(2013) 10 GUJ CK 0166

In the Gujarat High Court

Case No : Civil Application No. 615 of 2013 in Stamp Number No''s. 2661 and 2662 of 2013

State of Gujarat APPELLANT

Vs

Wood Craft Assam RESPONDENT

Date of Decision : 17-10-2013

Acts Referred:

Citation : (2013) 10 GUJ CK 0166

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

Bench : Division Bench

Advocate : Jaimin Gandhi, AGP No. 1, for the Appellant;

Final Decision : Dismissed

Judgement

M.R. Shah, J.

1.00. 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 1544 days in preferring the Tax Appeal against the judgment and order passed by the Gujarat Value Added Tax Tribunal, Ahmedabad in Second Appeal No. 265 of 1999 dated 15/4/2009. Mr. Jaimin Gandhi, learned AGP 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. Therefore, it is requested to take a liberal view and condone the delay. The learned AGP has relied upon the decisions of the Honb''le 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, He has also relied upon the decision of this Court rendered in OJ Civil Application No. 251 of 2013, by which, in similar set of facts, this Court condoned the delay on imposing the cost.

2.00. Heard Mr. Jaimin Gandhi, learned AGP 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 1544 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 1544 days has not been properly and sufficiently explained.

2.01. Identical question came to be considered by the Hon''ble Supreme Court in the case of Lanka Venkateswarlu (D) by L.Rs. Vs. State of A.P. and Others, In the said decision, Hon''ble Supreme Court considered the earlier decision in the case of M. Balakrishnan (Supra), which has been relied upon by the learned AGP. 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 Hon''ble Supreme Court, it is observed and held by the Hon''ble 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 Hon''ble Supreme Court, the delay was sought to be condoned, which was caused by the inefficiency and ineptitude of the Government Pleaders and the Hon''ble Supreme Court observing the above, refused to condone the delay.

2.02. Similar view has been expressed by the Hon''ble 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 Hon''ble Supreme Court considered the decision of the Hon''ble Supreme Court in the case of G. Ramegowda (Supra) as well as the decision in the case of Chandra Mani (Supra), relied upon by the learned AGP. In view of the decisions of the Hon''ble Supreme Court in the case of Lanka Venkateswarlu (D) by L.Rs. and in the case of Living Media India Ltd. and Anr., the decisions cited by the learned AGP would not be applicable.

3.00. 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.

4.00. Now, so far as the reliance placed upon the decision rendered by this Court in OJ Civil Application No. 251 of 2013 is concerned, it is required to be noted that in the said case the tax effect was to the extent of Rs. 3.18 Crores and therefore, considering decision of the Hon''ble Supreme Court in the case of Commissioner of Income Tax Vs. West Bengal Infrastructure Development Finance Corporation Ltd., this Court condoned the delay. It is required to be noted that so far as the present case is concerned, the tax effect would be very low i.e. less than Rs. 1 Lac and therefore, the aforesaid order would not be applicable to the facts of the present case. Accordingly, the present OJ Civil Application to condone the huge delay of 1544 days deserves to be dismissed and is accordingly dismissed. Consequently, Tax Appeal being Stamp No. 2661 of 2013 is also liable to be dismissed on the ground of delay and is accordingly dismissed.

In view of the above, Civil Application for stay in the Tax Appeal being Stamp No. 2662 of 2013 is also liable to be dismissed 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.

