

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 26TH DAY OF JUNE 2015/5TH ASHADHA, 1937

WP(C).No. 19191 of 2015 (Y)

PETITIONER(S) :

**M/S.R.M.PRIME EXIM,
SUBAIDA BUILDING, V/766/B UNNICHIRA, THRIKKAKKARA P.O.,
ERNAKULAM, REPRESENTED BY ITS MANAGING PARTNER
KAILASH BHATTAD.**

BY ADV. SRI.R.RAMADAS

RESPONDENT(S) :

- 1. KERALA VALUE ADDED TAX APPELLATE TRIBUNAL,
ERNAKULAM-682 011.**
- 2. THE DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES, ERNAKULAM-682 011.**
- 3. THE INTELLIGENCE OFFICER,
SQUAD NO.III, COMMERCIAL TAXES, THRISSUR-680 001.**

BY SR.GOVERNMENT PLEADER SMT.SHOBA ANNAMMA EAPEN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 26-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

- EXT.P1 : A TRUE COPY OF THE PROCEEDINGS OF THE 3RD RESPONDENT
 DATED 28-02-2011.
- EXT.P2 : TRUE COPY OF THE APPEAL DATED 07-10-2014 FILED BY
 THE MANAGING PARTNER OF THE PETITIONER FIRM.
- EXT.P3 : TRUE COPY OF THE PETITION TO CONDONE THE DELAY FILING
 THE APPEAL DATED 07-10-2014 FILED BY THE MANAGING
 PARTNER OF THE PETITIONER FIRM.
- EXT.P4 : TRUE COPY OF THE ORDER DATED 19-11-2014 IN
 INTP NO.388/2014 IN T.A(VAT) NO.406/2004.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A. MUHAMED MUSTAQUE, J.

W.P(C). No. 19191 of 2015

Dated this the 26th day of June, 2015

J U D G M E N T

The petitioner impugnes an order passed by the Appellate Tribunal in application for condonation of delay.

2. The application for condonation of delay has been dismissed vide Ext.P4 order.

3. The petitioner is a firm. The firm has filed the appeal through Manager, namely Sri.P.Anil Kumar. The reason for delay is explained is the illness of Sri.P.Anil Kumar. He also produced the Medical Certificate. Since he is only an authorised representative, affidavit was sworn by the Managing Partner of the firm to explain delay, as directed by the Tribunal. The appeal was also substituted through the Managing Partner. One of the reasons stated in the affidavit is that, the firm is not having business in Kerala. It was also sworn that the person in charge was laid up due to illness (ie; Sri.P.Anil Kumar).

4. The Tribunal found that, there is no document to show that, Sri. Anil Kumar was looking after the business activity. It is noted that Sri.P.Anil Kumar was not at all responsible for delay.

Accordingly the application was dismissed.

5. Heard the learned counsel for the petitioner and the learned Government Pleader.

6. The impugned order necessarily decided on the fact that, Sri.P.Anil Kumar was not responsible for the delay and there is nothing to show that he was authorised person to carry the business in Kerala.

7. I am of the view that, delay petition has to be understood, to understand the scope of reason for not filing the appeal within time. It cannot be treated as proceedings for a decision to decide upon substantial rights or liability of the parties. The sufficient cause has been made out that, Sri.P.Anil Kumar, who is the person in charge of the business, was laid up. If Sri.P.Anil Kumar is in charge of the business there is nothing to disbelieve unless contra is proved. I am of the view that, the explanation as put forth by the appellant ought to have been believed especially, that was placed through an affidavit by the Managing Partner of the firm. No doubt unexplained delay could also be remedied by way of ordering the cost. Substantial justice always demand the Tribunal should not take technical approach in

considering the application for delay.

8. Coming to the facts of the case, the Managing partner had sworn an affidavit stating that Sri.P.Anil Kumar is in charge and he has also produced the Medical Certificate, Tribunal did not find that the Medical Certificate is forged or not. In such circumstances, I am of the view that, the delay condonation petition is liable to be allowed.

Accordingly, the impugned order is set aside. The appeal is restored on the file. The Tribunal is directed to dispose of the appeal after notice to the petitioner.

Sd/-

A. MUHAMED MUSTAQUE, JUDGE.