IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

O.T.C.No. 14 of 2010

AGAINST THE ORDER IN AITA 20/2009 of STAT ADDL.BENCH, KOTTAYAM DATED 24-08-2009

REVISION PETITIONER/APPELLANT/REVENUE:

STATE OF KERALA,
REP. BY DEPUTY COMMISSIONER (LAW),
COMMERCIAL TAXES
ERNAKULAM

BY ADV. GOVERNMENT PLEADER SRI.LIJU STEPHEN

RESPONDENT/RESPONDENT ASSESSEE:

M/S.ABRAHAM OOMMEN & OTHERS
KALLOOPARAMBIL,
NATTAKOM, KOTTAYAM-680 566

R, R1 BY ADV. SRI.JOSEPH MARKOSE (SR.)
R, R1 BY ADV. SRI.V.ABRAHAM MARKOS
R, R1 BY ADV. SRI.MATHEWS K.UTHUPPACHAN
R, R1 BY ADV. SRI.BINU MATHEW
R, R1 BY ADV. SRI.TERRY V. JAMES
R, R1 BY ADV. SRI.B.J.JOHN PRAKASH
R, R1 BY ADV. SRI.TOM THOMAS (KAKKUZHIYIL)

THIS OTHER TAX CASES HAVING BEEN FINALLY HEARD ON 29-06-2015 ALONG WITH OTC 16/10, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.T.C.No. 14 of 2010

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A: TRUE COPY OF THE RECTIFIED ASSESSMENT ORDER DATED 17.4.2006 FOR THE YEAR 2000-2001.

ANNEXURE B: TRUE COPY OF THE ORDER OF THE FIRST APPELLATE AUTHORITY DATED 20.1.2009.

ANNEXURE C: TRUE COPY OF THE ORDER OF THE STAT DATED 24.8.2009.

// TRUE COPY //

P.A. TO JUDGE

ANTONY DOMINIC & SHAJI P.CHALY, JJ.

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C.M.Appln.781 of 2010 in O.T.C.No.14 of 2010 &
C.M.Appln.821 of 2010 in O.T.C.No.16 of 2010

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Dated this the 29th day of June, 2015

JUDGMENT

Antony Dominic, J.

These are applications filed to condone delay of 316 and 318 days in filing the Other Tax Cases.

2. The order of the Tribunal was passed on 24.8.2009 and the same was received in the Office of the Joint Commissioner (Law) on 14.10.2009. It is stated in the affidavit that the copy was forwarded to the Deputy Commissioner, Commercial Taxes, Kottayam for his report and the report dated 7.6.2010 was received in the Office of the Joint Commissioner (Law) on 29.6.2010. The Joint Commissioner then requested the Advocate General to examine the scope for filing a revision by his letter dated 21.7.2010 and the said letter was forwarded to the Office of the Advocate General on 17.8.2010. This was considered by the Special Government Pleader (Taxes) on 28.8.2010 and after completing the procedural requirements, the appeal was filed on 24.11.2010. The delay on the part of the Departmental Offices is sought to be explained thus:

> *"It is respectfully submitted that the Circle Offices are dealing with multifarious work such as returns scrutiny, processing of VAT refund applications, assessment, creation of demand, collection of tax etc. The officers are also engaged in fieldwork. In addition to this periodic review meetings are also conducted by the higher authorities and also the revenue authorities to boost up the revenue collection and to ensure follow up action. In the circumstances the assessing authorities are taking some time to forward the remarks from the appellate order since the same is done after verification of the entire files and also discussion with higher authorities on legal issues."*

3. In our view, the explanation offered in both the affidavits are absolutely unsatisfactory as it only reflects the procedural red-tapism in the Department. Therefore, based on these reasons the delay cannot be condoned and this view that we have taken is fully supported by the Apex Court judgment in ***Chief Post Master General v. Living Media India Ltd. [2012 (2) KLT S.N.114 (C.No.112)SC]*** wherein it is held thus:

> *"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. 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 government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few."

The C.M. Applications are dismissed. Consequently, the Other Tax Cases are also dismissed.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

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