(2013) 09 GUJ CK 0055

In the Gujarat High Court

Case No : Civil Application No. 436 of 2013 in Stamp Number No. 1991 of 2013

State of Gujarat APPELLANT

Vs

Chemoil Adani Pvt. Ltd. RESPONDENT

Date of Decision : 06-09-2013

Acts Referred:

Citation : (2014) 45 GST 159 : (2014) 68 VST 117

Hon'ble Judges : Sonia Gokani, J;M.R. Shah, J

Bench : Division Bench

Advocate : Jaimin Gandhi, Assistant Government Pleader, for the Appellant; S.N. Thaker, for the Respondent

Judgement

M.R. Shah, J.—The present application u/s 5 of the Limitation Act has been preferred by the State of Gujarat to condone the delay of 210 days in preferring the tax appeal challenging the judgment and order dated September 27, 2012 passed by the Gujarat Value Added Tax Tribunal, Ahmedabad in Second Appeal No. 690 of 2011. Shri Jaimin Gandhi, learned Assistant Government Pleader appearing on behalf of the applicant-State of Gujarat has submitted that the delay has been explained in support of the prayer to condone the delay. It is submitted that after the judgment and order passed by the Tribunal was received by the Department on October 5, 2012, note was put by the Commercial Tax Inspector on October 10, 2012, by GA-3 on 03/12/2012, by GA-2 on December 3, 2012, by GA-4 on December 3, 2012, by GA-1 on December 4, 2012. Thereafter, the proposal to file the tax appeal against the said judgment was sent to the Finance Department on January 1, 2013. The Finance Department, Gandhinagar, granted permission on February 12, 2013 and on receipt of the said permission, immediately all the relevant papers were sent to the office of the Government Pleader for filing the tax appeal.

2. It is submitted that the applicant has a very meritorious case and the amount involved in the matter is very huge. It is submitted that even the decision passed in second appeal, which is subject-matter of the tax appeal, may adversely affect

the similar dealers in whose cases also large amount of revenue is involved. Therefore, relying upon the decision of the honourable Supreme Court in the case of Commissioner of Income Tax Vs. West Bengal Infrastructure Development Finance Corporation Ltd., as well as the decision dated March 15, 2013 of the Division Bench of this court in the case of State of Gujarat v. Welspun Gujarat Stahl Rohren Ltd. (2013) 1 VST-OL 558 (Guj.) rendered in Civil Application No. 253 of 2012, it is requested to condone the delay.

3. Shri S.N. Thaker, learned advocate appearing on behalf of respondent has tried to oppose the present application by submitting that the delay has not been properly explained at all. It is submitted that there is a huge delay which has not been explained sufficiently therefore, relying upon the decision of the honourable Supreme Court in the case of Office of The Chief Post Master General and Others Vs. Living Media India Ltd. and Another, it is requested to dismiss the present application.

4. Heard Shri Jaimin Gandhi, learned AGP appearing on behalf of the applicant and Shri S.N. Thaker, learned advocate appearing on behalf of the respondent. At the outset it is required to be noted that in the present case, the amount involved is a very big amount. Identical question came to be considered by the Division Bench of this court in the case of Welspun Gujarat Stahl Rohren Ltd. (2013) 1 VST-OL 558 (Guj) and considering the large amount of the revenue involved and considering the decision of the honourable Supreme Court in the case of the Commissioner of Income Tax Vs. West Bengal Infrastructure Development Finance Corporation Ltd., the Division Bench has condoned the delay of 732 days which was sought on similar grounds. The Division Bench of this court while condoning the delay of 732 days observed as under (pages 561-564 in 1 VST-OL):

In the present case, however, we find for the reasons recorded thereinafter, such delay is required to be condoned.

Firstly, in our opinion, the affidavit-contents of which are noted above, renders reasonable explanation for such delay and gives reasons why appeal could not be presented within the prescribed time-limit. It is pointed out that upon receipt of the judgment of the Tribunal, after obtaining opinion of the concerned officers, a decision was taken for filing the appeal. Approval from the Finance Department had thereafter, to be obtained. After obtaining such approval, necessary papers were handed over to the office of Government Pleader, Gujarat High Court. Due to heavy work load and shortage of staff, considerable time was consumed in the office of the Government Pleader in drafting such appeal. It is contended that the appeal involves substantial question of law. Simultaneously, we also notice that the duty amount involved in the present case is in excess of Rs. 6 crores.

In our opinion, looking to the nature of delay, explanation rendered by the appellant in various affidavits and the tax impact in the appeal, we would be inclined to condoned the delay. We would not in the case of this nature, like to dismiss the State appeal without consideration on merits. The applicant has correctly placed reliance on the observation of the Supreme Court in case of Commissioner of Income Tax Vs. West Bengal Infrastructure Development Finance Corporation Ltd., in which it was observed thus (page 270 in 334 ITR):

5. Looking to the amount of tax involved in this case, we are of the view that the High Court ought to have decided the matter on the merits. In all such cases where there is delay on the part of the Department, we request the High Court to consider imposing costs but certainly it should examine the cases on the merits and should not dispose of cases merely on the ground of delay, particularly when huge stakes are involved.

In case of State of Nagaland Vs. Lipok AO and Others, it was observed as under:

13. Experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. The State which represents collective cause of the community, does not deserve a litigant-non-grata status. The courts, therefore, have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression of sufficient cause. Merit is preferred to scuttle a decision on merits in turning down the case on technicalities of delay in presenting the appeal. Delay as accordingly condoned, the order was set aside and the matter was remitted to the High Court for disposal on merits after affording opportunity of hearing to the parties. In Smt. Prabha v. Ram Parkash Kalra : (1987) Supp. SCC 339, this court had held that the court should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. The appeal was allowed, the delay was condoned and the matter was remitted for expeditious disposal in accordance with law.

14. In G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore, , it was held that no general principle saving the party from all mistakes of its counsel could be laid. The expression "sufficient cause" must receive a liberal construction so as to advance substantial justice and generally delays in preferring the appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of delay. In litigations to which Government is a party, there is yet another aspect which, perhaps, cannot be ignored. If appeals brought by Government are lost for such defaults, no person is individually affected, but what, in the ultimate analysis, suffers is public interest. The decisions of Government are collective and institutional decisions and do not share the characteristics of decisions of private individuals. The law of limitation is, no doubt, the same for a private citizen as for governmental authorities. Government, like any other litigant must take responsibility for the acts, omissions of its officers. But a somewhat different complexion is imparted

to the matter where Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross-purposes with it. It was, therefore, held that in assessing what constitutes sufficient cause for purposes of section 5, it might, perhaps, be somewhat unrealistic to exclude from the considerations that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the Government. Government decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red-tape in the process of their making. A certain amount of latitude is, therefore, not impermissible. It is rightly said that those who bear responsibility of Government must have "a little play at the joints". Due recognition of these limitations on governmental functioning--of course, within reasonable limits--is necessary if the judicial approach is not to be rendered unrealistic. It would, perhaps, be unfair and unrealistic to put Government and private parties on the same footing in all respects in such matters. Implicit in the very nature of Governmental functioning is procedural delay incidental to the decision making process. The delay of over one year was accordingly condoned.

15. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay--intentional or otherwise--is a routine. Considerable delay of procedural red-tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day''s delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice oriented process. The court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-?-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorise the officers to take a decision or give appropriate permission for settlement. In the event of decision to file appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants.

16. The above position was highlighted in State of Haryana Vs. Chandra Mani and

others, and Special Tehsildar, Land Acquisition, Kerala Vs. K.V. Ayisumma, It was noted that adoption of strict standard of proof sometimes fails to protract (sic) public justice, and it would result in public mischief by skillful management of delay in the process of filing an appeal.

It could thus be seen that though like any other litigant the State authorities are also equally bound by the law of limitation, recognizing certain elements of public interest and the impersonal and slow moving machinery of the Government, the courts have moulded their approach, while considering request of the State for condoning the delay, in the present case, as already noticed, explanation in the form of administrative clearances and consumption of time in the office of the Government Pleader in preferring the appeals are pressed in service for explaining the delay. Further, the duty amount involved in the appeal is also substantially large. Considering these aspects of the matter, delay is condoned by awarding cost of Rs. 15,000, which shall be paid to the respondent within four weeks from today.

Considering the above decision and the amount of revenue involved and the ground stated in the application, the present application is allowed and delay caused in preferring the tax appeal is hereby condoned. Rule is made absolute accordingly.

