

* **HIGH COURT OF DELHI : NEW DELHI**

+ **CMs 7581/2004 & 8529/2006 & ST. REF. No.1 of 2004**

Judgment reserved on: April 09, 2008

% Judgment delivered on: April 11, 2008

M/s Nidhi Industries
C-4A/18A, Janakpuri
New Delhi.

...Petitioner
Through Mr.Bhagwati Prasad, Adv.

Versus

Commissioner of Sales Tax
Bikri Kar Bhawan
I.P. Estate
New Delhi.

...Respondent
Through Mr. H.L. Taneja, Adv.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Not necessary |
| 2. To be referred to Reporter or not? | Not necessary |
| 3. Whether the judgment should be reported in the Digest? | Not necessary |

MADAN B. LOKUR, J.

Both these applications are for condonation of delay in filing

the present petition under Section 9 (3) of the Central Sales Tax Act read with Section 45 (2) of the Delhi Sales Tax Act. The reference petition is for a direction to the Appellate Tribunal Sales Tax (for short the Tribunal) to refer questions of law for the opinion of this Court.

2. The delay in filing the present reference is 680 days and we find that the Petitioner has put in absolutely no effort to explain the delay.

3. Broadly, a demand was raised against the Petitioner by the Sales Tax Officer, which was upheld by the Additional Commissioner of Sales Tax and the Tribunal. The final order was passed by the Tribunal on 22nd January, 2002.

4. The Petitioner moved an application before the Tribunal (it is not clear on which date) for stating the case and referring some questions of law to this Court. By an order dated 6th June, 2002 the Tribunal referred only one question of law although the Petitioner had asked for the reference of as many as 11 questions of law.

5. Ordinarily, the Petitioner ought to have filed a petition for a mandamus to be issued by this Court to the Tribunal to refer such other questions of law as have arisen from the order of the Tribunal. Instead of doing that, the Petitioner filed a writ petition in this Court being CWP

No. 3035/2002 on 8th May, 2002 (while its reference application was pending in the Tribunal). In the writ petition, the Petitioner made as many as 16 prayers but essentially the Petitioner sought quashing of the order of the Tribunal passed on merits on 22nd January, 2002. This writ petition was withdrawn by the Petitioner on 20th May, 2002.

6. On the very next day, that is, on 21st May, 2002, the Petitioner filed another petition being CWP No. 3636/2002 which contained more or less the same 16 prayers as were contained in CWP No. 3035/2002.

7. While the second writ petition was pending in this Court, the application of the Petitioner under Section 9 (3) of the Central Sales Tax Act read with Section 45 (1) of the Delhi Sales Tax Act came to be decided by the Tribunal on 6th June, 2002. This fact is of some importance since it shows that the Petitioner was aware of the statutory procedure to be followed.

8. Be that as it may, on 14th November, 2003, the Petitioner withdrew CWP No. 3636/2002 (the second writ petition).

9. About two months later, on 19th January, 2004, the Petitioner filed a third writ petition being CWP No. 8223/2004 containing as many as 10 prayers, again essentially challenging the order passed by the

Tribunal on merits on 22nd January, 2002. The third writ petition was also withdrawn by the Petitioner on 21st May, 2004.

10. Immediately thereafter, the Petitioner filed the present petition seeking a mandamus to the Tribunal to state the case and refer questions of law for the opinion of this Court. This petition was filed on or about 25th May, 2004 almost two years after its reference petition was dismissed by the Tribunal.

11. According to the Petitioner, it was misled by legal advice given to it and that is why it pursued as many as three writ petitions in this Court before it ultimately decided to move the present petition on or about 25th May, 2004. It is explained that the delay that has been caused in approaching this Court is because of the filing of those three writ petitions. The Petitioner submits that under these circumstances, the delay in filing the present petition be condoned.

12. On a reading of the applications for condonation of delay as well as the conduct of the Petitioner, it is quite clear that the matter has not been pursued with any degree of seriousness by the Petitioner. Three writ petitions were filed by the Petitioner for no ostensible reason and all three writ petitions were withdrawn.

13. It is not as if the Petitioner is totally unaware of the

procedure since it had moved an application under Section 9 (3) of the Central Sales Tax Act read with Section 45 (1) of the Delhi Sales Tax Act to refer questions of law to this Court. Obviously, the Petitioner must have known the statutory procedure or must have taken legal advice. Since the Petitioner is not new to the trade, it should have known that the appropriate course to follow after 6th June, 2002 was to file a petition for a mandamus to the Tribunal to refer questions of law to this Court. Surely, there is no procedure whereby the Petitioner can file a writ petition for this purpose.

14. Assuming, for the sake of argument, that the Petitioner was misled when it filed the first writ petition without knowing the correct legal position, there is certainly no reason for the Petitioner to have believed and filed two more writ petitions, effectively making the same prayers and raising the same issues again and again. It is naïve on the part of the Petitioner to expect this Court to believe that the Petitioner was totally unaware of the procedure and continued to be misled by its advocate on as many as three occasions and for two long years. Interestingly, the advocate who filed the three writ petitions is the same advocate who has filed this reference petition.

15. The explanation given by the Petitioner is not worth any

serious consideration. The delay is enormous, running into as many as 680 days.

16. On the facts mentioned above, we are not inclined to condone the delay in filing the present petition. Accordingly, the applications for condonation of delay are dismissed.

17. The reference petition is also dismissed.

18. For unnecessarily taking up the time of this Court, the Petitioner will pay costs of Rs.5,000/- to the Delhi High Court Legal Services Committee. Any application filed by the Petitioner in this case will be entertained by the Registry only upon production of a receipt from the Delhi High Court Legal Services Committee regarding the payment of costs.

MADAN B. LOKUR, J

April 11, 2008
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V.B. GUPTA, J

Certified that the corrected copy of the judgment has been transmitted in the main Server.