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HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on: 15/05/2019****Judgment Delivered on : 17/05/2019****Writ Appeal No. 262 of 2019***{Arising out of order dated 20.03.2019 passed in Writ Petition (T) No. 60 of 2019 by the learned Single Judge}*

M/s. Brandavan Food Products (A company incorporated under the Companies Act, 1956) Plot No. 327, Ward 18, Near Post Office, Deepak Nagar, Durg, Chhattisgarh, Through its authorised signatory Mr. Rajeev Kumar Gupta, S/o Shri B.K Gupta, Aged bout 44 years, R/o Lavahandi, Raipur, Chhattisgarh.

---- Appellant**Versus**

1. Commissioner (Appeals), Central & State Goods and Service Tax Raipur Commissionerate Central GST Building, Dhamtari Road, Tikrapara, Raipur, Chhattisgarh.
2. Additional Commissioner, Central & State Goods & Service Tax, Raipur, Commissionerate Central GST Building, Dhamtari Road, Tikrapara, Raipur, Chhattisgarh.

---- Respondents**AND****Writ Appeal No. 263 of 2019***{Arising out of order dated 20.03.2019 passed in Writ Petition (T) No. 59 of 2019 by the learned Single Judge}*

M/s. R.K. Associates and Hoteliers Pvt. Ltd. (A company incorporated under the Companies Act, 1956) Room No. 1, Panchvati, Deepak Nagar, Durg, Chhattisgarh, Through its authorised signatory Mr. Rajeev Kumar Gupta, S/o Shri B.K Gupta, Aged bout 44 years, R/o Lavahandi, Raipur, Chhattisgarh.

---- Appellant**Versus**

1. Commissioner (Appeals), Central & State Goods and Service Tax
Raipur Commissionerate Central GST Building, Dhamtari Road,
Tikrapara, Raipur, Chhattisgarh.
2. Additional Commissioner, Central & State Goods & Service Tax,
Raipur, Commissionerate Central GST Building, Dhamtari Road,
Tikrapara, Raipur, Chhattisgarh.

---- Respondents

AND

Writ Appeal No. 264 of 2019

*{Arising out of order dated 20.03.2019 passed in Writ Petition (T) No. 58
of 2019 by the learned Single Judge}*

M/s. Satyam Caterers Pvt. Ltd. (A company incorporated under the
Companies Act, 1956) Room No. 2, Panchvati, Deepak Nagar,
Durg, Chhattisgarh, Through its authorised signatory Mr. Rajeev
Kumar Gupta, S/o Shri B.K Gupta, Aged bout 44 years, R/o
Lavahandi, Raipur, Chhattisgarh.

---- Appellant

Versus

1. Commissioner (Appeals), Central & State Goods and Service Tax
Raipur Commissionerate Central GST Building, Dhamtari Road,
Tikrapara, Raipur, Chhattisgarh.
2. Additional Commissioner, Central & State Goods & Service Tax,
Raipur, Commissionerate Central GST Building, Dhamtari Road,
Tikrapara, Raipur, Chhattisgarh.

---- Respondents

AND

Writ Appeal No. 265 of 2019

*{Arising out of order dated 20.03.2019 passed in Writ Petition (T) No. 57
of 2019 by the learned Single Judge}*

M/s. R.K. Associates and Hoteliers Pvt. Ltd. (A company
incorporated under the Companies Act, 1956) Room No. 1,
Panchvati, Deepak Nagar, Durg, Chhattisgarh, Through its
authorised signatory Mr. Rajeev Kumar Gupta, S/o Shri B.K Gupta,
Aged bout 44 years, R/o Lavahandi, Raipur, Chhattisgarh.

---- Appellant

Versus

1. Commissioner (Appeals), Central & State Goods and Service Tax
Raipur Commissionerate Central GST Building, Dhamtari Road,
Tikrapara, Raipur, Chhattisgarh.
2. Additional Commissioner, Central & State Goods & Service Tax,
Raipur, Commissionerate Central GST Building, Dhamtari Road,
Tikrapara, Raipur, Chhattisgarh.

---- Respondents

For Appellant	: Shri Chetan Sharma, Senior Advocate alongwith Shri Gagan Gupta, Shri Abhinit Das and Shri Romir S. Goyal, Advocates.
For Respondent/Revenue	: Shri Maneesh Sharma, Advocate.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Manindra Mohan Shrivastava, Judge

C.A.V. Judgment**Per P.R. Ramachandra Menon, Chief Justice**

1. Whether the interference declined to entertain the merit of the case by the statutory authorities and also by a learned Judge of this Court dismissing the appeals/writ petitions for the reason that the appeal was filed beyond the maximum time limit stipulated under the statute even after the condonable extent of delay, is correct or not is the question mooted for consideration in these appeals.

2. The thrust of the argument is that the power of this Court under Article 226 of the Constitution is quite wider enough to extend the relief with regard to the merit involved and that the technical ground of delay cannot be a bar in this regard.

3. Four different appeals arise from four different proceedings, all of which were dealt together by the learned Single Judge by passing a common

judgment dismissing the writ petitions. Writ Appeal No. 265 of 2019 is treated as the lead case, as suggested by the learned Senior Counsel for the Appellants.

4. We have heard Shri Chetan Sharma, the learned Senior Counsel appearing for the Appellants and Shri Maneesh Sharma, learned Standing Counsel for the Respondents/Department/Revenue.

5. The crux of the factual matrix reveals that the Appellants are supplying bed-rolls and newspapers as required by the award of the contract by M/s. Indian Railways and IRCTC subject to the terms and conditions as agreed upon. The duty cast upon the Appellants based on the contracts was being discharged accordingly and while so, they were served with a show cause notice proposing to tax the supply of newspapers under Section 65(105)(zzt) read with Section 67(76a) and Section 65(24) as 'outdoor catering service', while supply of bed-rolls was proposed to be taxed under the category of 'business support service' under Section 65(105c) read with Section 65(10)(zzzq) of the Finance Act, 1994 (*for short 'the Act, 1994'*).

6. According to the Appellants, the notice was absolutely without any basis as the delivery of goods sold at the direction of the buyer would not involve any services and it does not fall within the definition of 'caterer' under Section 65(24) and the 'outdoor caterer' under Section 65(76a) of the Act so as to constitute any 'outdoor catering service'. It is similarly contended that supply of bed-rolls and its maintenance also would not qualify to be branded as 'business support service'. The explanation submitted by the Appellant in this regard was considered but it was turned down and the assessment proceedings were finalised by the competent authority. Met with the situation, a statutory appeal was preferred before the Commissioner (Appeals) which is belated by 253 days and hence, it was sought to be condoned by filing a

petition to condone the delay. The matter was examined by the Commissioner (Appeals) who found that as per the relevant provisions of the statute, the appeal had to be filed within 'two months' and thereafter, the delay, if any could be condoned to a maximum period of 'one month', on offering sufficient cause. By virtue of the undisputed facts, the appeal was filed belatedly even beyond the condonable extent. The appellate authority dismissed the application for condonation of delay holding that there was no power to condone the said extent of delay and as a natural consequence, the appeal as well.

7. The Appellants moved the Customs, Excise & Service Tax Appellate Tribunal, New Delhi (*for short 'the Tribunal'*) challenging the course and proceedings finalised by the appellate authority i.e. the Commissioner (Appeals) also pointing out that the merit was squarely covered in favour of the Appellant and that the delay had to be condoned in view of the reasons specifically stated for the delay. However, the appellate authority also took the very same stand as taken by the Commissioner (Appeals) and the appeals came to be dismissed in view of the inordinate delay beyond the extent as specified in the statute, thus, without entertaining the merits. This made the Appellants to approach this Court by filing writ petitions referring to the sequence of events and trying to explain the delay, particularly in connection with the demise of the mother of the authorised signatory and also with reference to the unforeseen situations resulted in connection with the marriage of the daughter of the deponent and also the registration of a crime in connection with the affairs.

8. The learned Single Judge considered all the connected matters together and as per the common judgment dated 20.03.2019 held that the issue involved was no longer *res integra* as concluded/declared by the Apex Court in ***Singh Enterprises v. Commissioner of Central Excise,***

Jamshedpur {(2008) (221) ELT 163 (SC) : (2008) 3 SCC 70}. Reference was also made to the decision sought to be cited by the Appellants in **M/s. Shri Sai Rolling Mill v. The Commissioner, Customs, Central Excise & Service Tax & Others**; WA No. 322 of 2017 decided on 15.11.2018 whereby the appeal against dismissal of the writ petition was disposed off remitting the matter back to the Central Excise authority for consideration. The learned Single Judge observed that the facts and situation in **M/s. Shri Sai Rolling Mill** (*supra*) was totally different and with reference to the factual position involved, it was held that no extraordinary circumstance was substantiated by the Appellant/Petitioner to warrant interference by invoking the powers of this Court under Article 226 of the Constitution of India, in turn leading to dismissal of the writ petitions. This is to the chagrin of the Appellants who have filed these appeals seeking indulgence of this Court.

9. Shri Chetan Sharma, the learned Senior Counsel appearing for the Appellants submits that the appeals have been preferred under some firm grounds as noted below:

- That, the power of this Court under Article 226 of the Constitution is wide enough to render justice and that the legal position as to the exigibility to tax in respect of the two instances of sale sale/supply having already been answered in favour of the Assesseees with reference to other instances, the delay in the instance case was never to be reckoned a hurdle under any circumstances.
- Section 34 of the Arbitration and Conciliation Act, 1996 stipulates that the appeal has to be filed within three months and that no appeal shall be entertained thereafter. Such terminology, giving a mandate 'not to entertain the appeal' is

conspicuously absent in the instant case, where the appeal is preferred under Section 85(3A) of the Act, 1994 and hence, the delay ought to have been condoned by the statutory authorities as well as by the learned Single Judge.

- The legal position in this regard has been explained by the Full Bench of the Gujarat High Court in ***Panoli Intermediate (India) v. Union of India & Others***; {(2015) 326 ELT532 : (2015) 3 KLT 30} and that the relevant statutory provision dealt with thereof is virtually identical to Section 85(3A) of the Act, 1994. The said decision stands in favour of the Appellant, and hence, the verdict passed by the learned Single Judge is liable to be interdicted.
- Reliance is also sought to be placed on several other verdicts; viz; ***Commissioner of Income Tax v. Chhabil Dass Agrawal***; (2014) 1 SCC 603; ***Raja Mechanical Company (P) Ltd. v. Commissioner of Central Excise, Delhi-I***; (2012) 279 ELT 481; ***State of Nagaland v. Lipok AO and Others***; (2005) 3 SCC 752; ***Commissioner of Income Tax v. Kasturi & Sons***; (1999) 3 SCC 346; ***Uma Textiles Processors v. Union of India***; (2013) 290 ELT 214; ***The Food Inspector, Cannanore Municipality, Cannanore v. M. Gopalan***; (1991) AIR (Kerala) 240; ***M.P. Steel Corporation v. Commissioner of Central Excise***; {(2015) 319 ELT 373 : (2015) 7 SCC 58}; ***Central Industrial Security Force v. Commissioner of CGST & C. Ex.***; (2018) 14 GSTL 198; ***Sai Rolling Mill, A partnership firm registered v. Commissioner, Custom, Central Excise & Service Tax***; Writ Appeal No. 322 of 2017, decided on 15.11.2018; ***ITC Ltd. & Another v. Union of India (UOI) & Others***; SLP(C) No 11508 of 1998, decided on 22.08.1990 and

Star Battery Ltd. v. Assistant Commissioner, C. Ex; (2011)
264 ELT 363.

- During the course of submission, learned Senior Counsel submits with specific reference to ***Uma Textiles*** (*supra*), ***MP Steel Corporation*** (*supra*) and a Division Bench judgment of this Court in ***Sai Rolling Mill*** (*supra*), besides making reference to a Division Bench verdict passed by the Allahabad High Court in ***Central Industrial Security Force*** (*supra*) and that of a Single Bench of the Calcutta High Court in ***Star Battery Ltd.*** (*supra*) that the orders/verdict under challenge have caused miscarriage of justice.
- Despite the specific pleading as to the extraordinary circumstances under 'two' different heads (mother's case and the daughter's marriage, respectively); the learned Single Judge dealt with only one head (the marriage of the daughter) and held that it was not an extraordinary circumstance for condoning the delay. The reason stated is that the Petitioner/Appellant was still running the business throughout, notwithstanding the tragedy. It is stated that the omission to consider the other ground (with reference to the mother's death) has caused substantial prejudice to the Appellants and hence, interference is required, adding that the Appellant was only acting as a dutiful son, in discharge of his duties towards his mother in terms of the principle "***matru devo bhava***".
- A Division Bench of the Gujarat High Court in ***Uma Textiles*** (*supra*) (para 1 and 5) has condoned the delay beyond the statutory limit, in exercise of the power under Article 226 of the

Constitution of India, holding that the endeavor of the Court always shall be to promote justice leaning towards the merits and not to non-suit the parties on technicalities.

10. Shri Maneesh Sharma, the learned Standing Counsel for the Respondent/Revenue points out that the Appellants had failed to make out any point to be considered as involving 'extraordinary case' for invoking the power of this Court under Article 226 of the Constitution of India. The matter was considered in the said context by the learned Single Judge who categorically held that the reason/explanation offered could never be taken to infer that it was an 'extraordinary case'. That apart, a Division Bench of this Court has already held as per judgment dated 29.11.2018 in **TAXC No. 19 of 2017** that when the particular statute stipulates the time for filing appeal mentioning the parameters, the provisions of other statutes cannot be looked into, nor is it possible to make any comparative analysis. Reliance is sought to be placed on paragraphs 5, 6, 7, 8 and 9 of the said judgment.

11. The above discussion leads to the core question as to the scope of Section 85(3A) of the Act, 1994, the extent and power to condone the delay under the said provision and the scope of interference by this Court in exercise of the discretionary/extraordinary jurisdiction under Article 226 of the Constitution of India. For convenience of reference, Section 85(3A) of the Act, 1994 is extracted below:

"85. (3A). An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 receives the assent of the President, relating to service tax, interest or penalty under this Chapter:

Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two

months, allow it to be presented within a further period of one month. "

12. There is no dispute to the fact that the appeal came to be filed before the appellate authority **only after 253 days** beyond the stipulated period of 'two months' and hence, it was sought to be condoned by filing an application. The maximum condonable limit as per the statute is only 'one month', after the prescribed period of two months. This being the position, whether it could have been condoned by the statutory authority and if not possible, could it have been dealt with granting relief by this Court in exercise of the jurisdiction under Article 226 of the Constitution, is the only question.

13. We have gone through all the verdicts cited from the part of the Appellants and it is true that a Division Bench of the Gujarat High Court had condoned the delay beyond the statutory extent in exercise of power under Article 226 of the Constitution as held in ***Uma Textiles (supra)***. The questions considered by the Full Bench of the Gujarat High Court in ***Panoli Intermediate (India) (supra)*** are as extracted below:

"(1) Whether the period of limitation provided of 60 days, for filing an appeal under Section 35 of the Central Excise Act, 1944, could be extended only upto to 30 days as provided by the proviso or the delay beyond the period of 90 days could also be condoned in filing an appeal.

(2) Whether a statutory remedy or appeal is provided under Section 35 of the Central Excise Act, 1944 and the delay cannot be condoned under Section 35 beyond the period of 90 days, then whether Writ Petition under Article 226 of the Constitution of India would lie for the purpose of condoning the delay in filing the appeal?

(3) When if the statutory remedy or appeal under Section 35 is barred by the law of limitation whether in a Writ Petition under Article 226 of the Constitution of India, the order passed by the original adjudicating authority could be challenged on merits?

Referring to ***Singh Enterprises (supra)***, it was held that the Apex Court was considering the scope and ambit of sufficient cause found in the

various statutes and thereby to consider to give effect to the statutory provision made for limitation. It was further observed that the question as to whether the provisions of Section 35 of the Central Excise Act, 1944 affects the jurisdiction of the High Court under Article 226 of the Constitution of India for exercise of the constitutional power or not was not considered by the Apex Court. In paragraph 28, the Bench observed as follows:

"28. In the decision of the Apex Court in the case of *Singh Enterprises Vs. Commissioner of Central Excise Jamshedpur and Others*, (2008) 1 CLT 709 : (2008) 124 ECC 1 : (2008) 150 ECR 1 : (2008) 221 ELT 163 : (2007) 14 SCALE 610 : (2008) 3 SCC 70 : (2008) 12 VST 542 : (2008) AIR SCW 1461 : (2007) 8 Supreme 533, which has, been relied upon by the learned counsel Mrs. Parikh, the Apex Court was considering the scope and ambit of sufficient cause found in the various statutes and thereby to consider to give the effect of statutory provision made for limitation. In the said case, the question as to whether the provisions of Section 35 of the Act affects the jurisdiction of the High Court under Article 226 of the Constitution for exercise of the constitutional power or not was not considered by the Apex Court. Therefore, the contention of the learned counsel Mr. Parikh that the decision of the High Court taking the view that it had no power to condone the delay after the expiry of the period of 30 days should mean that the High Court will have no jurisdiction under Article 226 in a case where the period of 30 days is over cannot be countenanced for the simple reason that whether the High Court should exercise the power to condone the delay after expiry of the period of 30 days while exercising the power under Article 226 of the Constitution is one thing, but whether the jurisdiction of the High Court under Article 226 of the Constitution is affected by the statutory provision of section 35 of the Act is another thing. It cannot be disputed if the High Court declines to exercise the power after the expiry of the period of 30 days if the case is not falling in the exceptional circumstance where gross injustice is not satisfactorily demonstrated before the High Court. Hence, the said decision is of no help to Mr. Parikh for canvassing his contention."

14. In ***Central Industrial Security Force*** (*supra*), a Division Bench of the Allahabad High Court, as discernible from the discussions in paragraphs 2, 6, 8 and 10, held that by virtue of the statutory mandate, it could not be stated that there was any illegality in not condoning the delay; but considering

the ends of justice, the High Court chose to condone the delay, in exercise of jurisdiction under Article 226 of the Constitution of India.

15. It is true that some of the High Courts, including this Court, at times, have considered the question with reference to the 'extraordinary circumstances', to condone the delay beyond the statutory limit as mentioned above. The learned Single Judge specifically noted that the reason for the delay of 253 days in filing the appeal offered by the writ petitioner was that after passing of the assessment order, the Appellant/Petitioner was engaged in personal tragedy as his daughter was facing marital dispute and hence, the appeal could not be filed within the time. In paragraph 9, the learned Single Judge also observed that the so-called extraordinary situation pressed by the Petitioner was not of such nature which had paralyzed the Petitioner's business or his life and that admittedly, he was carrying on his business during the relevant period. Hence, according to the learned Judge, there was no pressing emergency which did not permit the Petitioner to prefer an appeal before the Commissioner (Appeals) on time. The reasoning given by the learned Single Judge is not liable to be interdicted as unsustainable under any circumstances.

16. The learned Senior Counsel for the Appellants submits that the learned Single Judge considered only 'one' of the two grounds raised and with reference to the extraordinary circumstance that there was another ground in relation to the demise of the mother of the Petitioner as specifically pleaded in the writ petition. This, however, was omitted to be considered and hence requires interference.

17. We asked a specific question whether such a ground pleaded/stated was ever argued before the learned Single Judge, to which the learned Senior Counsel fairly submitted that he was not aware, as a

different counsel was dealing with the situation at that point of time. Be that as it may, the learned Senior Counsel submits that the Appellant/Petitioner was only discharging his duty as a dutiful son honouring the values of motherhood, following the doctrine "***matru devo bhava***". This Court is aware of the unparalleled status of a mother in the society and the vacuum resulted in the lives of her children. This Court is also aware of the teachings in the Upanishads, particularly the ***Taittiriya Upanishad***, which says: "***maatru devo bhava, pitru devo bhava, aachaarya devo bhava; atithi devo bhava***", (be a man to whom mother is god, be a man to whom father is god, be a man to whom teacher is god, and be a man to whom guest is a god). When the Appellant contends that he was otherwise engaged in connection with the demise of his mother, even if it is acceptable, it cannot cover the inordinate delay of 253 days during which period, the Appellant did not find it necessary to compromise with the business activities and other commercial transactions. It has to be reasonably presumed that this plea under this head was never argued before the learned Single Judge; which otherwise would have found a place in the judgment, dealing with the same in appropriate manner. If the Appellant has got a case that it was argued, but omitted to be considered, the redressal of the grievance could only be by way of filing a review petition and nothing else. But since we are holding that the inordinate delay of 253 days cannot be covered by the said incidence/incident, during which period the Appellant was admittedly carrying on the commercial activities/business, it does not constitute any 'extraordinary circumstance' to have interfered by this Court, invoking the discretionary power under Article 226 of the Constitution of India.

18. During the course of hearing, this Court put across the latest judgment rendered by the Apex Court on the point, as decided in ***Oil and Natural Gas Corporation Ltd. v. Gujarat Energy Transmission***

Corporation Limited & Others; (2017) 5 SCC 42. It was with regard to the belated appeal filed in terms of Section 125 of the Electricity Act, 2003 against the order passed by the Appellate Tribunal. The said provision reads as follows:

"125. Appeal to Supreme Court. - Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal, to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908 (5 of 1908):

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days."

19. The above provision stipulates that the statutory remedy against the verdict of the Appellate Tribunal was to be by way of an appeal to be preferred before the Supreme Court within 60 days from the date of communication of the order; with a proviso to have the delay, if at all any, to be condoned within a further period not exceeding 60 days. The scope of the said provision was considered with reference to the various rulings rendered by the Apex Court on the point, particularly, in **Chhattisgarh SEB v. Central Electricity Regulatory Commission**; (2010) 5 SCC 23, the verdict passed by the Apex Court in **Singh Enterprises** (*supra*) sought to be relied on by both the Appellants and also by the Respondent (extracted and relied on by the learned Single Judge as well), **Suryachakra Power Corporation v. Electricity Department**; (2016) 16 SCC 152; **M.P. Steel Corporation** (*supra*) and such other verdicts.

20. After a threadbare analysis of the provisions of law and the precedents, it was declared in categorical terms by the 'three member Bench' that, once the period of limitation is specifically prescribed in a statute and

stipulates the maximum period/extent of delay which can be condoned, it cannot be condoned by the Apex Court even in exercise of the power under Article 142 of the Constitution of India. Having said so, the Appellants cannot be heard to say that the High Court is still having power to condone the delay beyond the prescribed extent under the statute, by invoking the power under Article 226 of the Constitution, which in fact will be amounting to re-writing the law and contrary to the verdict passed by the Apex Court, which is having a binding effect all over India in view of Article 141 of the Constitution of India. There is no answer from the part of the Appellants to the law declared by the 'three member Bench' of the Apex Court in **Oil and Natural Gas Corporation Ltd.** (supra) but for stating that the said judgment is not applicable, despite the fact that it has been rendered with reference to the judgments sought to be relied on by the Appellant, as discussed above.

21. In the above facts and circumstances, we are of the firm view that the verdict passed by the learned Single Judge is perfectly within the four walls of law and is not assailable under any circumstances. Interference is declined and all the appeals stand dismissed accordingly. The parties shall bear their costs.

Sd/-
(P. R.Ramachandra Menon)
CHIEF JUSTICE

Sd/-
(Manindra Mohan Shrivastava)
JUDGE