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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No.482 of 2020

(Arising out of order dated 18.05.2018 passed in Writ Petition (T) No.83 of 2018 by the learned Single Judge)

1. State of Chhattisgarh Through The Secretary, Department of Finance, DKS Bhawan, Mantralaya, Raipur Chhattisgarh.
2. The Commissioner, Commercial Tax Department, Kar Bhawan Civil Lines Raipur Chhattisgarh.
3. The Assistant Commissioner Commercial Tax Department, Circle-3 Kar Bhawan, Civil Lines, Raipur.

---- Appellants

Versus

1. Shree Raipur Cement Plant (A Unit of Shree Cement Limited), Having Its Office At 31/248, Civil Lines, Raipur (Chhattisgarh) Through Its Authorized Signatory And Senior Manager (Taxation) of The Petitioner Company, Ashish Bharadia, S/o Shri Gopal Bharadia, Aged About 37 Years And R/o Taxation Department, Shree Cement Ltd, Village Kharpadih, Thana Khapradih, Tahsil Simga District Balodabazar Bhatapara Chhattisgarh.
2. Union of India, Ministry of Finance (Department of Revenue), Through Joint Secretary (Revenue) Nirman Bhawan, (New Delhi).
3. The Under Secretary (ST-II) Ministry of Finance, Department of Revenue, State Tax Division, New Delhi.

---- Respondents

For Appellants : Shri Vikram Sharma, Deputy Government Advocate
For Respondent No.1 : Shri Ramit Mehta, Shri Saurabh Maheshwari and Shri Anumeh Shrivastava, Advocates.
For Respondents No.2, 3: Shri Ramakant Mishra, Assistant Solicitor General.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu, Judge

Judgment on Board

Per P.R. Ramachandra Menon, Chief Justice

26.02.2021

1. This appeal arises from the judgment dated 18.05.2018 passed by the learned Single Judge in Writ Petition (T) No.83 of 2018 giving a positive direction to issue C-Form to the Writ Petitioner in respect of the high speed diesel procured from the other States and brought into the State

for the purpose of manufacturing of cement in their plant. This according to the Appellants-State is not correct or sustainable for the reasons/grounds raised in the appeal and hence the challenge.

2. At the very outset, it is to be noted that the appeal is highly belated by 897 days and hence, the same is sought to be condoned by filing I.A. No.01 of 2021.

3. The Respondents have entered appearance and they filed their reply with regard to the application for condonation of delay, pointing out that no reason has been stated for condoning the inordinate delay.

4. When the matter is taken up for consideration, Shri Vikram Sharma, the learned counsel appearing for the State submits that the matter involves substantial question of law and is of public interest as well. It was only because of administrative reasons that the matter could not be filed earlier and that they were virtually waiting for the finality of the issue which was pending consideration before the Apex Court on the point. The learned counsel submits that the position of the State as a litigant has to be considered differently and in liberal manner, in view of the rulings rendered by the Apex Court in this regard.

5. The reasons given for the delay as contained in paragraph-3 of the I.A. are as extracted below :

> "3. That, the instant appeal is barred by limitation as provided under the provisions of section 2 of sub section (1) of the Chhattisgarh High Court (Appeal to Division Bench) Acct, 2006 as the impugned order was passed on 18/05/2018, but the instant appeal is being filed today. The appellants respectfully submit that the delay occasioned in filing the instant appeal is genuine and bonafide and has occasioned only on

account of the date today events as follows:-

a. **On 18/052018** – The impugned order was passed by the Hon'ble High Court which was sent to department on 21-22/06/2018.

b. **On 03/09/2020** - After going through the order, the department has decided to assail the said order and therefore, an opinion was sought to appeal against the order under appeal before the Hon'ble Division Bench of the Hon'ble High Court of Chhhattisgrah.

c. On 14-15/09/2020 - An opinion was granted by the office of the Advocate General that it is a fit case to file an appeal before the Hon'ble Division Bench against the order under appeal.

d. On 15/09/2020 - The Assistant Commissioner, State Tax, Raipur Circle -III, Raipur has been appointed as Officer In Charge of the case and directed to contact the office of the Advocate General at Bilaspur for filing of appeal against the order under appeal.

e. On 21/09/2020 - The aforesaid Officer In Charge of the case contacted the office of the Advocate General for filing of writ appeal against the order under appeal land in turn, the OIC was directed to bring the permission of the Department of Law and Legislative Affairs required for filing of writ appeal against the order under appeal.

f. That, on 13/11/2020 - permission was accorded by the Department of Law and Legislative Affairs for filing of appeal against the order under appeal.

> g. That, after collecting the aforesaid permission and other relevant records pertaining to the case, today the present Officer In Charge has again contacted the office of the Advocate General for filing of the instant appeal and the appeal has been drafted today itself and is being filed today without any further delay."

6. Going by the above, it can be seen that absolutely no reason is forthcoming with regard to the delay for the period from 18.05.2018 to 03.09.2020, which is virtually for more than two years. The rest is with regard to the course and events as to the correspondence between the officers of the State and also the office of the Advocate General, ultimately, taking a final decision to have the impugned verdict challenged by filing the appeal.

7. The delay on the part of the State may require a liberal construction, where tax payers' money is involved. We are also aware of the judgment passed by the Apex Court in **N. Balakrishnan v. M. Krishnamurthy** reported in **(1998) 7 SCC 123** where it has been held that extent of delay is not that matters much, but the explanation to condone the same. Hence, the question here is what is the explanation that has been offered in the instant case ?

8. As mentioned above, no reason has been stated; much less any satisfactory reason, to have the delay condoned. In the said circumstances, the law laid down by the Apex Court in **State of West Bengal and Others v. Soroj Kumar Mondal and Others** reported in **(2020) 7 SCC 263** comes to the field. The Apex Court held that the inordinate delay therein was not liable to be condoned merely with reference to the 'public interest' projected in the said matter. We are of

the view that the delay having not been properly explained, no interference is warranted. I.A. No.01 of 2021 fails and it is dismissed accordingly. As a natural consequence, the appeal as well. It stands dismissed accordingly.

Sd/- Sd/-

(P. R. Ramachandra Menon)
Chief Justice

(Parth Prateem Sahu)
Judge

Yogesh