IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 31 OF 2019

Model Infra Corporation Private Limited,
A Company incorporated under
the Companies Act, 1956,
having its Registered Office at No.6,
SMK Chambers, 2nd Floor,
1st 'A' Main Road, Sector 'A',
Yelahanka New Town,
Bengaluru- 560 064 Karnataka,
through its Director & CEO
Mr. K. P. Shivaprakash, son of late
K. P. Sreekantaiah,
major of age,
Indian national,
resident of Flat No.B-114,
N.R. Royal Manor Apartments,
Royal Enclave Layout,
Sriram Pura Road,
Jakkur Post, Bengaluru 560064
Karnataka. ... Applicant

Versus

1. Commissioner of Commercial Taxes,
   Department of Commercial Taxes,
   Government of Goa,
   Panaji Goa.
2. Additional Commissioner of Commercial Taxes,
   Department of Commercial Taxes,
   Government of Goa,
   Margao Goa.
3. Commercial Tax Officer,
   Department of Commercial Taxes,
   Government of Goa,
   Panaji Goa. ... Respondents

Mr. Raunaq Rao, Advocate for the Applicant.

Mr. D. Pangam, Advocate General with Ms. Susan Linhares, Addl. Government Advocate for the Respondents.

Coram:- M. S. SONAK &
NUTAN D. SARDESSAI, JJ.
Date:- 9th September, 2019

<u>Oral Judgment</u> **(Per M.S. Sonak, J)**

Heard Mr. R. Rao, learned counsel for the Applicant and Mr. D. Pangam, learned Advocate General alongwith Ms. S. Linhares, learned Addl. Government Advocate for the Respondents.

2. Rule. Rule is made returnable forthwith with the consent and at the request of the learned counsel for the parties.

3. The challenge in this revision application instituted under Section 38 of the Goa Value Added Tax Act, 2005 (the said Act) is to the order dated 22.11.2018 by which the Tribunal has dismissed the Applicant's application for condonation of delay.

4. On perusal of the impugned order, we find that the Tribunal has held that since the First Appeal before the First Appellate Authority was instituted beyond the period of one year from the date of service of original order, no useful purpose will be served in condoning the delay in instituting the Second Appeal before it.

5. The issue before the Tribunal, at least in the first instance was only whether any sufficient cause has been made out by the Applicant to seek condonation of delay in instituting the Second Appeal before it. The Second Appeal was admittedly instituted within a period of one year from the date of service of the decision of the First Appellate Authority. Accordingly, the Tribunal was required to first consider whether there was any sufficient cause for condonation of delay in instituting the Second Appeal. At this stage, at least it was not open to the Tribunal to go into the merits and decide whether the First Appellate Authority was justified in refusing to condone the delay or refusing to entertain the application for condonation of delay.

6. Accordingly, we set aside the impugned order dated 22.11.2018 and remand the matter to the Tribunal for consideration of Applicant's Application for condonation of delay in instituting the Second Appeal on its own merits and in accordance with law.

7. The Tribunal is requested to dispose of such an application as expeditiously as possible.

8. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

9. The parties to appear before the Tribunal on 13th

September, 2019 at 10.30 a.m. and file authenticated copy of this order.

10. All concerned to act on the basis of authenticated copy of this order.

NUTAN D. SARDESSAI, J. **M. S. SONAK, J.**

at*