

**Court No. - 5**

**Case :-** SALES/TRADE TAX REVISION DEFECTIVE No. - 50 of 2021

**Revisionist :-** Commissioner Commercial Tax U.P. Lucknow

**Opposite Party :-** M/S Jubilant Fresh Ltd. Noida

**Counsel for Revisionist :-** C.S.C.

**Counsel for Opposite Party :-** Rahul Agarwal,Rajat Gangwar

**Hon'ble Abdul Moin,J.**

**C.M.A. No.147438 of 2021**

1. Heard Shri Sanjay Sarin, learned Additional Chief Standing Counsel appearing for the revisionist and Shri Rajat Gangwar, learned counsel for the respondent.
2. This is an application under Section 5 of the Limitation Act. The delay as noted by the office is 713 days.
3. Shri Sanjay Sarin, learned Additional Chief Standing Counsel admits that the limitation for filing the instant revision expired on 27.11.2019 as per the specific averment made in the affidavit. However, on account of the advent of Covid-19 Pandemic, there being a lock-down, the instant revision could only be filed on 08.11.2021.
4. Placing reliance on the various judgement of the Hon'ble Apex Court as cited in the application for condonation of delay, it is contended that the delay merits to be condoned. Shri Sanjay Sarin, learned Additional Chief Standing Counsel has also placed reliance on the judgement of the Apex Court passed in the case of ***Suo Motu Writ Petition (Civil) No.3 of 2020; In re: Cognizance for extension of limitation*** to contend that the Apex Court has condoned the delay, where the limitation was expiring between 15.03.2020 to 28.02.2022 and the instant revision having been filed on 08.12.2021 would thus be within limitation.

5. On the other hand, Shri Rajat Gangwar, learned counsel for the respondent argued that admittedly the period of limitation for filing of the revision expired on 27.11.2019. As per the office report, the delay is of 713 days.

6. Placing reliance on the judgement of this Court in the case of ***Commissioner Commercial Tax U.P. Lko. Vs. M/s. R.C. & Sons., Rakabganj, Lucknow; Sales/Trade Tax Revision Defective No.6 of 2020***, the contention is that this Court has refused to condone the delay after placing reliance on various judgements of the Hon'ble Apex Court, where the delay was of 163 days and as such prays that the said judgement be also followed in the instant case.

7. So far as the judgement of the Apex Court in the case of ***Suo Motu (supra)*** is concerned, Shri Rajat Gangwar, learned counsel for the respondent has placed reliance on the judgement of the Hon'ble Apex Court in the case of ***Sagufa Ahmed and others vs. Upper Assam Plywood Products Pvt. Ltd. and others*** passed in Civil Appeal Nos.3007-3008 of 2020 decided on 18.09.2020, which has been filed along with the objections to the application for condonation of delay to contend that the Hon'ble Apex Court has held that the extended period of limitation as provided by the Apex Court in the case of ***Suo Motu (supra)*** would only be applicable where the limitation period was expiring during the aforesaid period and not where the limitation period had expired prior to the commencement of the said period and thus it is prayed that there being gross delay on the part of the revisionist in filing the instant revision, as such the application for condonation of delay merits to be rejected.

8. Heard learned counsel for the parties and perused the record.

9. From the perusal of the record, it emerges that the instant revision has been filed on 08.11.2021. The office has reported a delay in filing the revision of 713 days. Admittedly, the limitation for filing of the revision expired on 27.11.2019. The revisionist on their own accord proceeded to file the revision on 08.11.2021.

10. A perusal of the application of condonation of delay would indicate that on 24.10.2019, a proposal for filing of the revision was sent by Deputy Commissioner, Commission Tax. Certain discrepancies were noticed vide letter dated 06.01.2020. The sanction for filing of the revision was received from the Additional legal Remembrancer on 05.03.2020, but despite that the revision could only be filed on 08.11.2021.

11. This aspect of the matter has been considered threadbare by this Court in the case of **M/s. R.C. & Sons (supra)**, wherein this Court has held as under:-

*"7. Having heard the learned counsel appearing for the contesting parties and having perused the reasons indicated in the application for condonation of delay it emerges that the order of the learned Tribunal is dated 23.04.2019. The revision itself has been filed after a delay of 163 days. The reasons have been indicated in paragraphs 3 to 8 of the said application by indicating that initially a proposal had been sent for filing of a revision petition and thereafter the documents were sent. Later, the permission was sought for filing of revision which was received from the law department vide sanction letter dated 15.07.2019 and a request subsequently was made in July, 2019 to the office of the learned Chief Standing counsel, High Court, Lucknow for filing of a revision. The file was allotted for drafting after a period of almost one month and it took the learned Standing counsel a period of almost four and half months to file the revision and hence the delayed filing of revision."*

8. The delay which often occurs on the part of the department in filing the appeals/revisions has been considered threadbare by the Apex Court in the case of **Living Media India Ltd (supra)** wherein the Apex Court after placing reliance on

various earlier judgments of the Apex Court, including a few over which the learned Standing counsel has also placed reliance, held as under:-

"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."

9. Likewise, the Apex Court in the case of of **Central Tibetan Schools (supra)** has held as under:-

4.We have heard the learned Additional Solicitor General for some time and must note that the only error which seems to have occurred in the impugned order [Union of India v. Central Tibetan Schools Admn., 2018 SCC OnLine Del 13371] is of noticing that it is not an illiterate litigant because the manner

in which the Government is prosecuting its appeal reflects nothing better! The mighty Government of India is manned with a large Legal Department having numerous officers and advocates. The excuse given for the delay is, to say the least, preposterous.

5. We have repeatedly been counselling through our orders various Government Departments, State Governments and other public authorities that they must learn to file appeals in time and set their house in order so far as the Legal Department is concerned, more so as technology assists them. This appears to be falling on deaf ears despite costs having been imposed in a number of matters with the direction to recover it from the officers responsible for the delay as we are of the view that these officers must be made accountable. It has not had any salutary effect and that the present matter should have been brought up, really takes the cake!

6. The aforesaid itself shows the casual manner in which the petitioner has approached this Court without any cogent or plausible ground for condonation of delay. In fact, other than the lethargy and incompetence of the petitioner, there is nothing which has been put on record. We have repeatedly discouraged State Governments and public authorities in adopting an approach that they can walk in to the Supreme Court as and when they please ignoring the period of limitation prescribed by the statutes, as if the Limitation statute does not apply to them. In this behalf, suffice to refer to our judgment in *State of M.P. v. Bherulal* [(2020) 10 SCC 654 : (2021) 1 SCC (Civ) 101 : (2021) 1 SCC (Cri) 117 : (2021) 1 SCC (L&S) 84] and *State of Odisha v. Sunanda Mahakuda* [(2021) 11 SCC 560]. The leeway which was given to the Government/public authorities on account of innate inefficiencies was the result of certain orders of this Court which came at a time when technology had not advanced and thus, greater indulgence was shown. This position is no more prevalent and the current legal position has been elucidated by the judgment of this Court in *Postmaster General v. Living Media (India) Ltd.* [(2012) 3 SCC 563 : (2012) 2 SCC (Civ) 327 : (2012) 2 SCC (Cri) 580 : (2012) 1 SCC (L&S) 649]. Despite this, there seems to be a little change in the approach of the Government and public authorities.

7. We have also categorised such kind of cases as "certificate cases" filed with the only object to obtain a *quietus* from the Supreme Court on the ground that nothing could be done because the highest Court has dismissed the appeal. The objective is to complete a mere formality and save the skin of

the officers who may be in default in following the due process or may have done it deliberately. We have deprecated such practice and process and we do so again. We refuse to grant such certificates and if the Government/public authorities suffer losses, it is time when officers concerned responsible for the same, bear the consequences. The irony, emphasised by us repeatedly, is that no action is ever taken against the officers and if the Court pushes it, some mild warning is all that happens.

8. Looking to the gross negligence and the impunity with which the Union of India had approached this Court in a matter like this, we consider it appropriate to impose special costs of Rs 1 lakh in this case to be recovered from the officer(s) concerned, to be deposited with the Supreme Court Advocates-on-Record Welfare Fund within four weeks.

9. The special leave petitions are dismissed as time-barred in terms aforesaid. Pending application stands disposed of.

10. Incidentally, the judgment of the Apex Court in the case of **Central Tibetan Schools (supra)** is a judgment by three Hon'ble Judges.

11. The Apex Court in the case of **Volex Interconnect (supra)** has held as under:-

"2.This is one more case of what we have already categorised as "certificate cases" and we do not delve further, as the purpose seems just to bring the matter to the Courts to put a closure to the same without giving any cogent explanation for condonation of delay in terms of *Postmaster General v. Living Media (India) Ltd.* [ *Postmaster General v. Living Media (India) Ltd.*, (2012) 3 SCC 563 : (2012) 2 SCC (Civ) 327 : (2012) 2 SCC (Cri) 580 : (2012) 1 SCC (L&S) 649].

3.We have also examined the case on merits despite the aforesaid and find that a correct view has been taken by the Tribunal as the Department itself is treating the assessee in the same manner for subsequent years so far as classification is concerned.

4.We are thus of the view that for both the aforesaid reasons, the appeal is not liable to be entertained. The appeal is dismissed accordingly."

12. Considering the aforesaid judgments of the Apex Court what is to be seen is as to whether any plausible reason has been indicated by the revisionist in filing the instant revisions.

13. A perusal of paragraphs 3 to 8 of the application of condonation of delay would indicate that a very cavalier and casual attitude has been shown by the revisionist in filing the instant revision inasmuch as file and papers/permissions have been shunted from one desk to the other. Even though the file has reached the "ultimate destination" for drafting of the revision i.e to the concerned learned counsel for drafting of the revision in August, 2019 yet it has taken more than four months for the revision to be drafted despite limitation period of three months being prescribed under the statute for filing of a revision. All these facts indicate the casual and cavalier attitude on the part of the department in filing of the revision belatedly, rather, as observed by the Apex Court in the case of Central Tibetan Schools (*supra*) other than the lethargy and incompetence of the revisionist, there is nothing which has been brought on record to explain the delay.

14. Keeping in view the aforesaid discussion including the judgments of the Apex Court in the cases of Living Media India Ltd (*supra*), Central Tibetan Schools (*supra*) & Volex Interconnect (*supra*), all judgments being of a latter date to the judgments cited by learned counsel for the revisionist including the judgment of Central Tibetan Schools (*supra*) being a three judges judgment, the Court does not find any plausible or cogent reason for condoning the delay. Accordingly, the application for condonation of delay is rejected."

12. So far as the benefit of the judgement of the Apex Court in the case of **Suo Motu (supra)** which is sought by the revisionist is concerned, this aspect of the matter has also been considered by the Apex Court in the case of **Sagufa Ahmed (supra)**, wherein the Apex Court while considering the order in the case of **Suo Motu (supra)** has held that the Hon'ble Apex Court had extended the period of limitation and not the period up to which the delay can be condoned, meaning thereby that the order passed by the Apex Court was intended to benefit the vigilant litigants, who were prevented due to pandemic and the lock-down from initiating the proceedings within the period of limitation prescribed by general or special law.

13. Thus, from the perusal of the judgement in the case of **Sagufa Ahmed (supra)**, it emerges that the Apex Court has

categorically held that the order in the case of **Suo Motu (supra)** was passed in order to benefit the vigilant litigants, who were prevented due to pandemic from filing their applications/writs etc., but the limitation could not be extended in those cases, where the limitation had already expired prior to the said period, which incidentally was from 15.03.2020 to 28.02.2022 and thus even the order of the Apex Court in the case of **Suo Motu (supra)** would have no applicability to the facts of the instant case more particularly when the period of limitation for filing the revision on stood lapsed on 27.11.2019 i.e. much before the start of date for condonation of limitation i.e. 15.03.2020 and the said order has already been distinguished by the Apex Court in the case of **Sagufa Ahmed (supra)**.

14. Keeping in view the aforesaid discussion, the application for condonation of delay is rejected.

### **Order on the Memo of Revision**

The application for condonation of delay having been rejected, the revision is also dismissed.

**Order Date :-**21.2.2024

Ashutosh