

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

WP(C).No. 26274 of 2015 (H)

PETITIONER :

**M/S. S.N. SPICES,
POOPPALLIKKAVU, S.L.PURAM.P.O.,
CHERTHALA-688 523, ALAPPUZHA DISTRICT,
REPRESENTED BY ITS MANAGING PARTNER SEBASTIAN.N.C.**

BY ADV. SRI.V.DEVANANDA NARASIMHAM

RESPONDENT(S):

- 1. THE COMMERCIAL TAX OFFICER-II,
COMMERCIAL TAXES, CHERTHALA-688 524**
- 2. THE DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES, ASRAMAM.P.O.,
KOLLAM-691 002**
- 3. THE DEPUTY TAHSILDAR (RR), TALUK OFFICE,
CHERTHALA-688 524.**

BY GOVERNMENT PLEADER SRI.LIJU V. STEPHEN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 01-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE AGREEMENT TO MANUFACTURE CURCUMIN 95% POWDER DATED 01/02/11 ON JOB BASIS EXECUTED WITH M/S. OLIVE LIFE SCIENCES PVT. LTD BANGALORE.**
- P2 COPY OF THE INVOICE NO.456 DATED 24/02/11 ACCOMPANIED WITH SUCH CONSIGNMENT**
- P3 COPY OF THE DELIVERY NOTE IN FORM JJ NO.292 DATED 24/02/11 ACCOMPANIED WITH SUCH CONSIGNMENT**
- P4 COPY OF THE REPORT ON E-SUGAM FORMS UTILIZED BY M/S. OLIVE LIFE SCIENCES PVT. LTD., BANGALORE ON 24/02/11**
- P5 COPY OF THE NOTICE ISSUED U/S. 47 (2) BY THE INTELLIGENCE INSPECTOR, TIRUR, CAMP AT WALAYAR.**
- P6 COPY OF THE NOTICE DATED 9/12/11 ISSUED U/S. 25(1) OF KVAT ACT.**
- P7 COPY OF THE COMMON ORDER DATED 30/12/11 PASSED U/S 47(6) & U/S 25(1) OF THE KVAT ACT BY 1ST RESPONDENT ISSUED TO PETITIONER.**
- P8 COPY OF THE ARREAR NOTICE DATED 30/07/14 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.**
- P9 COPY OF THE REQUEST LETTER DATED 12/09/14 SUBMITTED BEFORE THE 1ST RESPONDENT BY THE PETITIONER.**
- P10 COPY OF THE REQUEST LETTER DATED 15/10/14 SUBMITTED BEFORE 1ST RESPONDENT BY THE PETITIONER.**
- P11 COPY OF THE APPEAL MEMORANDUM DATED 04/11/14 AGAINST CONVERSION OF SECURITY DEPOSIT INTO PENALTY U/S. 47(6) SUBMITTED BEFORE 2ND RESPONDENT**
- P12 COPY OF THE APPEAL MEMORANDUM DATED 04/11/14 AGAINST ASSESSMENT COMPLETED U/S. 25(1) ISSUED BY 1ST RESPONDENT TO PETITIONER.**
- P13 COPY OF THE INTERLOCUTORY APPLICATION FOR CONDONATION OF DELAY AGAINST THE ORDER ISSUED U/S. 47(6) OF THE KVAT ACT FOR 10-11**
- P14 COPY OF THE INTERLOCUTORY APPLICATION FOR CONDONATION OF DELAY AGAINST THE ORDER ISSUED U/S. 25(1) OF THE KVAT ACT FOR 10-11**
- P15 COPY OF THE SUCN ASSESSMENT ORDER DATED 30/05/12 FOR THE YEAR 2010-11 PASSED BY 1ST RESPONDENT**

WP(C).NO.26274/2015

- P16 COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WP(C).NO.32280 OF 2014**
- P17 COPY OF THE DISMISSAL ORDER DATED 11/05/1 PASSED IN EXBT-P13 INTERLOCUTORY APPLICATION FOR CONDONATION OF DELAY**
- P18 COPY OF THE DISMISSAL ORDER DATED 11/05/15 PASSED IN EXBT-P14 INTERLOCUTORY APPLICATION FOR CONDONATION OF DELAY.**

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.S.TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.26274 OF 2015 (H)

Dated this the 1st day of September, 2015

J U D G M E N T

The petitioner in this writ petition was the appellant before the 2nd respondent, having filed an appeal against the order of the 1st respondent confirming an assessment for the assessment year 2010-11. Inasmuch as there was a delay in filing the appeal before the 2nd respondent, the petitioner had also preferred petition for condonation of delay, supported by an affidavit giving an explanation for the delay occasioned. The 2nd respondent, 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 and stay petition as well.

2. In my view, the order of the 2nd respondent, 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 2nd respondent 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 Exts.P17 and P18 orders and direct the 2nd respondent, to restore the appeals, stay applications and the 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. There will be a stay of recovery proceedings against the petitioner, for recovery of the

amounts confirmed against him by the 1st respondent, till such time as orders are passed by the 2nd respondent, as directed in this judgment and communicated to the petitioner.

A.K.JAYASANKARAN NAMBIAR
JUDGE

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