IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 255 OF 2018

M/s. Mapple Viva Goa,
Mapple House,
83A, Central Avenue,
Sainik Farms,
New Delhi, 110062. …. Petitioner

V e r s u s

Asst. Commissioner of Commercial Taxes,
Mapusa-Ward,
Mapusa, Bardez-Goa. …. Respondent

(Registered Address)

Mr. J. Coelho Pereira, Senior Advocate with Adv. V. Braganza for the Petitioner.

Ms. S. Linhares, Additional Government Advocate for the Respondent.

CORAM: C. V. BHADANG, J.
Reserved on: 21/06/2018
Pronounced on: 28/06/2018.

ORAL ORDER:

The challenge in this petition is to the order dated 19/9/2017 passed by the Administrative Tribunal refusing to condone the delay of about sixty days in filing an appeal.

2. The appellant was running a hotel at Calangute and which was assessed under the Goa Tax on Luxuries (Hotels and Lodging Houses) Act 1988 (Act, for short). The appellant closed the business on 31/3/2009 and vide their letter dated 10/4/2009 applied for cancellation of the registration certificate. The appellant upon closure of the business activities in Goa went back to Delhi. The appellant vide a communication dated 10/4/2009 had intimated the Luxury Tax Officer (LTO) his new address for future communication which was as under:

> "Mapple Hotels Palaces Resorts,
> City Business Centre,
> R-4, 1st floor, Coelho Pereira Bldg.,
> Dada Vaidya Road,
> Panaji, Goa.
> Tel: 2435027/2232067.

3. It appears that the assessment of the establishment of the petitioner for the year 2007-2008 was reopened by the LTO and vide order dated 27/2/2012, the LTO levied an amount of Rs.4,58,695/- as tax. Feeling aggrieved, the petitioner challenged the same before the Assistant Commissioner of Commercial Taxes under Section 14 of the Act. It appears that vide Clause 6 of the Appeal Memo, the address to which the communication was to be dispatched was given by the petitioner as under:

M/s. Mapple Viva, Goa,
(a Unit of Ninth Dimension Hotels & Resorts Pvt. Ltd.,
Dr. Jack Sequeira Junction,
Calangute, Bardez, Goa.

4. The Assistant Commissioner dismissed the appeal vide order dated 3/2/2014 which according to the petitioner was not communicated to it and as such, the petitioner could not take steps for filing a Second appeal within time. According to the petitioner it was in receipt of a letter dated 22/7/2015 from the LTO, Mapusa informing the petitioner that the appeal has been dismissed and requiring it to make the payment of the assessed dues. The petitioner claims that it was only on receipt of the letter dated 22/7/2015, (which was sent to the petitioner at its Delhi address) that the petitioner came to know about the dismissal of the appeal. The petitioner then applied for a certified copy on 12/8/2015 which was received on 21/8/2015. The petitioner approached the Administrative Tribunal in appeal along with an application for condonation of delay, which appears to have been filed on 7/9/2015.

5. The application was opposed by the respondent. It was contended that the order of the Assistant Commissioner was dispatched at the address as disclosed by the petitioner in the appeal memo, i.e. the address at Calangute, however, it was returned back as “refused, return to the sender”. It was

contended that the notice was served on the petitioner on 23/7/2013 at the address as set out by the petitioner in the appeal memo. It was contended that the petitioner did not appear before the first appellate authority although he was given an opportunity, both at the time of reassessment before the LTO and also when the first appeal was taken up by the Assistant Commissioner.

6. The Tribunal by the impugned order dated 19/9/2017 has dismissed the application for condonation of delay. Hence this petition.

7. I have heard Shri Coelho Pereira, the learned Senior Counsel for the petitioner and Ms. Linhares, the learned Additional Government Advocate for the respondent. With the assistance of the learned counsel for the parties I have gone through the record.

8. It is submitted by Mr. Pereira, the learned Senior Counsel for the petitioner that the Tribunal was in error in refusing to condone the delay. It is submitted that the tribunal was required to consider the prayer in a pragmatic manner. It is submitted that the approach of the Tribunal is pedantic which is not permissible. Reliance in this regard is placed on the decision of the Supreme Court in the case of **Collector, Land Acquisition, Anantnag and anr. Vs. Mst. Katiji and others (1987) 2 SCC 107** and **B.S. Shehagiri**

Setty and others Vs. State of Karnataka and others (2016) 2 SCC 123.

9. It is submitted that after the closure of the business the petitioner had gone back to Delhi and the address for communication was given which was from Panaji. It is submitted that in the appeal memo, however, the same address i.e. of Calangute was given inadvertently. The learned counsel pointed out that the order of the Assistant Commissioner was served on the petitioner at its Delhi address and thus the respondent authorities were aware of the address of the petitioner at Delhi. It is submitted that the petitioner had no reason not to file the appeal within time as the petitioner would not stand to gain by approaching the Court late. He therefore submitted that the delay may be condoned.

10. Ms. Linhares, the Additional Government Advocate has supported the impugned order. It is submitted that the petitioner had himself given the address from Calangute in the appeal memo for communication and thus the petitioner now cannot extricate himself on the spacious plea that it was inadvertently given. It is submitted that the Tribunal has found that the petitioner had approached the Tribunal with a false case in which case the delay could not have been condoned.

11. I have considered the circumstances and the submissions made. The LTO had passed the order on 27/2/2012 of which the petitioner was aware. Hence the petitioner had approached the first appellate Court i.e. the Assistant Commissioner of Commercial Taxes within time. In the appeal memo itself the petitioner had given the address at Calangute Bardez-Goa for communication. The record discloses that a notice of the first appeal which was issued on 18/7/2013 was served on the petitioner on 23/7/2013. The Tribunal has found that there was a postal acknowledgment card which was bearing the seal of the petitioner. It further appears that the order passed by the first appellate authority was dispatched to the petitioner again at the same address at Calangute which was returned with a postal remark "refused, return to the sender". The Tribunal has found and to my mind rightly so that had the petitioner closed the office and shifted to Delhi as alleged, the postal remark should have been "premises closed or addressee not found at given address or addressee left". However, the remark showed that the postal envelope was refused. The remark of the postal authority has a statutory presumption in its favour under Section 114 (e) of the Evidence Act which has not been rebutted. The petitioner had even not averred in the application for condonation of delay much less substantiated by affidavit that it was not in receipt of the notice dated 18/7/2013 which appears to have been served on 23/7/2013. Thus it does appear that the explanation given by the

petitioner is not true and appears to be concocted.

12. The law relating to consideration of a prayer for condonation of delay is too well settled to be restated. The existence of a 'sufficient cause' is sina qua non for an order for condonation of delay. The Court should find that the reason shown and the explanation tendered is genuine and affords sufficient cause to the party not to file the appeal within time. If the explanation itself is found to be not correct (which the Tribunal has found to be false) certainly the delay cannot be condoned on such incorrect or concocted explanation. The principles as set out in the case of **Collector, Land Acquisition Anantnag (supra)** are the principles which are to be kept at the back of the mind while examining the factual situation in each case. It is evident that whether or not the party has made out a sufficient cause, would depend upon facts and circumstances of each case. Here is a case where the petitioner was served with a notice at the address which the petitioner gave in the appeal memo and the copy of the order of the first appellate authority was returned as “refused”. Thus I do find that no exception can be taken to the finding of the learned Administrative Tribunal refusing to condone delay. I am conscious of the fact that in a matter of condonation of delay the Court has to take a liberal view. However as noticed earlier unless and until the reason shown is found to be bonafide and is substantiated on record, the delay

cannot be condoned. In the case of **Collector, Land Acquisition Anantnag (supra)** the delay was only of four days in filing an appeal against the decree granting exorbitant enhancement in compensation**.** The case of **B.S. Sheshagiri Setty (supra)** in my considered view also turned on its own facts and is clearly distinguishable. In that case there was gross miscarriage of justice found to have been caused, as the principles of natural justice (which are so fundamental to any judicial dispensation) were ignored for technicalities causing miscarriage of justice to a public litigant.

13. I have carefully gone through the impugned order and I do find that the view taken by the Tribunal is a plausible view in which the Tribunal has refused to exercise discretion in condoning the delay. The jurisdiction exercised by this Court under Article 227 of the Constitution of India is neither appellate nor revisional. It is essentially supervisory in nature to keep the Subordinate courts and Tribunals within the bounds of their authority and to redress manifest injustice if caused by any such orders. In exercise of powers under Article 227 of the Constitution of India, this Court cannot substitute its view in place of the view taken by the Subordinate Courts or Tribunal unless the view taken is perverse and capricious resulting into manifest injustice. In my considered view none of the these conditions are satisfied in this case. The petition is accordingly dismissed with no order

as to costs. The amount deposited before this court shall be paid to the respondent along with interest, if any, after a period of ten weeks.

C. V. BHADANG, J.

Ap/