

Court No. - 37

Case :- WRIT TAX No. - 92 of 2021

Petitioner :- Unipatch Rubber Ltd.

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Vipin Kumar Kushwaha, Nishant Mishra, Yashonidhi Shukla

Counsel for Respondent :- C.S.C.

Hon'ble Ajay Bhanot, J.

Heard Shri Yashonidhi Shukla, learned counsel for the petitioner.

The petitioner has assailed the order dated 24.07.2020 passed by the learned tribunal condoning the delay of 584 days on part of the revenue in filing the appeal. The delay condonation application filed by the revenue records that the order passed by the appellate authority was received by the office of the competent authority on 25.04.2013. The limitation of filing the appeal existed till 24.07.2013. There was a delay in filing the appeal. Three reasons have been assigned for the delay on part of the revenue.

Firstly, there is a shortage of manpower in the department. Secondly, a number of employees have been transferred and the incumbent took a long time in assuming office. Thirdly, the procedure in taking various departmental approvals in filing the appeal also consumed a lot of time. The aforesaid grounds

found favour with the learned tribunal and the learned tribunal condoned the delay of 584 days.

This Court in **M/s Anil Enterprises vs. Commissioner of Commercial Tax, U.P. Lucknow** in **Sales/Trade Tax Revision No. 124 of 2020** was confronted with similar causes for delay on part of the revenue. While examining the bona fides of such reasons S.D. Singh, J. held as under:

"5. Having heard learned counsel for the parties and having perused the record, the undisputed facts of the case are, the above appeal carries a delay of 530 days. The entire explanation furnished to seek condonation of inordinate delay is as below:

"निवेदन है की इस कार्यालय में कार्य की अधिकता तथा स्वीकृत जनशक्ति से कम कर्मचारी कार्यरत होने के कारन उक्त विषयक अपील के दाखिल करने में विलम्ब हुआ है, अतः माननीय न्यायलय से प्रार्थना है की उक्त सन्दर्भ में ५३० दिन विलम्ब क्षमा करने की कृपा करे।"

6. It is that explanation alone, that was supported by the affidavit of the assessing officer, Sri D.B. Ram, Deputy Commissioner, Agra. Its copy has been appended to the counter affidavit filed in the present proceedings.

7. Thus, the delay of 530 days has been explained on wholly vague and generic grounds of - (i) shortage of manpower and; (ii) excess work. In the affidavit of the assessing officer, besides the above, it was further stated, the senior assistant had been assigned B.L.O. duty, resulting in the delay. Neither the application nor the affidavit bring out necessary facts pertaining to shortage of manpower claimed or the excess of work claimed. Then, the date of election and date of assignment of duty of the senior assistant has also not been disclosed. In any case, in the context of delay of 530 days, it is wholly unacceptable that such delay could have been caused owing to conduct of election or assignment on the election duty to certain officials. That explanation is inherently inadequate.

8. Though there is no doubt, day to day explanation of the delay is not required to be made, however, that explanation must be

genuine and such as may bring out bona fide of the litigant, seeking condonation of delay as also the plausibility of the reason disclosed. Further, such explanation may also bring out its proximity to the result of the delay sought to be explained. By merely stating vague and generic facts, a litigant may never expect the Court to exercise its discretion to condone the delay.

9. Therefore, the nature of explanation remains ever relevant and primary for consideration of the Court. It must inspire confidence as to truthfulness and completeness as to the delay sought to be explained. Only then, the Court may act and condone the delay. Where however, as in the instant case, that explanation is found to be lacking in particulars and substance as also intent, the Court may never act on the same. The law in that regard is fairly well settled. The Supreme Court in *Postmaster General & Ors. Vs. Living Media India Ltd. & Anr.*, (2012) 3 SCC 563, has held as below:

"27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several

months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few."

10. Seen in that light, the explanation furnished by the revenue was neither bona fide nor it appears to be otherwise sufficient or such as may have been relied by the Tribunal to condone the delay of 530 days."

The holdings of this Court in **Anil Enterprises (supra)** is squarely applicable to the facts of this case. In the facts of this case, the explanation offered by the revenue for the inordinate delay of 584 days is unsatisfactory. The department cannot get any benefit for its own laches which ultimately draw the assessee into unnecessary litigation. The laws of limitations are statutes of repose which bring a terminus to old controversies which have not been agitated in a timely basis. Limitation laws prevent the adverse consequences of the actions of indolent litigants falling on the adversary party(the assessee in this case) for no fault of the latter.

The impugned order dated 24.07.2020 is hereby quashed.

The writ petition is allowed.

Order Date :- 28.11.2023

Vandit