

Serial No. 03
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

MC (ITA) No. 2/2023

Date of order: 16.02.2024

Pr. Commissioner of Income Tax vs. M/s North Eastern Electric
Power Corporation Ltd.

Coram:

Hon'ble Mr. Justice S. Vaidyanathan, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Applicant : Mr. S. Pandey, Adv.
For the Respondent : Mr. V.K. Jain, Adv with
Mr. S. Dodeja, Adv
Ms. N. Kantoor, Adv
Mr. S. Jindal, Adv.

The respondent has raised a serious objection to condone the delay, stating that the order, which was pronounced by ITAT on 12.12.2022 has been received on 31.03.2023 and the appellant has not preferred the appeal within the statutory period of 120 days and that there is a delay in filing the present appeal. The further objection raised is that there is no proper explanation in filing the appeal and therefore, there is no need to condone the delay and number the Appeal.

2. Per contra, the applicant has submitted that the approval for filing an appeal was granted only on 14.08.2023 and that on account of

preparation of appeal papers and getting final approval from the office of the Chief Commissioner of Income-Tax, the delay has crept in. The applicant has further submitted that there is no prejudice going to be caused to the respondent, if the main appeal is taken up for hearing and a finding is rendered on merits.

3. At this juncture, the respondent would submit that the Court may condone the delay, by granting liberty to the respondent to oppose the appeal on merits.

4. After hearing both the parties, we are of the view that the delay has got to be explained from the last date of time granted under the Act till the date of filing of the case, which otherwise means that the delay of beyond 120 days has to be necessarily explained. In this case, the applicant has given sufficient reasons for condoning the delay. In the light of the judgments of the Apex Court in **Postmaster General and Others V. Living Media India Limited and another** reported in **(2012) 3 SCC 563** and **N.Balakrishnan V. M. Krishnamurthy** reported in **(1998) 7 SCC 124**, if the delay has been satisfactorily explained, the same can be condoned. These judgments have also been followed by a

Division Bench of the Madras High Court in the case of *M/s.Ruskim Sea Foods Limited vs. M/s.Evergreen Sea Foods Pvt. Ltd.*, reported in *MANU/TN/0876/2018* in which one of us (S.Vaidyanathan,J) was a party, wherein it has been held as follows:

“32. Ordinarily, the 'Condonation of Delay' is a matter of discretion to be exercised by the Concerned Court. Also, it is true that the length and breadth of delay is not relevant, but the acceptance of explanation can only be a relevant criterion for the concerned Court to deal with / condone the aspect of 'Condonation of Delay'. However, in this regard, the Petitioner / concerned litigant is to offer / ascribe sufficient reasons or project sufficient cause or good cause to condone the delay with a view to enable the Concerned Court to take a liberal view with a view to secure the ends of justice.”

5. To be precise, even if the delay is short and there is no proper explanation forthcoming, the delay need not be condoned. Similarly, despite the fact that the delay is enormous, sufficient reasons are given thereunder, the delay can be condoned.

6. In the present case on hand, the delay is also too short and sufficient reasons have been given, which are acceptable by us to

condone the delay. Hence, M.C.[ITA] No.2/2023 is allowed and the delay of 109 days is condoned.

7. Registry is directed to number the appeal, if it is otherwise in order and the list the appeal in the usual course.

(W. Diengdoh)
Judge

(S. Vaidyanathan)
Chief Justice

Meghalaya
16.02.2024
"Santosh, P.S."