IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 195 OF 2019

1. Savani Construction Co.& Anr. .. Petitioners
Vs.
1. The Union of India & Ors. .. Respondents

Mr.Jitendra Jain a/w. Ms. Divyasha Mathur I/b PDS Legal for petitioners.

Ms.Sneha Prabhu for respondents.

CORAM : M.S. SANKLECHA &
N.J. JAMADAR, JJ.

DATE : 24TH JUNE 2019

ORAL JUDGMENT (PER N.J. JAMADAR, J.) :

1. This petition under Article 226 and 227 of the Constitution of India assails the legality, propriety and correctness of an order dated 16th July 2018 in Application No.ST/COD/85418/2018 passed by the Customs Excise and Service Tax Appellate Tribunal (Tribunal), West Zone, Bench Mumbai (hereinafter referred to as 'the Tribunal') whereby the prayer of the petitioners to condone the delay of 387 days in filing appeal against an order dated 30th November 2016 passed by the Commissioner (Appeals), Service Tax-II, Mumbai came to be dismissed.

2. The background facts leading to this petition can be summarized as under :-

A show-cause notice dated 20th October 2009 came to be served upon the petitioners calling upon the petitioners to show cause as to why service tax amounting to Rs.20,57,067/- should not be recovered under Section 73(1) of Finance Act, 1994, along with interest and penalties prescribed therein. After consideration of the reply filed by the petitioners and affording an opportunity of hearing to the petitioners, an order in original came to be passed on 12th January 2012. The petitioners received a copy of the said order on 13th January 2013, yet the appeal preferred by the petitioners before the Commissioner (Appeals) came to be dismissed by the Commissioner (Appeals) as time barred by order in appeal dated 30th November 2016. The said order in appeal was sought to be assailed by the petitioners by filing an appeal before the Tribunal along with an application for condonation of delay of 387 days in preferring the said appeal. The Tribunal, however, dismissed the said application for condonation of delay without properly appreciating the genuine and sufficient cause assigned by the petitioners for delay by adopting a hyper-technical approach. Hence, this petition.

3. Heard Shri Jitendra Jain, the learned counsel for the petitioners and Ms.Sneha Prabhu, the learned counsel for the respondents.

4. Shri Jain, strenuously urged that the Tribunal committed a manifest error in rejecting the application for condonation of delay, despite the petitioners having ascribed a sufficient cause, and thereby deprived the petitioners of the opportunity to have an adjudication on merits. In the process, according to the learned counsel for the petitioners, the Tribunal lost sight of the fundamental principle that the Courts and Tribunals are expected to adopt a liberal approach in condoning the delay so as to advance the cause of substantial justice.

5. We were anxious to ascertain the reasons ascribed by the petitioners for the delay in preferring the appeal. Upon perusal of the affidavit filed on behalf of the petitioners, in support of the application for condonation of delay, we found that the petitioner No.2 affirmed that one of the partners of the firm, viz., Vitthal J. Savani died in the year 2010, and, thus, the firm stood dissolved and on account of the old age and ill health of the deponent-Shantilal J. Savani, he could not attend to the pending affairs of the petitioner-firm and, therefore, the delay. The learned Member of the Tribunal was not persuaded to accept the aforesaid reason as the justifiable cause for not preferring the appeal within the stipulated period. It noted that the partner of the firm had expired 8 years prior to the presentation of the application for condonation of delay and the petitioner No.2 was 64 years of age. Thus, there was no sufficient cause for condonation of delay of more than one year when the order in appeal was communicated to the petitioner No.2 on 30th November 2016.

6. In the light of the aforesaid reasoning of the Tribunal, we have examined the material on record. It is imperative to note that the order in original was passed on 12th January 2012. There was a delay in challenging the order in original before the Commissioner (Appeals) and, thus, the said appeal came to be dismissed as having been filed beyond the stipulated period of limitation, on 30th November 2016. The delay of 387 days in assailing the said order before the Tribunal, evidently, occurred at the second stage.

7. It is true that the Court is expected to lean in favour of condonation of delay so that the *lis* is determined on merits. The Courts and Tribunal generally adopt a liberal approach and the expression, 'sufficient cause' is construed rather generously so as to advance substantial justice. However, the cause ascribed by a litigant must relate to the events which transpired in proximity to the passing of the order sought to be assailed.

8. In the case at hand, the principal reason assigned for not filing the appeal is the death of one of the Partners of the petitioner No.1-firm. The said event occurred in the year 2010. The death of the partner of the petitioner No.1 occurred even before passing of the order in original. Since the order sought to be impugned before the Tribunal, was passed on 30th

November 2016, the Tribunal was justified in refusing to condone the delay on account of a cause which had no causal connection with the period in question. If the said cause is discounted, then it seems to be a case of no specific and bonafide explanation relatable to the period of delay. The material on record, on the contrary, indicates that the petitioners have not been diligent in pursuing the remedies as the delay occurred in preferring the appeal against the order in original before the Commissioner (Appeals) and also in assailing the order passed by the Commissioner (Appeals) before the Tribunal.

9. In this view of the matter, we are persuaded to hold that the impugned order cannot be said to be either perverse or unreasonable so as to warrant interference by this Court in exercise of extraordinary jurisdiction under Article 226 and 227 of the Constitution of India. The petition, therefore, deserves to be rejected.

10. Thus, the petition stands rejected.

[N.J. JAMADAR, J.] **[M.S. SANKLECHA, J.]**