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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decision delivered on: 30.03.2022

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SERTA 5/2021& CM APPL. 43924/2021

PRINCIPAL COMMISSIONER, GST, DELHI SOUTH..... Appellant

Through: Mr Satish Kumar, Adv.

versus

M/S. INDRAPRASTH GAS LIMITED Respondent

Through: Ms Charanya Laxshmi
Kumaran, Mr Yogendra Aldak, Mr
Karan Sachdeva, Mr Agrim Arora,
Mr Kunal Kapoor and Ms Avisha
Khatri, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE POONAM A. BAMBA

[Physical hearing/Hybrid hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

CM APPLs. 43925-26/2021

1. Allowed, subject to just exceptions.

CM APPL. 43927/2021

2. This is an application filed by the appellant seeking condonation of delay in filing the accompanying appeal.

3. The period of delay involved, according to the appellant, is 1310 days.

4. Via the accompanying appeal, the appellant seeks to assail the order dated 14.11.2017, passed by the Customs Excise and Services Tax Appellate Tribunal [in short “the Tribunal”].

4.1. The Tribunal, via the impugned order, has sustained the order passed by the adjudicating authority.

4.2. Therefore, in effect, the respondent has succeeded in two forums.



4.3. We may note that the issue which was raised before the Tribunal involved the interpretation of the provisions of Rule 6(3) of the CENVAT Credit Rules, 2004

5. As is evident from above, the appeal has been preferred after more than four years, since the impugned order has been passed.

5.1. The reasons given in the above-captioned application for condonation of delay are as follows :

“2. That the office of the appellant came to know about the status of CESTAT Final Order No.57931/2017 dated 14.11.2017 only on 06.07.2021 after a letter dated 28.06.2021 was received in its office from the Office of the Deputy Commissioner-Review, GST-Gurugram, asking about the status of CESTAT Final Order No.57931/2017 dated 14.11.2017 in the case of M/s Indraprastha Gas Limited Vs CCE, Delhi-II as the similar issue was involved in respect of Mis Suzuki Motorcycles India Private Limited falling under the jurisdiction CGST Gurugram Commissionerate.

3. That, immediately, a letter dated 08.07.2021 was written to the concerned Division, Naraina for providing the desired documents pertaining to the case file and also the staff was deputed to locate the case file. Also, a letter dated 30.07.2021 and subsequent reminder dated 03.08.2021 were sent to the Hon'ble CESTAT, office for providing certified copy of the said CESTAT Final Order No. 57931/2017 dated 14.11.2017.

4. That as per available records it was noticed that no such order is received in this office from the office of the Hon'ble CESTAT, Delhi. Therefore, certified true copy of the said order was obtained from the Registrar, CESTAT, New Delhi by hand only on 04.08.2021.

5. That for proper appreciation and adjudication of the present application, it is pertinent to bring to the kind notice of this Hon'ble Court that on GST regime coming into existence with effect from 01.07.2017, in terms of Notification No. 2/2017- Central Tax dated 19.06.2017 issued by the Government of India, Ministry of Finance, Department of Revenue, Central board of Excise and Customs, vide F.no.349/52/2017- GST, the areas falling under the jurisdiction of Principal Chief Commissioner, Central Tax, Delhi has been organized into Central Tax Commissionerates, namely East, North, West, and South, two Central Tax Audit Commissionerates and two



Central Tax Appeals Commissionerates and two central tax (audit Commissionerates) in the union capital territory of Delhi.

6. That, regarding non-receipt of certified and true copy of the impugned CESTAT order in the office of applicant during the period in question i.e. November-2017, it is submitted that GST regime came into existence w.e.f. 1.7.2017. In the instant case, the appellant was Commissioner of Service Tax, Delhi-II and when the judgment in this case was pronounced on 14.11.2017, the office of Commissioner of Service Tax, Delhi-II was no more in existence.

7. Thus, it appears that the certified copy of the said order was delivered at some address of newly created GST regime, but it might have not reached to the proper office due to miscommunication and confusion existing at that time due to sudden change of regime. However, to know about the status of delivery of the CESTAT Final Order, this office has written a letter dated 24.11.2021 to the Registrar, CESTAT, New Delhi to know about the timeline of dispatch of CESTAT Final Order No.57931/2017 dated 14.11.2017. Reply of the same is awaited.”

5.2. As would be evident from the extract set out above, although the Tribunal had dismissed the appeal as far back as on 14.11.2017, no attempts were made by the appellant to know the status of its appeal, in which orders had been reserved by the Tribunal. The appellant avers that it became aware of the impugned order passed by the Tribunal only when the Deputy Commissioner-Review, GST-Gurugram, sought to know about the status of the appellant's appeal in the Tribunal.

5.3. Clearly, the appellant goes on to suggest that because the Commissionerate bifurcated upon coming into force of the GST regime with effect from 01.07.2017, the impugned order was served upon another Commissionerate.

5.4. To our minds, it was incumbent upon the appellant to furnish the details with regard to the address at which the impugned order had to be served. The conduct of the appellant, who sits quietly for more than three and a half years and not seek information as to the status of its appeal, is



unacceptable. In any event, it is common knowledge, of which we take judicial notice, that since January 2017, the orders of the Tribunal are uploaded, and, hence, available on its website. The appellant, thus, cannot take refuge of lack of knowledge or, at least, means to acquire knowledge, concerning the impugned order passed by the Tribunal.

5.6. It appears, upon a perusal of the assertions made in the above-captioned application, that the appellant wrote, for the first time, to the Registrar of the Tribunal on 24.11.2021; something which could have been done earlier or, as indicated above, could have been known by accessing the website of the Tribunal.

5.7. Therefore, according to us, the reasons given are not tenable in law insofar as explanation of more than three and a half years delay in approaching the Court is concerned.

5.8. The observations made by the Supreme Court in *State of M.P. v. Bherulal*, (2020) 10 SCC 654, in that behalf, being apposite, are extracted hereafter:

“3. No doubt, some leeway is given for the government inefficiencies but the sad part is that the authorities keep on relying on judicial pronouncements for a period of time when technology had not advanced and a greater leeway was given to the Government [LAO v. Katiji [LAO v. Katiji, (1987) 2 SCC 107]]. This position is more than elucidated by the judgment of this Court in Postmaster General v. Living Media (India) Ltd. [Postmaster General v. Living Media (India) Ltd., (2012) 3 SCC 563 : (2012) 2 SCC (Civ) 327 : (2012) 2 SCC (Cri) 580 : (2012) 1 SCC (L&S) 649] wherein the Court observed as under : (Postmaster General case [Postmaster General v. Living Media (India) Ltd., (2012) 3 SCC 563 : (2012) 2 SCC (Civ) 327 : (2012) 2 SCC (Cri) 580 : (2012) 1 SCC (L&S) 649] , SCC pp. 573-74, paras 27-30)

“27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave



petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

30. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay.”

Eight years hence the judgment is still unheeded!”

6. Having regard to the aforesaid, we are not inclined to condone the delay of 1310 days.

7. The above-captioned application is, accordingly dismissed.



NEUTRAL CITATION NO: 2022/DHC/001291

SERTA 5/2021 & CM APPL. 4392 14/2021 *[Application filed on behalf of the appellant for interim relief]*

8. In view of the dismissal of the CM APPL. 43927/2021, nothing further survives in the appeal.
9. The appeal is, accordingly, closed.
10. Consequently, pending application shall stand closed.

RAJIV SHAKDHER, J

POONAM A. BAMBA, J

MARCH 30, 2022/p

Click here to check corrigendum, if any