(2013) 02 GUJ CK 0093

In the Gujarat High Court

Case No : Civil Application No. 63 of 2013 and Stamp Number 80 of 2013

State of Gujarat APPELLANT

Vs

Karnavathi Veneers Pvt. Ltd. RESPONDENT

Date of Decision : 15-02-2013

Acts Referred:

Citation : (2014) 68 VST 367

Hon'ble Judges : Sonia Gokani, J;Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Judgement

Sonia Gokani J.

1. This is an application preferred for condonation of delay of 1360 days in filing the present tax appeal challenging the order dated January 21, 2009 passed in Second Appeal No. 501 of 2008 passed by the Gujarat Value Added Tax Tribunal Ahmedabad ("Tribunal", for short).

It is pleaded in the application by the applicant-State, thus:

The applicant submits that the applicant had received the certified copy of the impugned judgment on February 12, 2009 and thereafter the proposal was sent to the Finance Department on January 2, 2010 for challenging the said judgment of the honourable Tribunal. Sanction was received from the Finance Department on May 3, 2010 and received by the concerned branch on May 5, 2010 and accordingly, the applicant had sent the papers for filing the tax appeal challenging the impugned order to the office of the learned Government Pleader on May 19, 2010 which was received by the learned G.P. Office on May 21, 2010.

The applicant further submits that, to file tax appeal before this court the applicant has to undergo certain administrative procedures mentioned below:

After receiving the judgment/order from the Tribunal, it is required to study the judgment and then opinions of several officers are sought as whether to file the tax appeal. Thereafter, the Department sends a proposal to the Finance

Department to get the approval of the Government to file the tax appeal. After receiving the approval from the Finance Department, all the papers along with the judgment/order are to be submitted to the G. P office to file the tax appeal. And thereafter, the G.P. office after receiving the papers prepares, gets approved and then files tax appeal before this court.

The applicant further says that due to Government administrative mechanism, every work passes and comes back to source point, through a route system, hence the tax appeal could not be filed within the statutory time-limit. Due to administrative procedures, time was consumed and hence the delay was caused.

2. It is further averred by the applicant that meritorious case would seriously get prejudiced, if delay is not condoned and opponent is not to lose anything as due opportunity is likely to be given to both the sides. It is also averred that it is the public interest which is at jeopardy in a case where the Government is the petitioner.

3. The learned Additional Government Pleader appearing for the applicant-State has fervently urged to condone delay as reasonable explanation is already embodied, according to her, in the petition and this must be construed as a sufficient cause. He has sought to rely upon the decision of the apex court rendered in case of G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore, , wherein, the apex court has held thus:

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 the Government are collective and institutional decisions and do not share the characteristics of decisions of private individuals.

...

Therefore, in assessing what, in a particular case, constitutes ''sufficient cause'' for purposes of section 5 of the Limitation Act, 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. Governmental 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, hot 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 a reasonable limit--is necessary if the judicial approach is not 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.

4. Reliance is also placed on the decision of the apex court rendered in case of N. Balakrishnan Vs. M. Krishnamurthy, . It is held therein by the apex court that the rules of limitation are not to jeopardize the right and interest of the parties. Court is to ensure of course that no dilatory tactics are adopted and if the large amount of tax revenue is at stake, the court should be slow in dismissing such plea of condonation of delay.

5. Judgment rendered in case of State of Haryana Vs. Chandra Mani and others, is pressed into service, wherein, the apex court has reiterated liberal approach in condoning the delay.

6. In short, the submission that has been emphasized is to the effect that in absence of any intention to flout any legal provision or Act, the attempt to deliberately jeopardize the interest of the other side, an explanation of delay as put forth should be accepted and this being the administrative cause involving revenue for the State, the court may approach this request with a liberal attitude.

7. On thus having heard the learned Additional Government Pleader and on having consciously considered the materials on record, this application is not being entertained for the reasons to follow hereinafter.

8. We are conscious that ordinarily the courts have liberally condoned the delay and are also expected to adopt "justice oriented approach" rather than giving any undue importance to the technicalities. We are also not oblivious of the fact that the delay is not to be explained by the litigant on literal sense on day-to-day basis. However, we cannot disregard the vital requirement of law that when there is no justification for delay, the substantial law of limitation cannot be marred advancing the cause of liberal approach.

9. It will not be out of place to refer to the judgment of the apex court rendered in case of Lanka Venkateswarlu (D) by L.Rs. Vs. State of A.P. and Others, wherein the delay was caused and there was insufficient explanation. The apex court set aside the order of the High Court in condoning the delay, by holding that the concept of liberal approach and justice oriented approach cannot be employed to jettison the substantial law of limitation. In the words of the apex court:

26. We are at a loss to fathom any logic or rationale, which could have impelled the High Court to condone the delay after holding the same to be unjustifiable. The concepts such as liberal approach'', ''justice oriented approach'', ''substantial justice'' cannot be employed to jettison the substantial law of limitation, especially, in cases where the court concludes that there is no justification for the delay. In our opinion, the approach adopted by the High Court tends to show the absence of judicial balance and restraint, which a judge is required to maintain whilst adjudicating any lis between the parties. We are rather pained to notice that in this case, not being satisfied with the use of mere intemperate language, the High Court resorted to blatant sarcasms. The use of unduly strong intemperate or extravagant language in a judgment has been repeatedly

disapproved by this court in a number of cases. Whilst considering applications for condonation of delay u/s 5 of the Limitation Act, the courts do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in a systematic manner informed by reason. Whims or fancies; prejudices or predilections cannot and should not form the basis of exercising discretionary powers.

10. The apex court in a decision, rendered in case of Balwant Singh (Dead) Vs. Jagdish Singh and Others, has given the test for a sufficient cause and what is to be seen is as to whether the party by the exercise of due care and attention could have avoided the delay. It reiterated that sufficient powers and discretion is available with the courts for applying this law in a meaningful manner but sufficient cause would mean presence of legal and adequate reasons.

11. It would be profitable to reproduce the relevant observations of the apex court in this case:

14. In the case of Union of India and Others Vs. Tata Yodogawa Ltd. and Another, , this court while granting some latitude to the Government in relation to condonation of delay, still held that there must be some way or attempt to explain the cause for such delay and as there was no whisper to explain what legal problems occurred in filing the special leave petition, the application for condonation of delay was dismissed. Similarly, in the case of Collector of Central Excise, Madras Vs. A. Md. Bilal and Co., , the Supreme Court declined to condone the delay of 502 days in filing the appeal because there was no satisfactory or reasonable explanation rendered for condonation of delay. The provisions of Order 22, rule 9, CPC, have been the subject-matter of judicial scrutiny for considerable time now. Sometimes the courts have taken a view that delay should be condoned with a liberal attitude, while on certain occasions the courts have taken a stricter view and wherever the explanation was not satisfactory, have dismissed the application for condonation of delay. Thus, it is evident that it is difficult to state any straight-jacket formula which can uniformly be applied to all cases without reference to the peculiar facts and circumstances of a given case. It must be kept in mind that whenever a law is enacted by the Legislature, it is intended to be enforced in its proper perspective. It is an equally settled principle of law that the provisions of a statute, including every word, have to be given full effect, keeping the legislative intent in mind, in order to ensure that the projected object is achieved. In other words, no provisions can be treated to have been enacted purposelessly. Furthermore, it is also a well-settled canon of interpretative jurisprudence that the court should not give such an interpretation to provisions which would render the provision ineffective or odious. Once the Legislature has enacted the provisions of Order 22, with particular reference to rule 9, and the provisions of the Limitation Act are applied to the entertainment of such an application, all these provisions have to be given their true and correct meaning and must be applied wherever called for. If we accept the

contention of the learned counsel appearing for the applicant that the court should take a very liberal approach and interpret these provisions (Order 22, rule 9 of the CPC and section 5 of the Limitation Act) in such a manner and so liberally, irrespective of the period of delay, it would amount to practically rendering all these provisions redundant and inoperative. Such approach or interpretation would hardly be permissible in law. 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 plentitude 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).

12. In yet another recent decision of the apex court rendered in case of Office of The Chief Post Master General and Others Vs. Living Media India Ltd. and Another, , in absence of plausible and acceptable explanation, the court refused to condone the delay mechanically only because it was a Government Wing, by observing thus (para 12, pages 200-201 in 54 VST):

27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a SLP in this court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

13. From the explanation rendered by the applicant, it can be noted that the

same is in general terms. The Department appears to have sent a proposal to the Finance Department, which had approved it on May 3, 2010 and after the same was received back along with necessary papers and orders permitting the office of the Government Pleader to file tax appeal, it appears that the tax appeal which was to be filed within the period of limitation prescribed under the law, came to be filed after a huge delay of 1,360 days. What is stated for explaining such delay is that due to Government administrative mechanism, within the statutory time period, tax appeal could not be filed. In absence of any specific details and explanation, this explanation in general terms does not satisfy us. There can be no straight-jacket formula adopted which can be applied uniformly in all matters, without considering the facts and circumstances of the case. In absence of any satisfactory explanation coming forth for condonation of delay, we are of the opinion that no liberal attitude requires to be adopted; particularly considering the inordinate delay in preferring this application. Only because the applicant is the State, it cannot be absolved of its responsibility to fulfil the mandate of law. Even if day today explanation is not desired, for a long period after the sanction of Finance Department also, nothing emerges on record to indicate due care or diligence to satisfy the requirement of explaining sufficiency of cause. Resultantly, this application for condonation of delay fails and consequently, Tax Appeal (Stamp) No. 80 of 2013 stands rejected as well.