IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P(NPD)Nos.3925 to 3927, 3929 to 3931 of 2011 and
M.P.Nos.1,1,1,1,1 and 1 of 2011 and
C.R.P(NPD)Nos.3831 to 3839 of 2011 and
M.P.Nos.1,1,1,1,1,1,1,1 and 1 of 2011 and
C.R.P(NPD)Nos.3943 to 3945 of 2011 and
M.P.Nos.1,1,1 of 2011 and
CRP(NPD)Nos.4045 to 4048 of 2011 and
MP.Nos.1,1,1,1 of 2011
CRP(NPD)Nos.4061 to 4065 of 2011 and
MP.Nos.1,1,1,1,1 of 2011
CRP(NPD)Nos.4073 to 4097 of 2011 and
M.P.Nos.1 to 1 of 2011 (25 MPs)

CRP(NPD)No.3925 of 2011

The Commissioner,
Coimbatore City Municipal Corporation,
Big Bazaar Street,
Coimbatore. .. Petitioner

Vs

M/s.Lakshmi Mills Company,
532 Avanashi Road,
Coimbatore. .. Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, against the order dated 31.03.2011 made in I.A.No.645 of 2005 in C.M.A.C.F.R.No.20576 of 2004, on the file of the Principal District Judge, Coimbatore.

For Petitioner : Mr.R.Sivakumar

For Respondent : M/s.P.T.Asha
for Sarvabhauman Associates

COMMON ORDER

All the civil revision petitions are filed challenging the order of the condone delay applications by the petitioner/Commissioner Coimbatore City Municipal Corporation, for condoning the delay in preferring the appeals.

2.The case of the petitioner/Commissioner Coimbatore City Municipal Corporation is that the respondents in all the civil revision petitions were filed the appeal before the Tax Appellate Tribunal, Coimbatore in respect of tax assessment levied by the Corporation of Coimbatore. The petitioner/Commissioner Coimbatore City Municipal Corporation has revised the property tax to the entire area of the Corporation from 01.04.1993 onwards.

3.The case of the petitioner/Commissioner Coimbatore City Municipal Corporation is that the Tax Appellate Tribunal without giving any opportunity to the Corporation has passed the orders. Therefore, as per the provision, the said copy of the order has to be supplied within 10 days from the date of passing the order. However, the Subordinate of Assistant Commissioner has received the order copy on the dates mentioned in the respective petitions and the same was forwarded to the concerned Zone. Due to the routine transfer of subordinate as well as administrative reasons the officials were not able to given instruction to the counsel to prefer the appeal in time. Therefore, there is a delay caused in filing the appeals before the appellate forum. Therefore, the petitioner/Commissioner Coimbatore City Municipal Corporation has prayed the appellate Court namely, the Principal District Judge, Coimbatore for condoning the delay in the respective petitions, for filing the appeals.

4.The counter affidavit filed by the respective respondent in which stated that the petitions are not maintainable in law and on facts, they have also stated that the petitions are gross abuse of process of Court, since the allegations mentioned in the affidavit are false. The respondent also come forward by saying that the affidavit does not contain the description of deponent i.e. his name, father's name, religion, age, etc. which are mandatory and condition precedent for swearing the affidavit and on that score alone the petitions are liable to be dismissed.

5.Apart from this, they also stated that they have not given valid reasons in the affidavit for condoning the delay. Therefore, they prayed the learned Principal District Judge, Coimbatore, for dismissal of the said petitions.

6.Considering both side arguments, the learned Principal District Judge was pleased to dismissed the said application on 31.03.2011 on the ground that the property tax in the entire area of Coimbatore City Corporation was revised from 01.04.1993 onwards and at that time sufficient opportunity was given to the public for furnishing their returns within the notified time and accordingly the Corporation revised the property tax and aggrieved over the same, the respondents filed the appeals as mentioned above wherein Tax Appellate Tribunal reduced the quantum of tax wrongfully and aggrieved over the same, this petitioner/Corporation wanted to prefer appeal but due to routine transfer of staff and administrative reasons, the officials were not able to give instruction to the counsel to prefer the appeals in time and hence the delay occurred in filing the appeals. But, the learned Judge says that there was no valid reasons has been given to condone the delay. The affidavit filed in support of the petitions are not properly sworn to and the petitioner being the Commissioner, as stated in the affidavits and the days of delay calculated is not correct and the judgment rendered by this Court in ***Indian Oil Corporation Ltd. Madras v. Mrs.Sakuntala Ganapathy Rao, Proprietor, Modern Home Agencies*** reported in ***1998 (III) CTC 170***. The learned Judge has considered other two judgments in the case of ***The Special Tahsildar (L.A.) Adi Dravidar Welfare, Velloe v. Kumarasamy Naidu*** reported in ***2000 The Madras Law Journal Reports Page 382*** and in the case of ***Joint Commissioner, Hindu Religious and Charitable Endowment Department, Trivanrum Road, Palayamkottai, Tirunelveli Dist. v. Ambasamudram Taluk, Ambasamudram Vetta Thirukoil, Paniyalargal Sanga, through its Secretary P.Ramasamy and others*** reported in ***2006 (1) CTC 45***.

7.The petitioner/Corporation states that the appeal should be preferred within 30 days from the date of receipt of the order passed by the learned District Judge, but the appeals were filed belatedly with a long delay and for that delay also they have not given any valid reason. Therefore, the learned Judge dismissed all the 176 petitions for condoning the delay including these petitions. Challenging the said order, the petitioner/Commissioner has filed the respective civil revision petitions before this Court.

8.I heard Mr.R.Sivakumar, learned counsel appearing for the petitioner and M/s.P.T.Asha for Sarvabhauman Associates, learned counsel appearing for the respondent in CRP.No.3925 of 2011.

9.The petitioner is the Commissioner, Municipal Corporation, Coimbatore, though the taxes were revised in the entire area from 01.04.1993 onwards by giving sufficient opportunity to the public and passing the orders by the petitioner/Commissioner, Municipal Corporation, Coimbatore. The respective respondents were challenged the same before the Tax Appellate Tribunal, Coimbatore, but the Appellate Tribunal without giving any proper opportunity to the Municipal Corporation has allowed the said appeals filed by the respondent herein and wrongfully reduced. Therefore, being aggrieved the same, the Commissioner, Municipal Corporation, Coimbatore has filed the appeal before the Principal District Judge, since against the order only the appeal will lie before the learned Principal District Judge, Coimbatore. Accordingly, the appeals were filed, but in each cases of the Appeal there is delay and the days are in different.

10.On perusal of the records clearly shows that there are 176 cases were filed by the respective respondents before the Tax Appellate Tribunal. Being the authority/Commissioner, Municipal Corporation, Coimbatore, they should have preferred Appeals, after getting proper advice and opinion from the Government Advocate as well as from the higher officials. The appeal should be filed before the learned Principal District Judge, but there are totally 176 appeals to be filed, therefore, for filing the appeals definitely the delay would be occurred.

11.For challenging the said reduction of the taxes passed by the Tax Appellate Tribunal, an opportunity must be given to the petitioner/ Commissioner, Municipal Corporation, Coimbatore.

12.The respondents counsel, who appeared for the respondents in respective civil revision petitions are vehemently opposed for condoning the delay, since the petitioner has not given any valid reasons and they have not filed affidavit in the proper manner.

13.It is admitted fact that there are 176 cases, the appeal should be filed by the petitioner/Commissioner before the Principal District Judge, Coimbatore. Therefore, the delay can be occurred for filing the respective appeals, in fact, each and every civil revision petitions, the days of delays are different.

14.Apart from this, the learned counsel appearing for the petitioner/Commissioner has produced orders passed by this Court that the similar nature of civil revision petitions filed by the petitioner/ Commissioner in respect of other cases out of 176 cases were allowed on condition of payment of costs. Therefore, in the interest of justice, by giving a fair opportunity to the petitioner/Commissioner, Municipal Corporation, Coimbatore, for filing appeal against the orders passed by the Tax Appellate Tribunal in respect of the respondents, the delay should be condoned. Therefore, this Court warranting interference in the orders passed by the learned Principal District Judge, Coimbatore in rejecting the condone delay applications and the same is liable to be set aside, on payment of costs.

15.In the result:

(a) all the civil revision petitions are allowed by setting aside the orders passed by the learned Principal District Judge, Coimbatore, on condition that the petitioner in respective civil revision petitions should pay a sum of Rs.5,000/- each to the learned counsel appearing for the respondent in respective civil revision petitions, within a period of three weeks from the date of receipt of a copy of this order;

(b) on production of the payment receipts within the stipulated period of time, the learned Appellate Court namely, the Principal District Judge, Coimbatore, is directed to number the appeal and pass orders within a period of three months, by giving notice to both parties. No costs. Consequently, connected miscellaneous petitions are closed.

27.02.2017

vs

Index: Yes/No
Internet: Yes/No

To
The Principal District Judge, Coimbatore.

M.V.MURALIDARAN,J.

vs

C.R.P(NPD)Nos.3925 to 3927, 3929 to 3931 of 2011 and
M.P.Nos.1,1,1,1,1 and 1 of 2011 and
C.R.P(NPD)Nos.3831 to 3839 of 2011 and
M.P.Nos.1,1,1,1,1,1,1,1 and 1 of 2011 and
C.R.P(NPD)Nos.3943 to 3945 of 2011 and
M.P.Nos.1,1,1 of 2011 and
CRP(NPD)Nos.4045 to 4048 of 2011 and
MP.Nos.1,1,1,1 of 2011
CRP(NPD)Nos.4061 to 4065 of 2011 and
MP.Nos.1,1,1,1,1 of 2011
CRP(NPD)Nos.4073 to 4097 of 2011 and
M.P.Nos.1 to 1 of 2011 (25 MPs)

27.02.2017