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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **VAT APPEAL 14/2017 & C.M. No. 34349/2017 (stay)**

THE COMMISSIONER DEPARTMENT OF TRADE AND TAXES, GOVERNMENT OF NCT OF DELHI ..... Appellant

Through: Mr. Satyakam, Additional Standing Counsel.

versus

M/S J. S.N. TRADING COMPANY ..... Respondent

Through: None.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH

<u>O R D E R</u>
% 19.09.2017

<u>C.M. No. 34350/2017 (exemption)</u>

1. Allowed, subject to all just exceptions.

<u>C.M. No. 34410/2017 (delay in re-filing)</u>

2. For the reasons as stated in the application, the delay in re-filing the appeal is condoned. The application stands disposed of.

<u>C.M. No. 34351/2017 (delay in filing) in VAT APPEAL 14/2017</u>

3. There is a delay of 776 days in filing the appeal. The reason for delay in filing the appeal, as stated in this application, is that though the impugned

order dated 9th March 2015 of the Appellate Tribunal (AT) was received in the Department 'on the very next day', subsequent events prevented it from filing the appeal in the prescribed period.

4. Interestingly, the dates and events thereafter begin on 21st November 2016, more than one year and eight months after the receipt of the order of the AT. There is no explanation for not taking any steps for more than 20 months after receiving the impugned order of the AT. This alone is sufficient to dismiss the present application.

5. Learned counsel for the Appellant has relied upon the decision of the Supreme Court in ***Executive Officer, Antiyur Town Panchayat v. G. Arumugam (2015) 3 SCC 569*** where the Supreme Court held that, if the Court is convinced that there has been an attempt on the part of government officials or public servants to defeat justice by causing delay, the Court, in view of the larger public interest, should take a lenient view in such situations, condone the delay and decide the matter on merits.

6. However, there is nothing stated in the application that the delay is on account of any deliberate attempt by any officer to delay the filing of the appeal. Nothing is said about any action having been taken against any such officer found responsible for causing the delay.

7. On the other hand, the Supreme Court has in ***Postmaster General v. Living Media India Limited (2012) 3 SCC 563***, observed as under:

> "In our view, it is the right time to inform all the government

> bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the Government Departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few."

8. The above observations have been reiterated by the Supreme Court in ***State of U.P. v. Amar Nath Yadav (2014) 2 SCC 422***.

9. The explanation offered by the Appellant is insufficient for the Court to be persuaded to condone the extraordinary delay of 776 days in filing the appeal. The application for condonation of delay is dismissed.

10. Consequently, the appeal and the pending stay application are dismissed.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

SEPTEMBER 19, 2017
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