Meena

IN THE HIGH COURT OF BOMBAY AT GOA
MISC. CIVIL APPLICATION NO. 42 OF 2021
IN
TAX REVISION APPLICATION NO. 627 OF 2021 (FILING NO.)

ASR ENGINEERING AND PROJECTS LTD., REP. BY ITS DIRECTOR, MUKKAMALLA VIJAYA RAGHAVA REDDY …Petitioner

VS …Respondents

STATE OF GOA, THR. ITS CHIEF SECRETARY AND 2 ORS

Mr. Sudesh Usgaonkar with Ms. Marie Rosette Pereira, Advocates *for the Petitioner.*

Mr. Deep Shirodkar, Additional Government Advocate *for the respondents.*

CORAM: M. S. SONAK AND R.N. LADDHA, JJ.

DATE: 16th February 2022

P.C.:

1. Heard Mr. Sudesh Usgaonkar with Ms. Marie Rosette Pereira, learned Advocates for the Petitioner, and Mr. Deep Shirodkar learned Additional Government Advocate for the respondents.

2. This is an application seeking condonation of delay of 2 years and 300 days in filing a Tax Revision Application under the Goa Value Added Tax Act, 2005 (said Act) before this Court.

3. The cause stated by the applicant for this delay is to be found in para No.5

of the application which reads as follows:

> *5. That the Petitioner was under bonafide belief that the Order of the Administrative Tribunal is amenable to the jurisdiction of Revisional authority exercising revisional powers as per Sec.39 said Act, which provides for a limitation period of 3 years. Accordingly, the Petitioner approached its Advocate in Goa in the month of January, 2021 to take advice for the purpose of filing such revision application. That at the time of studying the matter the Advocate for the Applicant opined that the legal effect of merger of Orders as stated in para 3 above, and that though the revision is provided under Sec.39 of the said Act, limitation whereof is for 3 years, it is against orders other than those passed by the Tribunal. It was further advised that the revisional powers of the Hon'ble High Court would have to be invoked in such a situation. The Applicant states that it was also pointed out that the period of limitation for filing a revision to this Hon'ble Court was 60 days from receipt of Order for which necessary application to condone the delay in filing the Revision Application would have to be filed."*

4. Mr. Sudesh Usgaonkar, learned Advocate for the applicant submits that the applicant was under bonafide belief that the limitation for instituting the revision before this Court is three years. He submits that it is only when the applicant approached his Advocate at Goa he was informed that the limitation is only 60 days. He submits that there are no malafides involved and this is a bonafide error which ought to be condoned, if necessary by imposing some costs. He pointed out that this revision has been instituted within three years from the date of the impugned order dated 26/02/2018 made by the Administrative Tribunal.

5. Mr. Shirdokar, learned Additional Government Advocate countered the aforesaid submissions and referred us to the detailed affidavit by Joanita Vaz e Dias, Assistant State Tax Officer. He referred to the list of important dates and events and submitted that from this it is very apparent that the applicant was only interested in delaying the proceedings and avoiding payment of tax. He submitted that it is only after a notice was issued on 05/01/2021 for provisional freezing of the accounts of the applicant this revision came to be instituted after an inordinate delay of 2 years and 300 days. He submitted that the provisions of the said Act are very clear and there is no ambiguity whatsoever. Therefore, based on the alleged belief of the applicant, the delay ought not to be condoned.

6. We have considered the rival contentions and also perused the material on record. We agree with Mr. Shirodkar, learned Additional Government Advocate that in this case no sufficient case has been shown to condone the inordinate delay of 2 years and 300 days.

7. Firstly, we must refer to the chronology of the dates and events which has been set out in paragraph 5 of the affidavit filed by the Assistant State Tax Officer, and the same reads as follows:

> *"5. Before dealing with the statements made by the Applicant in the application, it would be appropriate to enlist the important dates and events, which are as under :*

Date	***Event***
FY 2011-2012	*NIL Returns filed by the Applicant*
30.8.2012	*Assessing Officer issued notice u/s 29(2)*
30.9.2012	*Applicant filed revised returns showing taxable sales as Rs. 63,88,90,459/-*
23.01.2013	*Assessment Order made*

	Total tax, interest and penalty assessed at Rs. 3,48,54,663/-
13.02.2013	*Order served on the Applicant*
04.8.2014	*Appeal filed with Respondent No. 2 along with condonation of delay application*
11.9.2017	*Appellate Authority rejected the Appeal as being barred by limitation*
11.12.2017	*Second Appeal filed u/s 36 before the Administrative Tribunal*
26.02.2018	*Appeal dismissed for non-deposit after giving opportunities*
05.01.2021	*Notice issued for provisional freezing of accounts of the Applicant for non-payment*
23.02.2021	*Tax Revision Application filed before this Hon'ble Court with an application for condonation of delay*

8. The chronology of dates and events which is not disputed by the applicant indeed suggests that the applicant was simply interested in delaying the matter and avoiding the payment of tax. Even the First Appeal was filed after a considerable delay of seven months along with the application for condonation of delay. This was dismissed by the First Appellate Authority on 11/09/2017.

9. Thereafter, the applicant did file the Second Appeal on 11/12/2017 within the prescribed period of the limitation but this time failed to make the mandatory deposit as provided under the said Act. After almost three months from the date of the institution of the Second Appeal, the Tribunal dismissed this appeal for non-deposit. The certified copy of this order was applied for and obtained for taking further steps. But for a period of almost little less than three years, nothing was done.

10. The provisions of the said Act are quite clear in that they provide for a limitation of only 60 days against the order of the Administrative Tribunal. Instead, the applicant instituted this revision application after the delay of 2 years and 300 days. The contention about alleged bonafide belief on the part of the applicant cannot be accepted in the aforesaid facts and circumstances. Rather, it is clear that this revision was filed only after the applicant received the notice for provisional freezing of his account on 05/01/2021. Accordingly, we are satisfied that no sufficient cause has been shown condoning the delay of 2 years and 300 days in this case.

11. From time to time, we had adjourned this matter to enable the learned Advocate for the applicant to obtain instructions as to whether the applicants are willing to secure the tax amount or some part. This was to test the bonafide of the Applicant. After several adjournments, the applicant has stated that they are not in a position even to secure the tax or part. Though this is not a consideration for either condoning or not condoning the delay, we think that the entire conduct of the applicant does suggest that the applicant was far from diligent and the proceedings were taken up only to delay or avoid the payment of the tax as determined. The Applicant perhaps carried the impression that the mere pendency of proceedings might delay the action from the tax authorities and took full advantage of this impression to delay the proceedings.

12. For all the aforesaid reasons we dismiss this application. But we refrain from imposing any costs.

13. As a consequence of the dismissal of this application even the Tax Revision Application No. 627 of 2021(F) will not survive and the same is also disposed of.

R.N. LADDHA,J. M. S. SONAK, J.