IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

WP(C).No. 7577 of 2015 (V)

PETITIONER :

M/S. S.F.DYES, AGED 51 YEARS,
NH 47, PATHIRAPLLY P.O, ALAPPUZHA-688 521
REP. BY ITS PARTNER RAVINDRA ARORA.

BY ADVS.SRI.V.DEVANANDA NARASIMHAM
SRI.P.H.RIYAS

RESPONDENTS :
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1. **THE AGRL. INCOME TAX AND COMMERCIAL TAX OFFICER,**
   COMMERCIAL TAXES, ALAPPUZHA-688 011

2. **THE DEPUTY COMMISSIONER (APPEALS),**
   COMMERCIAL TAXES, BAPPUJI NAGAR, ASRAMAM
   KOLLAM-691 002.

3. **THE KERALA VALUE ADDED TAX/AGRICULTURAL INCOME TAX &**
   SALES TAX APPELLATE TRIBUNAL, KOTTAYAM-686 001.

4. **THE DEPUTY TAHSILDAR (RR),**
   AMBALAPPUZHA TALUK, ALAPPUZHA-668 561.

R1 TO R4 BY SENIOR GOVERNMENT PLEADER
SMT. SOBHA ANNAMMA EAPPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

WP(C).No. 7577 of 2015 (V)

APPENDIX

PETITIONER(S)' EXHIBITS

P1 : TRUE COPY OF ANNUAL RETURN BOTH UNDER KVAT & CST ACTS DT 30.04.06 FILED BEFORE 1ST RESPONDENT.

P2 : TRUE COPY OF THE CST ASSESSMENT ORDER DT. 11.10.10 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

P3 : TRUE COPY OF RR NOTICE DT 31.10.11 ISSUED BY 4TH RESPONDENT TO THE PETITIONER.

P4 : TRUE COPY OF CONDITIONAL STAY ORDER DT 31.01.12 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

P5 : TRUE COPY OF CERTIFIED 1ST APPELLANT ORDER NO.KVATA (ALPY) 1058/12 DT 20.04.13 ISSUED BY 2ND RESPONDENT TO THE PETITIONER.

P6 : TRUE COPY OF FORM 31 APPEAL MEMORANDUM DT 27.10.14 FOR 05-06 AGAINST EXT P2 CST ASSESSMENT ORDER.

P7 : TRUE COPY OF THE INTERLOCUTORY APPLICATION FOR CONDONATION OF DELAY ALONG WITH AFFIDAVIT DT 27.10.14 FOR 05-06 SUBMITTED BEFORE 3RD RESPONDENT.

P8 : TRUE COPY OF THE INTERLOCUTORY APPLICATION FOR ABSOLUTE STAY ALONG WITH AFFIDAVIT DT 27.10.14 FOR THE YEAR 2005-06 SUBMITTED BEFORE THE 3RD RESPONDENT.

P9 : TRUE COPY OF THE NOTICE DT 6.11.14 ISSUED TO THE COUNSEL FOR THE PETITIONER.

P10: TRUE COPY OF THE LETTER DT 3.12.14 ISSUED BY THE INDIAN OVERSEAS BANK, BRANCH KOMALAPURAM.

P11 : TRUE COPY OF THE APPELLATE ORDER DT. 7.1.15 ISSUED BY 3RD RESPONDENT TO THE PETITIONER ON 16.2.15.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.K.JAYASANKARAN NAMBIAR, J.

...

W.P.(C) No.7577 of 2015 (V)

...

Dated this the 19th day of March, 2015

JUDGMENT

The petitioner in this writ petition was the appellant before the Kerala Value Added Tax Appellate Tribunal, having filed an appeal against the order of the first appellate authority confirming a demand of tax/penalty on him. Inasmuch as there was a delay in filing the application before the Appellate Tribunal, the petitioner had also preferred petition for condonation of delay, supported by affidavit giving an explanation for the delay occasioned. The delay in this case was to an extent of 434 days. The Appellate Tribunal, on a consideration of the application for condonation of delay preferred by the petitioner, proceeded to hold that the petitioner had not satisfactorily explained the delay that was occasioned, and therefore proceeded to dismiss the delay condonation petition, and thereafter, the appeal as well. 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.

2. In my view, the order of the Appellate Tribunal, in the delay

condonation application preferred by the petitioner, does not reflect a consideration of the facts relevant for consideration of the issue of condonation of delay in second appeal, 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:
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> 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 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.

3. On a consideration of the said principles as laid down by the Supreme Court, I am of the view that in the instant case, the Appellate Tribunal has not considered the application for condonation of delay filed by the appellant in accordance with the decisions laid down by the Supreme Court. Accordingly, I quash Ext.P11 order and direct the The Kerala Value Added Tax/Agricultural Income Tax & Sales Tax Appellate Tribunal, Kottayam, to restore the appeal, stay application and the delay condonation application 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. There will be a stay of recovery proceedings for recovery of the amounts confirmed against the petitioner by the orders of the lower authorities, till such time as orders are passed by the Appellate Tribunal, as directed in this judgment and communicated to the petitioner.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/20/03/