balaji Varma, for the Appellant;

Judgement

V.V.S. Rao, J.—The T. Rev. C.M.P. is filed purportedly u/s 5 of the Limitation Act, 1963 (in fact, it ought to have been filed under the proviso to sub-section (1) of section 22 of the Andhra Pradesh General Sales Tax Act, 1957) ("the Act") seeking condonation of delay of 383 days in filing the tax revision case. The application is accompanied by an affidavit deposed by the Deputy Commissioner and State Representative on June 27, 2011. As it is vague and does not give even the barest details as to sufficient cause, we permitted the Special Counsel for Commercial Taxes to file better affidavit. A better affidavit, being USR No. 561 of 2011, is filed before us. It is stated therein that the certified copy of the order dated December 1, 2009 in T. A. No. 142 of 2005 passed by the Sales Tax Appellate Tribunal (STAT) was received on February 3, 2010, and that the Commissioner of Commercial Taxes (CCT) constituted Tax Revision Cases Committee (TRC Committee) to examine the orders of the STAT with a view to decide whether to file a tax revision case or not. Accordingly, from out of the orders received in the month of February 2010, the State Representative put up 86 cases before the TRC Committee and submitted notes in all these cases for the committee''s recommendations. The committee offered its opinion in respect of 35 cases, and the same were circulated to the Commissioner who accorded his approval on September 23, 2010 and after obtaining the approval the present case is filed on June 21, 2011.

2. A counter-affidavit is filed on behalf of the respondent. It is stated therein that the delay in the T. Rev. C.M.P. is mentioned as 383 days, but the actual delay is much more than that because the Department calculated the delay relying on rule 39 of the Andhra Pradesh General Sales Tax Rules, 1957, ignoring the limitation prescribed u/s 22 of the Act. As per section 22 of the Act, the tax revision case has to be filed within 90 days from the date of service of the order of the STAT. And the actual delay in this case is 408 days and not 383 days, and the reasons for the delay are also inadequate, improper and vague.

3. We have heard the Special Counsel for Commercial Taxes. As directed by us, he has placed before us the proceedings dated December 2, 1997 of the Commissioner of Commercial Taxes (CCT). The CCT issued the said proceedings to streamline the procedure for filing the revisions u/s 22(1) of the Act. The same reads as below:

It has been decided to constitute a committee to examine the orders of the S.T.A.T. with a view to decide whether to file TRC''s or accept the same. The following officers in the office of the Commissioner of Commercial Taxes will comprise the committee.

1. Additional Commissioner (CT) (Legal)

2. Joint Commissioner (CT) (General)

3. Joint Commissioner (CT) (Legal)

4. State Representative/Additional State Representative before S.T.A.T.

The committee can co-opt any other officer as depending upon the importance of the cases. The committee may invite city Deputy Commissioners whenever cases relating to city divisions come up for discussion. In case of very important cases, the concerned outstation Deputy Commissioners can also be invited with the permission of Commissioner of Commercial Taxes. The committee shall meet every Saturday afternoon and decide whether to file TRC''s or not after examination of S.T.A.T. orders.

Procedure to be adopted:

As soon as the S.T.A.T orders are received, their copies will be circulated in advance to all committee members and orders received in a particular week will be put to discussion on Saturday of the next week. The views of the members of the committee and the committee''s recommendation will be recorded in the shape of minutes after every meeting. In important cases where there is divergence of view, the opinion of the Government Pleader for Taxes may be obtained. With the opinion of the orders, the Additional State Representative before S.T.A.T. will function as convener of the committee and shall be responsible for circulating the agenda and maintaining records of discussion.

(emphasis supplied)

4. Though the CCT order does not specifically say so, it is stated in the affidavit that the recommendation of the TRC Committee with regard to the filing of tax revision case before this court shall be sent to the Commissioner who shall be the final authority to grant approval/permission for filing the tax revision case.

5. According to the proceedings in SR''s Ref. No. C/360/97, the TRC Committee has to meet every Saturday, the copies of the STAT orders shall have to be circulated to the members "as soon as they are received". The meeting has to be convened on the Saturday of the following week and a decision has to be taken, thereon expeditiously. All these are ignored. The submission of the Department, therefore, cannot be accepted.

6. The proviso to sub-section (1) of section 22 of the Act enables this court to admit a tax revision case after the period of ninety days if it is satisfied that the aggrieved person had "sufficient cause" for not referring the petition within the period. The language in section 5 of the Limitation Act is also in similar terms, i.e., "any appeal or application... may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had ''sufficient cause'' for not preferring the appeal or making application within such period".

7. A voluminous case law is available on interpretation of the phrase ''''sufficient cause" and the principles are very well settled. It is not necessary to burden this order with the precedent law. We may, however, refer a latest decision of the Supreme Court in Balwant Singh (Dead) Vs. Jagdish Singh and Others, The apex court has held that the expression "sufficient cause" is to be construed liberally, to advance substantial justice but it does not permit negligence or inaction or want of bona fide. Their Lordships also held that the absence of legal and adequate reasons would remove any explanation from the expression "sufficient cause", and that at all times the term must squarely fall within the concept of reasonable time and proper conduct of the party concerned. If the plausible explanation does not satisfy the test of reasonableness or condonation of delay occasions doing injustice to other party, the courts shall be slow to accept the explanation for the delay. The observations relevant in this regard are as under:

We may state that even if the term ''sufficient cause'' has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of ''reasonableness'' as it is understood in its general connotation....

Liberal construction of the expression ''sufficient cause'' is intended to advance substantial justice which itself presupposes no negligence or inaction on the part of the applicant, to whom want of bona fide is imputable. There can be instances where the court should condone the delay; equally there would be cases where the court must exercise its discretion against the applicant for want of any of these ingredients or where it does not reflect ''sufficient cause'' as understood in law. (Advanced Law Lexicon, P. Ramanatha Aiyar, Second Edition, 1997). The expression ''sufficient cause'' implies the presence of legal and adequate reasons. The word ''sufficient'' means adequate enough, as much as may be necessary to answer the purpose intended. It embraces no more than that which provides a plenitude which, when done, suffices to accomplish the purpose intended in the light of existing circumstances and when viewed from the reasonable standard of practical and cautious men. The sufficient cause should be such as it would persuade the court, in exercise of its judicial discretion, to treat the delay as an excusable one. These provisions give the courts enough power and discretion to apply a law in a meaningful manner, while assuring that the purpose of enacting such a law does not stand frustrated. We find it unnecessary to discuss the instances which would fall under either of these classes of cases. The party should show that besides acting bona fide, it had taken all possible steps within its power and control and had approached the court without any unnecessary delay. The test is whether or not a cause is sufficient to see whether it could have been avoided by the party by the exercise of due care and attention. (Advanced Law Lexicon, P. Ramanatha Aiyar, Third Edition, 2005)

8. Applying the above principles we have examined the contentions of the special counsel. We are afraid, we cannot countenance any of the submissions made by him. We may reiterate that, even the explanation offered is contrary to the orders dated December 2, 1997 of the CCT, and therefore, delay cannot be said to be reasonable. In a case of this nature, if the delay is condoned, it would certainly occasion injustice to the other party. In the result, for the above reasons, the T. Rev. C.M.P. is dismissed. Consequently, the tax revision case shall stand dismissed.

