

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.35641 of 2003
and
W.P.M.P.No.43296 of 2003

Kothari Sugars and Chemicals Ltd.,
Rep. by its Company Secretary,
Mr.V.Natarajan,
115, Mahatma Gandhi Road,
Chennai.

.. Petitioner

Vs.

1. The Assistant Commissioner of
Central Excise-1 Division,
Trichy.
2. The Commissioner of Customs and
Central Excise (Appeals-II),
1, Williams Road, Trichy-1.
3. The Customs, Excise and Service Tax
Appellate Tribunal,
South Zonal Bench,
Rep. by the Registrar,
Shastri Bhavan Annexe, 1st Floor,
26, Haddows Road, Chennai-6.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the third respondent herein, pertaining to the order bearing Appeal No.E/PD/221/2003 & E/489/2003, dated 08.10.2003, confirming the order bearing Order-in-Appeal No.290/2003 (SCN) TRY II, dated 13.06.2003 issued by the second respondent and quash the same and consequentially direct the second respondent to hear the petitioner's Appeal bearing A.No.92/99-TRY on merits.

For Petitioner : Mr.R.Ramesh

For Respondents : Mr.J.Madana Gopal Rao, SCGSC for RR-1 and 2
R-3 Tribunal

ORDER

The issue involved in this Writ Petition is that the authorities concerned have not condoned the delay of 41 days in filing appeal on the ground that there was no proper explanation from the petitioner-Company and that every day's delay has got to be explained. The plea of the petitioner is that the Finance Manager who was in-charge of the excise matter, left the job on 07.01.1999 without handing over the pending matters to the Company, and hence, the appeal could not be filed in time, which was not acceptable to the authorities. This reason does not appear to be sound and that there is no sufficient reason for late submission of papers holding and that there is negligence on the part of the petitioner, and that the petitioner did not explain each and every day's delay and hence, the authorities below have refused to entertain the appeal and the condonation of delay application was dismissed. In view of the same, the main appeal was also rejected as time barred.

2. It is worthwhile to notice a decision of the Apex Court reported in AIR 1987 SC 1353 (Collector, Land Acquisition, Anantnag and another Vs. Mst. Katiji and others) held as follows:

"3. The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters, instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

"Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period."

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very

threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a stepmotherly treatment when the 'State' is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The Courts therefore have to be informed with the spirit and philosophy of the provision in

the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. ..."

3. In view of the above decision of the Supreme Court, there is no justification on the part of the authorities in not condoning the delay in filing the appeal. Hence, the Writ Petition is allowed. The impugned order confirming the order of the original authority is set aside and the matter is remitted to the first appellate authority/Commissioner of Customs and Central Excise (Appeals-II), Trichy. The delay in filing the appeal is condoned. The second respondent is directed to entertain the appeal and number the same and decide the issue on merits and in accordance with law, after affording reasonable opportunity of hearing to both sides and dispose of the appeal within a period of one month from the date of receipt of a copy of this order. If the petitioner-Company fails to represent the matter for any reason whatsoever, the second respondent is directed to pass orders on merits based on the documents available on record. No costs. W.P.M.P. is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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Copy to

1. The Assistant Commissioner of Central Excise-1 Division, Trichy.
2. The Commissioner of Customs and Central Excise (Appeals-II), 1, Williams Road, Trichy-1.
3. The Registrar,
The Customs, Excise and Service Tax Appellate Tribunal,
South Zonal Bench,
Shastri Bhavan Annexe, 1st Floor,
26, Haddows Road, Chennai-6.

+1cc to Mr.Srinath Sridevan, Advocate SR.No.49574

W.P.No.35641 of 2003

VGI(CO)
GN(10/08/2017)