

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRMP No. 271 of 2015**

Noorulla Khan S/o Late Shri Amir Mohammad, Aged about 73 years, R/o Shantiwan Chowk, Vivekanand Ward No. 9, Shanker Nagar, Road, Harnabandha, Durg, Tahsil and District Durg, Chhattisgarh.

---Petitioner

Versus

State of Chhattisgarh, Through Excise Commissioner, Chhattisgarh Govt. Raipur, District Raipur, Chhattisgarh.

--- Respondent

For Petitioner :- Mr. H.B. Agrawal, Sr. Advocate with
Ms. Richa Dwivedi, Advocate
For State :- Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

14/08/2020

1. Proceedings of this matter have been taken up through video conferencing.
2. Petitioner's vehicle was confiscated by the Collector vide order dated 18/03/2002 (Annexure 'D') in exercise of the power conferred under Section 47-A (2) of the Chhattisgarh Excise Act, 1915 (in short, "the Excise Act") against which the petitioner preferred an appeal on 07/04/2011

with a delay of 9 years and 21 days. The said appeal was dismissed by the Excise Commissioner, Raipur vide order dated 22/03/2013 (Annexure 'E') holding that no sufficient cause has been shown by the petitioner for the inordinate delay of 9 years and 21 days in filing the appeal. Feeling aggrieved and dissatisfied with the order of the Excise Commissioner, petitioner preferred a revision under Section 47-A (3) of the Excise Act which has been dismissed by the Additional Session Judge, Durg vide the order impugned dated 23/01/2015 (Annexure 'F') against which this petition has been preferred by the petitioner.

3. Mr. H.B. Agrawal, learned senior counsel, would submit that both the authorities are absolutely unjustified in holding that the delay of 9 years and 21 days in filing the appeal is deliberate and no sufficient cause has been shown by the petitioner with regard to that. They have ignored the fact that petitioner's vehicle stood confiscated by order dated 18/03/2002 and the State Government is in possession of the vehicle, therefore, there was no reason not to prefer the appeal except that the certified copy of the order of the Collector (Annexure 'D'), though it

was obtained by the petitioner but it got lost and then when he got the certified copy, he ultimately preferred the appeal on 07/04/2011. It is not the case that petitioner was in possession of the confiscated vehicle and he was enjoying its benefits so, he did not prefer the appeal right on time, as such, the order passed by the appellate authority as well as the revisional Court deserves to be set aside holding the appeal to be barred by limitation and the delay in filing the appeal be condoned and the matter be remitted either to the appellate authority or to the revisional authority for deciding it on merits in accordance with law.

4. Mr. Ravi Bhagat, learned State counsel, would submit that the delay of 9 years and 21 days in an inordinate delay and though the State Government is in possession of the confiscated vehicle and petitioner was not using it, still it cannot be held that the said delay is not deliberate and bona fide. Petitioner ought to have been vigilant and ought to have preferred the appeal right on time unless he had sufficient cause, as such, the impugned order affirming the order of the appellate authority does not call

for any interference in the inherent jurisdiction of this Court under Section 482 of Cr.P.C.

5. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.

6. It is not in dispute that petitioner's vehicle which was found involved in excise offence was confiscated by the Collector in exercise of Section 47-A (2) of the Excise Act vide order dated 18/03/2002 (Annexure 'D') against which the petitioner preferred an appeal with a delay of 9 years and 21 days only on 07/04/2011 along with an application for condonation of delay. The reason so assigned by the petitioner is that he got the certified copy of the order on 31/07/2002 but it got lost and thereafter, he remained busy in taking care of his ill health so he could not prefer the appeal and after some time, he applied for the certified copy again and after obtaining it, he ultimately preferred the appeal, therefore, the delay occurred thereby is purely not deliberate, unintentional and bona fide.

7. It appears from the record that no reply supported by the affidavit was filed meeting the reason with regard to the delay in filing the appeal, as such, there is an uncontroverted affidavit on record to hold that petitioner preferred the appeal under Section 47-B of the Excise Act within the prescribed time. Further, it is evident that petitioner is not in possession of the confiscated vehicle from the date of confiscation i.e. 18/03/2002 and he would not gain anything by preferring the appeal with an inordinate delay. The position could be different if the petitioner was in possession of the vehicle and he preferred the appeal after a delay of 9 years and 21 days. Petitioner is the sufferer of order dated 18/03/2002 (Annexure 'D'), therefore, in view of the uncontroverted evidence on record and on account of bona fide reasons, it can be held that he could not prefer the appeal right on time.

8. In the matter of N. Balakrishnan v. M. Krishnamurthy¹, the Supreme Court has clearly held that sufficient cause has to be construed

¹ (1998) 7 SCC 123

liberally especially when the delay is not deliberate and *mala fide*.

9. Upon factual consideration, I am of the considered opinion that petitioner has assigned sufficient cause for delay of 9 years and 21 days in filing the appeal under Section 47-B of the Excise Act. Consequently, the impugned order passed by the revisional Court (Annexure 'C') as well as the order by the Excise Commissioner (Annexure 'E') deserve to be and are hereby set aside.
10. Accordingly, this petition under Section 482 of Cr.P.C. is allowed to the extent indicated herein-above. No cost(s).
11. Ordinarily, this Court could have remitted the matter to the Excise Commissioner but considering the fact that the order of the Collector was passed as back as on 18/03/2002, the matter is remitted to learned Session Judge, Durg for hearing and disposal on merits in accordance with law. Parties are directed to appear before the said revisional Court on 26th August, 2020. Notices need not be issued by the revisional Court and if physical hearing of the matter is

not possible due to the current situation of COVID-19 pandemic, then the parties shall be allowed to argue the matter through video conferencing and decide it within 30 days from 26th August, 2020.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet