AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No.7112 of 2007

M/s. Agrawal Fuels Through its Proprietor Kamal Kumar Agrawal S/o Sri Govindlal Agrawal, Aged about 46 years, R/o Rajnandgaon, Tahsil & Distt Rajnandgaon (CG)

---- Petitioner

Versus

1. State of Chhattisgarh Through the Secretary, Food & Civil Supplies Department, Mantralaya, Dau Kalyan Singh Bhawan, Raipur (CG)
2. Collector, District Rajnandgaon (CG)

---- Respondents

For Petitioner	:	Mr.Ashish Shrivastava, Advocate
For Respondents	:	Mr.Arun Sao, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

29/11/2017

1. The Collector, Rajnandgaon feeling aggrieved against the order dated 9.11.1993 (Annexure P/5) filed a revision petition before the State Government under clause 17 of the Madhya Pradesh Motor Spirit and High Speed Diesel Oil (Licensing and Control) Order, 1980 (hereinafter called as 'the Order of 1980'). That revision was barred by 60 days as it could have been preferred within 30 days from the date of its communication. By the impugned order, the State Government has condoned the delay and admitted the revision for final hearing, against which, this writ petition has been filed by the dealer/petitioner herein.

2. Mr.Ashish Shrivastava, learned counsel appearing for the petitioner, would submit that there is no provision in clause 17 of the Order of 1980 to condone delay, therefore, delay could not have been condoned by the State Government.

3. On the other hand, Mr.Arun Sao, learned Deputy Advocate General appearing for the respondents/State would submit that

provisions contained in Section 5 of the Limitation Act, 1963 (hereinafter called as 'the Limitation Act') would be applicable to condone delay, therefore, the State Government is absolutely justified in condoning delay in filing revision petition.

4. I have heard learned counsel appearing for the parties, considered their rival submissions made herein-above and also gone through the records with utmost circumspection.

5. Section 29(2) of the Limitation Act provides as under:-

> “29.(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.”

The aforesaid provision would clearly mandate that the provisions contained in Section 4 to 24 (inclusive) shall apply only if they are not expressly excluded by such special or local law.

6. Recently, the Supreme Court in the matter of **B.S. Sheshagiri Setty and others Vs. State of Karnataka and others**[1] dealing with identical fact situation has held that provisions contained in Section 29(2) of the Act of 1963 would apply. It was observed as under:-

> “35. Further, Section 108 of the KCS Act confers the power of revision on the State Government suo motu at any time, or on application by an applicant within 6 months of the passing of an order. The KCS Act is a special legislation. Thus, by virtue of Section 29(2) of the Limitation Act, 1963, the power to condone delay is available with the State Government. The

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> contention of the auction-purchaser that no such application for condonation of delay of the belated revision petition has been filed by the appellants is a hypertechnical one and cannot be sustained. Where the State Government has exercised its statutory power under Section 108 of the KCS Act after satisfying itself that the sale of the mortgaged immoveable property of the appellants in the public auction is illegal, it is not open for the respondents to contest the same by urging technical grounds, especially in light of the fact that the power conferred upon the State Government under Section 108 of the KCS Act is "suo motu" and the same can be exercised "at any time". Therefore, having regard to the facts of the case, in the absence of an application for condonation of delay, we hold that the exercise of the power by the Minister for Cooperation, the State Government of Karnataka must be taken as a suo motu exercise of power by him."

7. Reverting back to the facts of the present case, it would appear that clause 17 of the Order of 1980 provides for limitation of 30 days for filing the revision, but does not provide expressly exclude provision of Section 5 of the Limitation Act.

8. Following the mandate of the Supreme Court in **B.S. Sheshagiri Setty** (supra), it is held that the provisions contained in Section 5 of the Limitation Act would be applicable and the State Government being *quasi-judicial* authority is absolutely justified in condoning delay in filing the revision finding sufficient cause.

9. In view of the aforesaid analysis, the writ petition deserves to be and is hereby dismissed. However, the State Government is directed to decide the revision expeditiously keeping in view it is pending since for a fairly long time. No cost(s).

Sd/-

(Sanjay K. Agrawal)

Judge