IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 962 OF 2018

STATE OF GOA, THR. THE CHIEF SECRETARY, REP. BY THE COMMISSIONER OF COMMERCIAL TAXEX, PANAJI., ... Petitioner

Versus

GUALA CLOSURES (INDIA) PVT. LTD., ... Respondent

Shri Pravin N. Faldessai, Government Advocate for the Petitioner.
Shri Abhijeet Kamat, Advocate for the Respondents.

Coram:- C. V. BHADANG, J.

Date:- 24th January 2019

P.C.

This petition has to fail both on the ground of delay and laches and on merits.

2. The Assistant Commissioner of Commercial Taxes had passed an order on 12.05.2010 levying an amount of Rs.5,47,360/- along with penalty of Rs.1,000/- on the respondent for the assessment year 2005-06. The same was challenged by the respondent before the Administrative Tribunal in Value Added Tax Appeal nos.5/2010 and 6/2010. The Tribunal by the impugned Judgment and Order dated 01.04.2011 allowed the appeals and set aside the impugned order of assessment. After seven years of the passing of the said order, the petitioner has

sought to challenge the same by way of present petition before this Court.

3. An attempt is made to explain the delay in para 12 onwards of the petition, which reasons are not at all satisfactory and cannot be accepted. It is not necessary to set out the reasons in details. However, suffice it to mention that in para 18 of the petition, a case is made out that after the file was received in the office of Commissioner of Commercial Taxes on 14.06.2012, the same "remained with him", until 31.07.2015 and only when the Commissioner was due for retirement on 31.07.2015 while clearing all the files which were pending in the office, that it was realised that the present file was also pending for a long period.

4. It is not possible to accept such an explanation which speaks of gross negligence. That apart, even after the file was allegedly found on 31.07.2015, the petition is filed only on 09.04.2018. Broadly speaking the explanation is that the file was moving from one table to another. Such an explanation obviously cannot be accepted.

5. In a matter of condonation of delay, the Supreme Court in the case of OFFICE OF THE CHIEF POST MASTER GENERAL VS. LIVING MEDIA INDIA LTD.,[(2012) 3 SCC 563] has held that such an explanation that the file was moving from one table

to another cannot be accepted particularly when there is a gross delay of about eight years. Similar principles would also apply while dealing with the question of laches. Thus, the petition has to fail on the ground of delay and laches itself.

6. Even as far as merits are concerned, it appears that as per Section 29(3) of the Goa Value Added Tax Act, 2005 (prior to its amendment by Act no.18/2006) no assessment under Section 29(3) of the Act could be made after a period of three years from the end of the year to which the return under Section 24 is submitted by a dealer. The period of three years was reduced to two years by the Amendment Act w.e.f. 01.09.2006. The assessment in the present case was admittedly made beyond the period of two years for which reason, the Tribunal has set aside the order of the Assessing Officer. The contention that because the assessment pertained to the year 2005-06, the period of two years would not apply, to my mind, cannot be accepted.

7. Considering the overall circumstances, no case for interference is made out. The petition is without any merit and it is accordingly dismissed, with no order as to costs.

C. V. BHADANG, J.

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