

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 12TH DAY OF MARCH 2015/21ST PHALGUNA, 1936

WP(C).No. 6515 of 2015 (L)

PETITIONER(S):

**K.G.SURESHKUMAR, AGED 42 YEARS,
PROPRIETOR, HOTEL MARINE PALACE,
KOVALAM, THIRUVANANTHAPURAM.**

BY ADV. SRI.T.K.ANANDA KRISHNAN

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTED BY SECRETARY
COMMERCIAL TAXES DEPARTMENT, THIRUVANANTHAPURAM 695 001.**
- 2. THE SECRETARY, KERALA VALUE ADDED TAX
AGRICULTURE INCOME TAX & SALES TAX
APPELLATE TRIBUNAL ADDITIONAL BENCH
THIRUVANANTHAPURAM-695 001.**
- 3. DEPUTY COMMISSIONER (APPEALS)
COMMERCIAL TAXES DEPARTMENT
THIRUVANANTHAPURAM-695 001.**
- 4. COMMERCIAL TAX OFFICER
COMMERCIAL TAXES DEPARTMENT
NEYYATTINKARA THIRUVANANTHAPURAM-695 001.**

R BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPPEN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
12-03-2015 ALONG WITH W.P.(C).NO.6560/2015, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:**

WP(C).No. 6515 of 2015 (L)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 - TRUE COPY OF THE APPEAL BEARING NO.TA(VAT)NO.58/2014

EXT.P2 - TRUE COPY OF THE APPEAL BEARING NO.TA(VAT)NO.59/2014

EXT.P3 - TRUE COPY OF THE APPEAL BEARING NO.TA(VAT)NO.60/2014

**EXT.P4 - TRUE COPY OF THE DELAY CONDONATION PETITION BEARING INTP
NO.176 OF 2014**

**EXT.P5 - TRUE COPY OF THE DELAY CONDONATION PETITION BEARING INTP
NO.178 OF 2014**

**EXT.P6 - TRUE COPY OF THE DELAY CONDONATION PETITION BEARING INTP
NO.180 OF 2014**

**EXT.P7 - TRUE COPY OF THE ORDER DATED 17-01-2015 ISSUED BY THE 1ST
RESPONDENT.**

RESPONDENT(S)' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.6515 OF 2015 (L)

&

W.P.(C).NO.6560 OF 2015 (T)

Dated this the 12th day of March, 2015

J U D G M E N T

As both these writ petitions involve a common issue, they are taken up together and disposed by this common judgment.

2. The petitioners in both the writ petitions were appellants before the Kerala Value Added Tax Appellate Tribunal having filed appeals against the orders of the first appellate authority confirming a demand of tax/penalty on them. Inasmuch as there was a delay in filing the applications before the Appellate Tribunal, the petitioners had also preferred petitions for condonation of delay, supported by affidavits giving an explanation for the delay occasioned. The delay in these cases was to an extent of 141 days in W.P.(C).No.6560/2015 and 320 days in W.P.(C).No.6515/2015. The Appellate Tribunal, on a consideration of the applications for condonation of delay preferred by the petitioners, proceeded to hold that the petitioners had not satisfactorily explained the delay that was occasioned, and therefore proceeded to dismiss the delay condonation petitions, and thereafter,

the appeals as well. In the case of the petitioner in W.P.(C). No.6560/2015, the Appellate Tribunal also went into the authority of the person who had filed the affidavit on behalf of the appellant before the Appellate Tribunal, and found that the authorised representative of the appellant had placed reliance only on a photocopy of a Resolution of the Company that authorised him to file the appeal. It was found that the photocopy of the Resolution that was produced, indicated that the power of attorney was granted to one K.P.Ashok Kumar and the same had been withdrawn with effect from 1.3.2007, whereas the authorised representative, Benadict Lopez, traced his authority to the Resolution dated 24.2.2007 of the appellant company.

In my view, the orders of the Appellate Tribunal, in the delay condonation applications preferred by the petitioners, do not reflect a consideration of the facts relevant for consideration of the issue of condonation of delay in second appeals, under a statutory scheme of litigation. The parameters for exercise of discretion, in cases involving condonation of delay, have been laid down by the Supreme Court in a number of decisions wherein it is stated that, normally

when a claim made by an applicant is legally sustainable, the delay must be condoned. It is also mandated that, when substantial justice and technicalities are pitted against each other, then the cause of substantial justice deserves to be preferred. There are cases where the conduct of a party must also be gone into, and where it is established that the conduct of the litigant party is not such as would indicate that he was negligent or callous in pursuing the matter before the Forum, and further, the delay was not so huge as would cause substantial prejudice or harm to the opposite side, the situation would normally call for a condonation of the delay. The legal principle that informs such decisions is that, as far as possible, in a legal arena, the attempt must always be to enable a consideration on merits rather than to throw out the matter, on technicalities. It would be instructive to refer to the judgment of the Supreme Court in **Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and others - [JT 2013 (12) SC 450]**, where, at paragraphs 15 and 16, the court culled out the broad principles that should govern an application for condonation of delay. They read as follows:

15. From the aforesaid authorities the principles that can broadly be culled out are:

i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

vi) it is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first

one warrants strict approach whereas the second calls for a liberal delineation.

ix) The conduct, behavior and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:

a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

b) An application for condonation of delay should not be dealt with in a routine manner on the base of

individual philosophy which is basically subjective.

c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistence and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.

On a consideration of the said principles as laid down by the Supreme Court, I am of the view that in the instant cases, the Appellate Tribunal has not considered the application for condonation of delay filed by the appellants in accordance with the decisions laid down by the Supreme Court. Accordingly, I quash Ext.P8 in W.P.(C).No.6560/2015 and Ext.P7 in W.P.(C).No.6515/2015 and direct the Appellate Tribunal, Ernakulam, to restore appeals, stay applications and delay condonation applications to file, and consider the applications filed for condonation of delay afresh within a period of two months from the date of receipt of a copy of this judgment, after hearing the petitioner. The interim order of stay, granted by this Court in the writ petitions, shall continue to be in force till such time as orders are passed by the Appellate Tribunal, as directed in this

judgment and communicated to the petitioners in both the writ petitions.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp