IN THE HIGH COURT OF BOMBAY AT GOA

TAX REVISION APPLICATION NO.3 of 2019

M/s. Sunshine Electricals Pvt. Ltd.
A Company registered under
the Indian Companies Act,
Having its registered office at Plot No.30,
Thivim Industrial Estate,
Karaswada, Mapusa – Goa 403 526.
Represented herein by its Managing Director
Mr. Sadanand P. Verenkar
Having Office at Plot No.30,
Thivim Industrial Estate,
Karaswada, Mapusa-Goa. …. Petitioner

V/s

1. Asst. Commissioner of Commercial Tax,
Government of Goa,
Having office at the Office of
Assistant Commissioner of Commercial
Taxes, Mapusa Ward, Mapusa-Goa.

2. The Commissioner of Commercial Tax,
Government of Goa,
Panjim-Goa. ….Respondents

Shri A.D. Bhobe, Advocate for the Petitioner.
Shri D. Pangam, Advocate General with Shri Deep Shirodkar, Additional Government Advocate for the Respondents.

Coram:- M. S. SONAK &
PRITHVIRAJ K. CHAVAN, JJ.

Date:- 25th November, 2019

ORAL JUDGMENT : (Per M.S. Sonak, J.)

Heard Shri Bhobe, learned Counsel for the petitioner and Shri D. Pangam, learned Advocate General along with Shri Deep Shirodkar, learned Additional Government Advocate for the respondents.

2. This Tax Revision Application is admitted and with the consent of the learned Counsel for the parties taken up for final disposal forthwith.

3. The challenge in this Tax Revision Application is to the judgment and order dated 25/03/2019 made by Administrative Tribunal in Value Added Tax Appeal No.4/2018. By the impugned judgment and order, the Tribunal has held that since the appeal was instituted beyond the period of one year from the date of the receipt of the impugned order dated 31/03/2012 made by the Commercial Tax Officer, the same is barred by limitation and there was no provision to also consider the application for condonation of delay.

4. Section 35 of the Value Added Tax, 2005 (said Act), *inter alia*, provides that any person objecting to an order affecting him passed under the provisions of this Act by an authority may appeal to Appellate Authority as may be prescribed within sixty days from the

date of receipt of order by him.

Sub-section 2 of Section 35 provides that where the Appellate Authority is satisfied that the person has reasonable cause for not preferring an appeal within sixty days, he may accept an appeal, provided it is made within a period of one year, from the date of receipt of order by him.

5. In this case, the order dated 31/03/2012 sought to be appealed before the Appellate Authority, it appears was served upon some representative, not actually upon the appellant. In the application for condonation of delay, though vaguely, the contention was that the person on whom the order may have been served was not the representative of the appellant. He was merely a tax consultant. It is further the case of the petitioner that the said representative, on account of ill health failed to inform the petitioner about such order until 22/05/2012. On this date, the petitioner applied for certified copy which was delivered on 24/05/2012. The appeal was thereafter filed on 26/04/2013.

6. Shri Bhobe submits that since the appeal was filed within a period of one year from the date of receipt of impugned order dated 31/03/2012, the Appellate Authority was duty bound to consider the cause shown for condonation of delay. Shri Bhobe submits that

sufficient cause was shown by the petitioner, and, therefore, the delay should have been condoned. He relies on the decision of the Hon'ble Apex Court in the case of ***Benarsi Krishna Committee & Ors. V/s. Karmyogi Shelters Pvt. Ltd.***[1] to submit that service upon some representative or consultant or advocate is not proper service, when it comes to computation of period of limitation.

7. Shri Pangam, the learned Advocate General points out to the application seeking condonation of delay as absolutely vague. He submits that there is no categorical statement with regard to the status of the person upon whom the order was served. He points out that the explanation from 24/05/2012 till 26/04/2013 also does not make out any case for sufficient cause. He points out that the tax deemed in the present case was ₹13,01,044/- as on 31/03/2012. He points out that the petitioner has deposited hardly ₹3,00,000/- or thereabout. In such circumstances, he submits that there is no case made out to interfere with the impugned order.

8. Rival contentions now fall for determination.

9. Though, it is true that there is no sufficient clarity in the application for condonation of delay filed by the petitioner, it

1 (2012) 9 SCC 496

transpires that the order dated 31/03/2012 was not directly served upon the petitioner herein. The issue as to whether the party upon whom this order was served was an authorised representative of the petitioner or whether he was merely a tax consultant engaged by the petitioner, is no doubt a relevant issue. However, looking to the material on record, there is no reason to disbelieve the assertion made by the petitioner that the person upon whom the order was served was only a tax consultant engaged by the petitioner and not the authorised representative of the petitioner.

10. In the context of the provisions of Arbitration and Conciliation Act, 1996, the Hon'ble Apex Court in the case of ***Benarsi Krishna Committee*** (supra) has held that the expression "party to arbitration" means the actual party itself and not the agent or the advocate of the party.

11. The petitioner, in this case, has admitted that the intimation with regard to the order was received by it on 22/05/2012. On the same date, certified copy was applied for and such certified copy was delivered on 24/05/2012. The appeal has been filed on 26/04/2013 i.e. within the period of one year from the date of receipt of the order by the petitioner. Accordingly, the Appellate Authority was duty bound to consider the cause shown by the petitioner and to

determine whether the same constitutes sufficient cause.

12. Ordinarily, the matter was required to be remanded in order to enable the Appellate Authority to appreciate the cause shown. However, we find that the petitioner has stated that its old consultant was not keeping good health and suffering from heart ailment. The consultant, in fact, underwent bypass surgery as well. Accordingly, the papers were handed over to another consultant. However, this consultant also fell sick and virtually lost his eyesight due to diabetic retinopathy. According to us, in the peculiar facts of the present case, this constitutes sufficient cause for non instituting the appeal within the prescribed period. It is true that the petitioner, should have acted with little greater diligence. Therefore, whilst condoning the delay, the petitioner will have to be put to terms.

13. The petitioner, in the first place, will have to pay to the respondents the demanded amount of ₹13,01,044/- after taking credit for the amount of ₹3,00,000/- or thereabout already deposited by the petitioner.

14. Shri Bhobe, the learned Counsel for the petitioner, on the basis of instructions, states that such amount will be paid, no doubt, without prejudice within a period of four weeks from today.

15. Secondly, the petitioner will also have to pay costs which we assess at ₹10,000/-. This costs should also be paid to the respondents within four weeks from today.

16. If the aforesaid amounts are indeed paid within four weeks from today to the respondents and necessary proof of payment is produced before the respondent no.1 herein, then the application for condonation of delay made by the petitioner will be deemed to have been allowed and the delay condoned. The respondent no.1 will then proceed to decide the petitioner's appeal on its own merits and in accordance with law. If, however, the petitioner fails to pay the amounts as aforesaid within four weeks from today, then this revision petition, shall be deemed to have been dismissed without any further reference to this Court.

17. The revision petition is allowed in the aforesaid terms.

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

PRITHVIRAJ K. CHAVAN, J. **M. S. SONAK, J.**

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