$~24

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

\+ VAT APPEAL 2/2018

COMMISSIONER OF VALUE ADDED TAX, DELHI ..... Appellant

Through Mr. Anuj Aggarwal, ASC, GNCTD with Mr. Deboshree Mukherjee, Advocate.

versus

M/ S INDIAN HOTELS COMPANY LIMITED ..... Respondent

Through Mr. Gogan Kumar, Mr. Rohan Sharma and Mr. Dheeraj P., Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

O R D E R

% **02.04.2018**

CM No. 2629/2018 and VAT APPEAL No. 2/2018.

As per office report notice was not issued for want of process fee. However, respondent had entered appearance.

CM No. 2629/2018 is an application for condonation of delay of 674 days in filing of the appeal under Section 81 of the Delhi Value Added Tax Act, 2004 against the judgement dated 1st January, 2016 passed by the Appellate Tribunal, Delhi Value Added Tax in Appeal Nos. 255-258/ATVAT/14-15.

Paragraph 3.3 of the application refers to list of dates and how the file for approval had moved from one officer to the other. List of dates would indicate that there were time gaps for which there is no explanation. The delay is certainly substantial and without good cause and justification. We are not, therefore, inclined to condone the same.

Counsel for the appellant on the last date of hearing had stated that issue involved and raised is of considerable importance and would have substantial tax implication as the Tribunal has held that on services charge or fee, only service tax was payable and value added tax was not chargeable. While issuing notice, vide order dated 22nd January, 2018, we had recorded that the Court in view of delay may not interfere with the impugned order retrospectively. Counsel for the parties state that Goods and Services Tax has been enforced w.e.f. 1st July, 2017 and hence prospective ruling and decision would not be of consequence.

In view of the aforesaid position, we dismiss the present application for condonation of delay. However, we make it clear that this Court has not examined the issue on merits. In case of an adverse order by the Tribunal in another appeal, it will be open to the Revenue to challenge the same in accordance with law before the High Court.

In view of the fact that the application for condonation of delay in filing of the appeal is dismissed, the appeal would be also treated as dismissed.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

APRIL 02, 2018
MR/NA