(2011) 11 AP CK 0062

In the Andhra Pradesh High Court

Case No : Tax Revision Case (S.R.) No. 545 of 2011

The State of Andhra Pradesh, represented by the State Representative before STAT. — APPELLANT

Vs

The State of Andhra Pradesh, represented by the A.C. Officer of the STAT — RESPONDENT

Date of Decision : 24-11-2011

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 22(1)
Andhra Pradesh Tax on Luxuries Rules, 1987 — Rule 2A
Limitation Act, 1963 — Section 5

Citation : (2011) 11 AP CK 0062

Hon'ble Judges : V.V.S. Rao, J;B.N. Rao Nalla, J

Bench : Division Bench

Advocate : P. Balaji Varma, for the Appellant; C.R. Sridharan, for the Respondent

Final Decision : Dismissed

Judgement

Hon''ble Sri. Justice V.V.S.Rao

1. This application is filed u/s 5 of the Limitation Act, 1963 praying this Court to condone the delay of 160 days in preferring the Tax Revision Case u/s 22(1) of the Andhra Pradesh General Sales Tax Act, 1957 (the APGST Act).

2. The Deputy Commissioner (Commercial Taxes)-cum-State Representative before the Sales Tax Appellate Tribunal, Hyderabad, filed affidavit in support of the application. It is stated that after receiving the certified copy of the order of the Appellate Tribunal, the file was processed by the authorities at various levels and in that process the delay of 280 days occurred. Be it noted that though the application is for condonation of delay of 160 days, the affidavit says it is 280 days.

3. After receipt of the notice, the respondent/dealer has filed counter affidavit. The allegation that there is delay of 160 days is denied. In substantiation of this,

in para 7 of the counter, the following reasons are given: (i) The certified copy of the order under revision, which is dated 05.11.2009, was admittedly made available to the Petitioner-Revenue on 03.2.2010; (ii) The Revision, if any, against the order of the STAT should have been filed within 90 days from that date which would be 04.5.2010; (iii) Since that day happened to fall within the summer vacation of this Hon''ble Court, the limitation would have extended and the revision ought to have been filed on 29.5.2010 i.e., on the date when the Courts reopened; (iv) In the event of not doing so, the law of limitation would continue to run without the reckoning of the period of vacations; and (v) It is evident from the records that the revision appears to have been filed on 18.2.2010 only.

4. It is also alleged in the counter affidavit that after the decision of the Supreme Court in Godfrey Phillips India Ltd. and Another Vs. State of U.P. and Others, no proceedings under the Andhra Pradesh Tax on Luxuries Act, 1987 (the Act) can be commenced or continued and therefore the revision itself is not maintainable. A reference is also made to the decision of this Court in ITC Limited Vs. State of Andhra Pradesh and Others, to submit that any proceedings cannot be continued after declaration of the Act ultra vires legislative power of the State.

5. The Special Counsel for Commercial Taxes would submit that when substantial justice is to be done, the Court should not be tied down with technicalities; no prejudice could be caused to the respondent if the delay is condoned and that if the delay is not condoned it would enable respondent to retain unjust enrichment because the dealer collected luxury tax before the Act was declared ultra vires by the Supreme Court. He relied on N. Balakrishnan Vs. M. Krishnamurthy, , State of Nagaland Vs. Lipok AO and Others, and State of Karnataka Vs. Y. Moideen Kunhi (dead) by Lrs. and Others,

6. The Counsel for the respondent would submit that the delay is not explained at all; based on the vague and unsubstantiated allegations the power to condone the delay cannot be exercised; the plea of prejudice to the Revenue is misconceived as the Act itself was declared ultra vires and subsequently the attempts to collect the tax as well as levy of interest on delayed payments were prohibited by this Court. He relied on The State of West Bengal Vs. The Administrator, Howrah Municipality and Others, Union of India v Tata Yodogawa Limited 1988 (38) ELT 739 (SC) and Balwant Singh (Dead) Vs. Jagdish Singh and Others,

7. Before considering the core issue as to whether the State has shown sufficient cause for not preferring the revision within the statutory period of limitation, it is necessary to briefly mention the background of the case.

8. The State enacted the Andhra Pradesh Tax on Luxuries Act, 1987 levying tax. The said Act was amended by the A.P. Act 28 of 1996 with effect from 01.8.1996 inserting Section 3A whereunder the turnover of receipts by tobacconist (a person selling among others tobacco products like cigarettes) relating to supply

of luxuries is charged to tax at the rate specified in the schedule i.e., 5%. This Act was unsuccessfully challenged before this Court. But the Supreme Court by judgment dated 20.1.2005 in Godfrey-Phillips India Ltd declared the Act ultra vires being beyond the legislative competence.

9. For the assessment year 1998-99 the jurisdictional Commercial Tax Officer (CTO) assessed the turnover of the respondent adopting the rate of 5/100 instead of 5/105 as claimed by the dealer. Against the final assessment order the dealer preferred appeal before the Appellate Deputy Commissioner, Punjagutta who by order dated 17.6.2004 remanded the matter to the CTO observing that under Rule 2A of the Andhra Pradesh Tax on Luxuries Rules, 1987 (the Rules) the dealer is eligible to deduction of deemed element of tax collection by applying formula under Rule 2A(e) of the Rules and therefore the assessing authority was directed to verify the details and grant relief. Further the assessing authority was also directed to issue modified demand. Aggrieved by the same, the dealer preferred a second appeal being T.A.No.21 of 2005 before the Appellate Tribunal. As the Act itself was struck down, the appellant was not required to pay tax on tobacco products. While doing so, the appeal was allowed on 05.11.2009, against which the instant revision is filed.

10. It is brought to our notice that the jurisdictional CTO passed the assessment order on 24.6.1998 for the period 1997-98 and issued a demand; it was challenged by the respondent herein in W.P.Nos.20804, 20808 and 20809 of 1998. By common order dated 21.4.2005 a Division Bench of this Court allowed the writ petitions following the decision of the Supreme Court in Godfrey Phillips India Ltd and observed that dealers should pay luxury tax amounts to the State only if such dealers have collected tax amounts from the customers. In this case there is no dispute that the department refused to apply the formula under Rule 2A(e) of the Rules on the ground that the respondent did not collect the tax from the customers and the same was paid by the dealer only. Therefore the plea of prejudice to the revenue may not arise. We would, however, hasten to add that we have adverted to the issue passingly and the observations are not conclusive, as they are in the context of considering the application for condonation of delay of 280 days. Whether sufficient cause is shown

11. u/s 22(1) of the APGST Act an appeal would lie to the Appellate Tribunal within 90 days from the date of which the order of the Tribunal is communicated. The proviso, however, enables this Court to entertain revision after the period of limitation if the Court is satisfied that the petitioner has sufficient cause for not preferring the revision within the period of limitation. Did the petitioner plead and prove that they had sufficient cause for not preferring revision within the time?

12. In the affidavit of the State Representative what all, that is alleged is as follows.

I submit that the Hon''ble STAT, Hyderabad allowed the appeal filed by the

Respondent in T.A.No.21/2005 and issued orders dated 05.11.2009 in respect of M/s, ITC Limited (ITD), 9-1-123/3/2, 2nd & 3rd Floor, Sidharth Plaza, S.D. Road, Secunderabad - 500 003. The certified copies of the judgment were received in the State Representative Office on 03.2.2010 against this order a Tax Revision Case has to be filed within (120) days. The file was processed by the authorities at various levels in the department and finally a decision has been taken by the Department to file Revisions against the judgment of the Tribunal in the above appeal. Under the circumstances there occurred a delay of (280) days in preferring the above revision. The delay is neither willful nor wanton but for the reasons stated above.

13. Even if the allegation that the certified copy was received on 03.2.2010 the revision ought to have been filed by 04.5.2010. It was filed on 18.2.2011. As rightly pointed out by the Counsel for the respondent even if the period of summer during which there was a Court recess is excluded, there is delay of 280 days. No attempt is made by the State to explain the delay of almost ten months. When the basic details as to when the copies were sent to the concerned authorities for processing it, when orders were passed, when they had taken final decision, are absent. It cannot, therefore, be said that necessary details of sufficient cause have been furnished by the petitioner. Being aware that affidavit is very vague the Special Counsel sought time to file a better affidavit. As counter affidavit is already filed by the respondent after receipt of notice, it would not be proper for this Court to show indulgence and permit filing of better affidavit which, according to us, would certainly be an improved affidavit over the one which is already filed. The law requires every application to be supported by an affidavit and it does not permit repeated or multiplicity of affidavits in support of application.

14. In Administrator, Howrah Municipality, the Supreme Court observed that, "the High Court was not bound to accept readily whatever has been stated on behalf of the State to explain the delay. But, it was the duty of the High Court to have scrutinized the reasons given by the State and considered the same on merits and expressed an opinion, one way or the other" In Tata Yodogawa Limited, Union of India filed SLP in a Central Excise matter with a delay of 51 days stating that, "due to inter-departmental correspondence and processing of the matter to enable the department to file the petition" the delay occurred. Dismissing the application for delay, a three Judge Bench of the Supreme Court observed as under.

From 26.12.1986 to 10.2.1987 and from 6.3.1999987 to 24.3.1987 there is no cogent and possible explanation. It may be mentioned that the SLP was actually filed on 23.3.1987. There is no whisper to explain what "legal problems in filing the SLP arose" it appears to us that no attempt has been made to explain this delay. In that view of the matter we gave further opportunity to the petitioners to file additional affidavit explaining the cause, if any, for this delay. It is further stated in the rejoinder affidavit to the counter affidavit on behalf of the

Respondents that "such delay is always beyond the control of especially in Government matters as the file has to be routed through several Sections of the Department". We are aware of the fact that the Government being impersonal takes longer time than the private Bodies or the individuals. Even giving that latitude, there must be some way or attempt to explain the cause for such delay. As stated from the facts narrated hereinbefore there is no sufficient cause to explain the delay. Hence, the application for condonation of delay is dismissed.

(emphasis supplied)

15. In N. Balakrishnan a two Judge Bench of the Supreme Court while observing that the words "sufficient cause" u/s 5 of the Limitation Act should receive liberal construction so as to advance substantial justice made the following observations.

Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time........ It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss.

16. In Lipok AO another two Judge Bench of the Supreme Court while reiterating that the expression "sufficient cause" must receive a liberal construction so as to advance substantial justice held that no separate standards would determine the cause laid by the State vis-a-vis a private litigant would be allowed to consider the strict standard of cause. It is apt to quote following observations.

It is axiomatic that decisions are taken by officers/agencies proverbially at a slow pace and encumbered process of pushing the files from table to table and keeping it on the 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 a 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-a-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 the State is an impersonal machinery working through its officers or servants.

17. In Moideen Kunhi a two Judge Bench of the Supreme Court again reiterated that the expression sufficient cause as appearing in Section 5 of the Limitation Act must receive liberal construction so as to advance substantial justice and that the Government like any other litigant must take responsibility for the act or omissions of its officers except in cases where acts of fraud or bad faith on the part of the officers resulted in subverting public interest.

18. In a recent decision of the Supreme Court in Balwant Singh a new dimension has been pointed out by the Supreme Court when their lordships held that even if the expression "sufficient cause" is to receive liberal construction it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. It is apposite to excerpt the following.

We may state that even if the term "sufficient cause" has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of "reasonableness" as it is understood in its general connotation....... The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly..... The application filed by the applicants lacks in details. Even the averments made are not correct and ex facie lack bona fide. The explanation has to be reasonable or plausible, so as to persuade the Court to believe that the explanation rendered is not only true, but is worthy of exercising judicial discretion in favour of the applicant. If it does not specify any of the enunciated ingredients of judicial pronouncements, then the application should be dismissed. On the other hand, if the application is bona fide and based upon true and plausible explanations, as well as reflects normal behaviour of a common prudent person on the part of the applicant, the Court would normally tilt the judicial discretion in favour of such an applicant. Liberal construction cannot be equated with doing injustice to the other party.

(emphasis supplied)

19. We have extracted almost entire affidavit accompanying the application for condonation of delay. It does not specify any reason except stating that there was delay in processing of the file. Such affidavits have been rejected by the Supreme Court as we have noticed hereinabove. As held by the Supreme Court in Balwant Singh mere showing of sufficient cause is not enough and such sufficient cause must squarely fall within the concept of reasonable time and proper conduct. These are absent in this case. After considering the pleadings and precedents, we are convinced that it is not a fit case for condoning the delay.

20. The application is therefore dismissed. Consequently the Tax Revision Case is rejected.