(2013) 09 GUJ CK 0018

In the Gujarat High Court

Case No : Civil Application No. 533 of 2013 in Stamp Number No. 2243 of 2013

State of Gujarat APPELLANT

Vs

Swet Zink Ltd. RESPONDENT

Date of Decision : 19-09-2013

Acts Referred:

Citation : (2014) 69 VST 429

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

Bench : Division Bench

Judgement

M.R. Shah, J.—The present application u/s 5 of the Limitation Act has been preferred by the applicant-State of Gujarat to condone the huge delay of 1205 days in preferring the Tax Appeal against the judgment and order passed by the Gujarat Value Added Tax Tribunal, Ahmedabad dated February 4, 2010 in Second Appeal No. 966 of 2009. Shri Jaimin Gandhi, learned Additional Government Pleader, has vehemently submitted that the applicant has a good meritorious case. It is submitted that the question involved in the tax appeal is a pure question of law and would have recurring effect. It is submitted that in view of the impugned decision of the Tribunal the cumulative effect in the appeal would be Rs. 17 lakhs and, therefore, it is requested to take a liberal view and condone the delay. The learned Additional Government Pleader has relied upon the decisions of the honourable Supreme Court in the cases of G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore, , N. Balakrishnan Vs. M. Krishnamurthy, and State of Haryana Vs. Chandra Mani and others, .

2. Heard Shri Jaimin Gandhi, learned Additional Government Pleader and considered the grounds set out in the application in support of the prayer to condone the delay. At the outset, it is required to be noted that there is a huge delay of 1205 days in preferring the tax appeal. From the averments made in the application in support of the prayer to condone the delay, it appears that no specific particulars are given explaining the huge delay and as such the same can be said to be as vague as it can be. In any case, in the facts and circumstances

of the case, we are of the opinion that the huge delay of more than 1205 days has not been properly and sufficiently explained.

3. Identical question came to be considered by the honourable Supreme Court in the case of Lanka Venkateswarlu (D) by L.Rs. Vs. State of A.P. and Others, . In the said decision, the honourable Supreme Court considered the earlier decision in the case of N. Balakrishnan Vs. M. Krishnamurthy, , which has been relied upon by the learned Additional Government Pleader. While considering the question of condonation of delay u/s 5 of the Limitation Act in filing the appeal and considering the earlier various decisions of the honourable Supreme Court it is held and observed by the honourable Supreme Court that while considering the 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. It is further observed that such 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 the said decision before the honourable Supreme Court, the delay was sought to be condoned, which was caused by the inefficiency and ineptitude of the Government Pleaders and the honourable Supreme Court observing the above, refused to condone the delay.

4. Similar view has been expressed by the honourable Supreme Court in the case of Office of The Chief Post Master General and Others Vs. Living Media India Ltd. and Another, . In the said decision also, the honourable Supreme Court considered the decision of the honourable Supreme Court in the case of G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore, as well as the decision in the case of State of Haryana Vs. Chandra Mani and others, , relied upon by the learned Additional Government Pleader. In view of the decisions of the honourable Supreme Court in the case of Lanka Venkateswarlu (D) by L.Rs. Vs. State of A.P. and Others, and in the case of Office of The Chief Post Master General and Others Vs. Living Media India Ltd. and Another, , the decisions cited by the learned Additional Government Pleader would not be applicable.

5. Considering the fact that there is no proper explanation offered by the Department for the delay except mentioning of various dates and throwing burden upon the office of the Government Pleader, we are of the opinion that the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone huge delay. Accordingly, the present application to condone the huge delay of 1205 days deserves to be dismissed and is accordingly dismissed. Consequently, the tax appeal is also liable to be dismissed on the ground of delay and is accordingly dismissed. However, it is observed that the question of law, if any, is kept open as the tax appeal is dismissed on the ground of delay.