

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

C.W.P. No. 13291 of 2006 (O&M)

Date of decision: 22.11.2016

M/s Kirloskar Oil Engine Limited

.. Petitioner

vs

State of Haryana and others

.. Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Abhishek Sanghi, Advocate, for the petitioner.

Ms. Tanisha Peshawaria, Deputy Advocate General, Haryana.

Mr. Deepak Balyan, Advocate, for respondent nos. 2 and 3.

Rajesh Bindal, J.

The petitioner has challenged the orders dated 21.5.1999, 30.5.2001 and 1.7.2003. The writ petition was filed on 21.8.2006. The same was admitted on 24.8.2006 by passing the following order:-

“This writ petition has been filed against the order passed by Executive Officer, Municipal, Bahadurgarh dated 21.5.1999, Annexure P.1, as affirmed by the Deputy Commissioner, Jhajjar on 30.5.2001 and Secretary to Government of Haryana on 1.7.2003. The last impugned order was passed three years back whereby levy of octroi duty was upheld holding that the machine in question was brought in the municipal limits of Bahadurgarh for the first time. It was further held that reduction of penalty from ten

times to four times by the appellate authority was not justified and the penalty should be ten times.

While we do not feel inclined to go into the argument that octroi duty itself was not leviable, particularly when the petition has been filed after three years and a finding of fact has been recorded concurrently by the authorities below that the machine was brought to the municipal limits for the first time. However, we are of the view that the contention that penalty equal to ten times of the amount of octroi was excessive and the view of the appellate authority that the penalty should not be more than four times, did not call for interference, will require consideration.

Subject to delay of three years in filing the writ petition being satisfactorily explained, admitted confined to the question of penalty only.”

Learned counsel for the petitioner sought to explain the delay by stating that the counsel as well as the petitioner remained under the impression that the order was still not pronounced by the Commissioner and Secretary to the Government, hence, the writ petition could not be filed. He further submitted that copy sent by counsel at Chandigarh to the counsel at Delhi on 7.7.2003 by courier was not received by him. There is correspondence in that reference. The petitioner was not going to gain anything by delaying the process of filing the present petition as the amount of octroi as well as penalty had already been paid.

On the other hand, learned counsel for the respondents vehemently argued that the writ petition deserves to be dismissed on account of delay and laches only. The final order was passed by the Commissioner and Secretary to the Government in revision filed by the petitioner on 1.7.2003. Admittedly, it was received by the counsel for the

petitioner and sent to the counsel for the petitioner at Delhi on 7.7.2003.

Even if, as claimed by the petitioner, it was not received, the petitioner and the counsel at Delhi, were to enquire about the case within a reasonable time. However, nothing was done. It was almost about three years when the enquiry was supposedly made. There is no explanation for the intervening period. The petitioner is a limited company well advised by its officers and the professionals. Plea of ignorance cannot be accepted. They had to be careful.

After hearing learned counsel for the parties, we do not find that justifiable reason is made out explaining huge delay of more than three years in filing the present petition. The final order impugned in the present writ petition was passed by the Commissioner and the Secretary to the Government on 1.7.2003 (Annexure P-3). Admittedly, copy of the order was received by the counsel for the petitioner at Chandigarh and dispatched to the counsel at Delhi through courier on 7.7.2003. It is sought to be claimed that the courier was not received. However, there is nothing on record to suggest as to why the petitioner or the counsel at Delhi did not make any enquiry about the result of the case. The only plea taken that the order had been reserved by the Secretary, hence, they were under the impression that the order was still reserved, is too hard to believe to cover up delay of about three years. The only correspondence with reference to the order, as placed on record starts from 31.3.2006 and prior to that there is nothing.

The writ petition was filed on 21.8.2006, which was more than three years after the passing of the order by the Commissioner and the Secretary to the Government.

For the reasons mentioned above, we do not find that delay in filing the writ petition has been satisfactorily explained. Hence, the writ petition is dismissed on account of delay and laches only.

(Rajesh Bindal)
Judge

22.11.2016
vs

(Harinder Singh Sidhu)
Judge

Whether speaking/ reasoned
Whether Reportable

Yes/No
Yes/No