(1997) 03 AP CK 0062

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6143 of 1997

Surya General Traders APPELLANT

Vs

Commercial Tax Officer and Others RESPONDENT

Date of Decision : 31-03-1997

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 21(2)

Citation : (1997) 4 ALD 439 : (1997) 3 ALT 110 : (1997) 2 APLJ 437 : (2003) 133 STC 388

Hon'ble Judges : T.N.C. Rangarajan, J;Lingaraja Rath, J

Bench : Division Bench

Advocate : P. Srinivasa Reddy, for the Appellant; Special Government Pleader for Taxes, for the Respondent

Judgement

Lingaraja Rath, J.—Heard the learned counsel for the parties.

2. The petitioner has approached this Court because of the refusal by the Tribunal to condone the delay of one year, five months and nine days in filing the appeal. In the affidavit for condonation of delay, the petitioner furnished the explanation of having erroneously assumed that no appeal need be filed for the year 1988-89 as the demand against him for the year 1987-88 had been challenged and was pending in appeal before the Tribunal, and that whatever order would be passed for that year would automatically apply for the subsequent year. When later on he met his counsel he was explained that appeal has to be filed in respect of each year, for which he took steps to file the appeal. The Tribunal did not find the cause to be sufficient to warrant condonation of delay. Hence it dismissed the condone delay petition.

3. The learned counsel for the petitioner has placed before us the judgment of the Sales Tax Appellate Tribunal, Andhra Pradesh, Hyderabad, in Surya General Stores v. State of A.P. (1997) 24 APSTJ 37, in which the Tribunal gave relief to the petitioner in respect of the year 1987-88 by treating the wood supplied neither as fire wood, as was contended by the petitioner, nor as timber, as was

contended by the Revenue, but by treating the wood as general goods taxable at six per cent. It is submitted by the petitioner that the Tribunal''s decision is now pending in revision before this Court in T.R.C. S.R. No. 1008 of 1997.

4. Considered on merits, the learned Government Pleader for Taxes does not dispute that save the question of limitation, the petitioner is entitled to the relief as was obtained by him for the previous year, and would also be entitled to the relief that is obtainable by him in the pending T.R.C. before this Court. When a person has a good case on merits, defeat of his claim on technical plea of limitation would ultimately lead to injustice. It has often been observed by the apex Court that State should not stand by a technical plea of limitation if a citizen''s case was otherwise meritorious. In Collector, Land Acquisition v. Mst. Katiji [1987] 66 STC 228, the apex Court held that "every day''s delay must be explained" does not imply a pedantic approach, and the doctrine has to be applied in rational sense in a pragmatic manner. The apex Court further observed that the doctrine of equality demands that all litigants, including the State as a litigant, are to be accorded the same treatment. There have been various cases in which the apex Court has explained that so far as State is concerned there may be delay occasioned on its part because of the fact that the decision making process in the State to file a case involves layer after layer stages, which the papers must go through before final decision is taken to challenge an order, and that the question of condonation of delay in so far as the State is concerned should be viewed from that angle. Though we do not propose at all to say that the same approach must be adopted for private litigants also, yet we feel that the principle can be extended where a person has a good case on merits and the State should not take technical plea of limitation so as to deprive him of his just dues. Considering such fact, we set aside the impugned order and direct the Tribunal to reconsider the question of condonation of delay, in the light of the observations made above. The writ petition is accordingly disposed of. No costs,