

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 7TH DAY OF APRIL 2015/17TH CHAITHRA, 1937

WP(C).No. 11276 of 2015 (H)

PETITIONER :

**NIKKI'S NEST
BAILEY'S RESORTS PVT. LTD.,
CHOWARA P.O., THIRUVANANTHAPURAM
PIN – 695 501
REPRESENTED BY SMT. MARIA JACOB
MANAGING DIRECTOR.**

**BY ADVS.SRI.VIJAYAN K.U.
SRI.K.V.VIMAL**

RESPONDENT(S) :

- 1. ASSISTANT SECRETARY
THE KERALA VALUE ADDED TAX/
AGRL. INCOME TAX AND SALES TAX
APPELLATE TRIBUNAL, ADDITIONAL BENCH
THIRUVANANTHAPURAM – 695 001.**
- 2. INSPECTING ASSISTANT COMMISSIONER
COMMERCIAL TAXES, KILLIPALAM
THIRUVANANTHAPURAM – 695 001.**
- 3. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
TAXES DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM, PIN – 695 001.**

R1 TO R3 BY SR. GOVT. PLEADER SMT. SHOBA ANNAMMA EAPEN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 07-04-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Mn

APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P1 : COPY OF SEPARATE ASSESSMENT ORDER FOR THE YEAR 2010-11 IN RESPECT OF NIKKI'S AYURVEDA HOSPITAL DATED 2.6.2014.
- EXT.P2 COPY OF THE APPEAL FOR THE YEAR 2009-10 FILED BEFORE THE TRIBUNAL ALONG WITH APPLICATIONS ON 18.12.2014.
- EXT.P3 COPY OF THE ORDER INTP NO. 55/2014 IN TA NO. 52/2014 DATED 11.3.2015.
- EXT.P4 COPY OF THE REVENUE RECOVERY NOTICE NO. RRC 59/14-15/LTO.TVM ISSUED BY THE 2ND RESPONDENT.

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.11276 OF 2015 (H)

Dated this the 7th day of April, 2015

J U D G M E N T

The petitioner in this writ petition was the appellant before the Kerala Value Added Tax Appellate Tribunal, having filed appeal against the order of the first appellate authority confirming demands of 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 an affidavit giving an explanation for the delay occasioned. The Appellate Tribunal, on a consideration of the applications 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.

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:

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 encapsulate 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 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.P3 order and direct the Appellate Tribunal, Ernakulam, to restore the appeal, stay application and the delay condonation application to file, and consider the application 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 against the petitioner, for recovery of the amounts confirmed against him by the lower authorities, till such time as orders are passed by the Appellate Tribunal, as directed in this judgment and communicated to the petitioner.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns

