

Before Hon'ble Ashok Bhan & N. K. Sodhi, JJ.

STATE OF HARYANA,—Petitioner.

versus

M/S FREE WHEEL (INDIA) LTD., FARIDABAD.—Respondent.

Sales Tax Case No. 16 of 1986

5th December, 1995

Haryana General Sales Tax Act, 1973—S. 42(2)—Limitation Act, 1963—S. 5—Code of Civil Procedure, 1908—S. 151 & Order 23, Rule 1—Condonation of delay—Joint petition for three assessment years held to be not maintainable—High Court directing Tribunal to refer question of law in respect of assessment year 1970-71—Application for condonation of delay filed for assessment years 1971-72 & 1972-73—Neither culpable negligence nor mala fide on the part of the petitioner shown—Delay condoned and Tribunal directed to refer identical question arising in assessment years 1971-72 & 1972-73 for opinion of the High Court.

Held that, the petitioner, under some mistaken advice, did file a joint petition for all the three assessment years and on pointing out the mistake on 25th July, 1986, filed the present petition on 16th September, 1986, before the disposal of S.T.C. 1 of 1986 on 15th October, 1986. This Court had ordered that S.T.C. 1 of 1986 be treated to have been filed for the assessment year 1970-71 only and did not observe anything about the subsequent assessment years. There was no culpable negligence or mala fide on the part of the petitioner in filing the petition at a belated stage. Petitioner did not stand to gain or benefit by resorting to delay. Refusing to condone the delay, as in the case in hand, would result in a meritorious matter being thrown out at the very threshold and the cause of justice being defeated. This Court has already directed the Tribunal on the similar facts and circumstances in S.T.C. 1 of 1986, to refer the question of law arising out of the order of the Tribunal for opinion to this Court. To deny the same relief to the petitioner for the two subsequent assessment years 1971-72 & 1972-73 on the same facts and circumstances, would result in the failure of justice.

(Para 11)

S. S. Khetarpal, Advocate, for the Petitioner.

B. S. Gupta, Sr. Advocate with Sanjay Bansal, Advocate, for the Respondent.

JUDGMENT

Ashok Bhan, J.

(1) This order shall dispose of sales Tax Cases 16 and 17, both of 1986, pertaining to the assessment years 1971-72 and 1972-73, as common questions of law and fact are involved in both these cases.

(2) The facts are taken from S.T.C. 16 of 1986.

(3) Sales Tax Tribunal, Haryana (hereinafter referred to as 'the Tribunal') had decided three appeals pertaining to three assessment years 1970-71, 1971-72 and 1972-73, by passing separate orders. State of Haryana (hereinafter referred to as 'the petitioner') filed three petitions under Section 42(1) of the Haryana General Sales Tax Act, 1973 (hereinafter referred to as 'the Act'), for referring certain questions of law arising out of the orders of the Tribunal to this Court for opinion. These petitions were dismissed on 15th October, 1985. Copies of the orders passed in the three petitions were supplied to the petitioner on 20th November, 1985. Instead of filing three separate petitions under Section 42(2) of the Act, for issuing a mandamus directing the Tribunal to make a reference to the High Court for its opinion, petitioner filed one joint petition i.e. S.T.C. 1 of 1986, for all the three assessment years i.e. 1970-71, 1971-72 and 1972-73.

(4) Respondent-assessee filed an application on 25th July, 1986, taking an objection that a joint petition for all the three assessment years was not maintainable and the petitioner should have filed three separate petitions for the three assessment years.

(5) Prior to the final disposal of S.T.C. 1 of 1986, on 16th September, 1986, petitioner filed present S.T.C. Nos. 16 and 17, both of 1986, for the assessment years 1971-72 and 1972-73, claiming the assessment years 1971-72 and 1972-73, claiming the same questions of law which had been claimed in S.T.C. 1 of 1986. An application under Section 5 of the Limitation Act read with Section 151, Civil Procedure Code, for condonation of delay for late filing of the petitions under Sub-section (2) of Section 42 of the Act, was also filed. The reason for condonation of delay given in the application is that the petitioner had acted upon the advice of the State Counsel and filed the joint petition *bona fide* and in good faith. It was prayed that the delay in filing the petitions for assessment years 1971-72 and 1972-73 be condoned, being attributable to the procedural omission.

(6) S.T.C. 1 of 1986 was taken up on 15th October, 1986. The objection raised by the respondent assessee that a joint petition was not maintainable was upheld. Accordingly, it was held that the petition (S.T.C. 1 of 1986) would be deemed to have been filed concerning the assessment year 1970-71 only.

(7) S.T.C. 1 of 1986, pertaining to the assessment year 1970-71 was disposed of with a direction to the Tribunal to refer the following question of law together with the statement of the case for the opinion of this Court :—

“Whether on the facts and circumstances of the case, the Tribunal was right in setting aside the order of the Additional Excise and Taxation Commissioner-II, dated December 12, 1983 passed under Section 40 of the Haryana General Sales Tax Act, 1973 ?”

Tribunal has sent the above question of law along with the statement of the case, which is now numbered as G.S.T.R. 14 of 1988.

(8) Counsel appearing for the respondent-assessee argued that S.T.C. 1 of 1986 was taken to be for the assessment year 1970-71 and the petitions for the assessment years 1971-72 and 1972-73 would be deemed to have been dismissed as withdrawn. Relying upon order 23 Rule 1, Civil Procedure Code, counsel for the respondent-assessee argued that once the petitioner withdraws or abandons the cause of action, then he cannot be permitted to file a second petition on the same cause of action.

(9) From the facts narrated above, it is clear that the petitioner did not either abandon or withdraw its petitions for the assessment years 1971-72 and 1972-73. Order 23 Rule 1, Civil Procedure Code, under the circumstances, would not be applicable to the facts and circumstances of the present case.

(10) Counsel for the respondent-assessee, thereafter, contended that there was no justifiable cause for condoning the delay as the petitioner did not disclose the name of the counsel who had advised it to file a joint petition instead of filing three separate petitions for the three assessment years. It was contended that the mistake on the part of the petitioner was not *bona fide* and, therefore, the delay should not be condoned. Further contention raised by the counsel for the respondent-assessee is that the petitioner has rendered no

explanation for the delay in late filing of the petition between 25th July, 1986 to 16th September, 1986 i.e. after it was brought to its notice that one joint petition was not maintainable, till its actual filing.

(11) This Court in S.T.C. of 1986 had already directed the Tribunal to refer the question of law raising out of the order of the Tribunal on the same facts and circumstances as prevailing in these cases. Petitioner, under some mistaken advice, did file a joint petition for all the three assessment years and on pointing out the mistake on 25th July, 1986, filed the present petition on 16th September, 1986, before the disposal of S.T.C. I of 1986 on 15th October, 1986. This Court had ordered that S.T.C. I of 1986 be treated to have been filed for the assessment year 1970-71 only and did not observe anything about the subsequent assessment years. There was no culpable negligence or *mala fide* on the part of the petitioner in filing the petition at a belated stage. Petitioner did not stand to gain or benefit by resorting to delay. Refusing to condone the delay, as it the case in hand, would result in a meritorious matter being thrown out at the very threshold and the cause of justice being defeated. This Court has already directed the Tribunal on the similar facts and circumstances in S.T.C. I of 1986, to refer the question of law arising out of the order of the Tribunal for opinion to this Court. To deny the same relief to the petitioner for the two subsequent assessment years 1971-72 and 1972-73 on the same facts and circumstances, would result in the failure of justice, in the given facts and circumstances of this case.

(12) In *Collector, Land Acquisition, Anantnag and another v. Mst. Katiji and others* (1), their Lordships of the Supreme Court, while considering condonation of delay in an application made by the State Government, condoned the delay in filing the appeal and held. *inter alia*, as under :—

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3. “Every day’s delay must be explained” does not mean that a pedantic approach should be made. Why not every hour’s delay, every second’s delay ? The doctrine must be applied in a rational common sense pragmatic manner.

(1) A.I.R. 1987 S.C. 1353.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberated delay.
5. xx xx xx xx xx
6. It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable to removing injustice and is expected to do so.

Making a justice.—oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an evenhanded manner. There is no warrant for according a stepmotherly treatment when the 'State' is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing on the buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant non-grata status. The Courts therefore have to informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as

time barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides."

(13) The observations made by their Lordships are aptly applicable to the facts and circumstances of the present case. In order to do substantial justice between the parties, it would be in the interest of justice to condone the delay in filing the petitions and to issue a direction to the Tribunal to refer the same question of law which was ordered by this Court in S.T.C. 1 of 1986, pertaining to the earlier assessment year.

(14) In view of the above, it is held that the following question of law does arise from the order of the Tribunal :—

"Whether on the facts and circumstances of the case, the Tribunal was right in setting aside the order of the Additional Excise and Taxation Commissioner-II dated December 12, 1983 passed under section 40 of the Haryana General Sales Tax Act, 1973 ?"

(15) Tribunal is, accordingly, directed to refer the above said question of law together with the statement of the case for opinion of this Court, within a period of three months from today. On receipt of the reference from the Tribunal, the same be put up along with G.S.T.R. 14 of 1988.

R.N.R.

Before Hon'ble N. K. Sodhi, J.

HANS RAJ,—*Petitioner.*

versus

THE CENTRAL CO-OPERATIVE BANK LTD. FAZILKA AND ANOTHER.—*Respondents.*

C.W.P. 6907 of 1992.

11th October, 1995.

Constitution of India, 1950—Arts. 226/227—Industrial adjudication—Delay in raising demand—Services of workman terminated in