

\$~49

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 28.03.2023*

+ **SERTA 3/2022**

**PRINCIPAL COMMISSIONER CENTRAL TAX,
DELHI SOUTH**

..... Appellant

Through: Mr. Harpreet Singh, SSC with Ms.
Suhani Mathur, Adv.

versus

**BRAHMAPUTRA INFRASTRUCTURE
LTD.**

..... Respondent

Through: Mr. Yogesh Jogia, Mr. Amit Sood,
Mr. Chandan Dutta & Mr. H
Minocha, Advs.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. The appellant has filed the present appeal impugning an order dated 06.07.2018 passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi in Appeal No.ST/53655/2015. The appellant states that the said order was received on 23.07.2018. The present appeal was filed on 31.05.2019, almost 10 months after the receipt of the impugned order.

2. The appellant had also filed an application seeking condonation

of delay, stating that the delay *‘is due to misplacement of some of the file papers in the office which were recovered later on and the matter further got delayed due to oversight and inadvertence.’* Apart from the aforesaid, no other reason for condoning the delay was mentioned in the application (CM. APPL. 9867/2022). Further, the application also did not specify the period of delay. Since the prayer clause of the said clause did not specify the number of days of delay, which the appellant prayed for being condoned, the appellant was given an opportunity to file a better application.

3. Thereafter, the appellant filed another application (CM NO.33370/2022) further improving the reasons as stated in the first application. The reasons for seeking condonation of delay as stated in the said application are set out below:-

- “3. That the delay which has occurred in filling the appeal is due misplacement of some of the file papers in the office of the counsel which were recovered later on and the matter further got delayed due oversight and inadvertence.
4. That upon the receipt of the aforesaid impugned order in the office of the appellant, the same was then sent to the Review Branch for taking a decision as to whether the said order has to be challenge/appeal against or not. The review branch, after carefully going through entire case and after analyzing the legal position, came to a conclusion that the impugned order passed by the Ld. Tribunal deserved to be challenged before this Hon'ble Court and thereafter the appeal papers were sent to the counsel for the appellant.
5. That, owing to the bulky nature of the appeal, some papers were inadvertently left out when the matter was handed over to the counsel for the appellant and thereafter upon a request being made by the counsel to the department for complete

transmission for the filed on 23.01.2019, the appellant department sent the complete records vide mail on 25.01.2019. Thereafter copies of orders relied upon by the Ld. Tribunal in the impugned judgment were also sought for and which was later on provided by the appellant department to the counsel. The status as to whether the relied upon judgment had been appealed against or not or whether it had attained finality or not was also ascertained by the counsel and in which process was some time was lost.”

4. Although the appellant had somewhat improved its explanation for the reasons which had led to the delay in filing the present appeal, it is apparent that the same were also wanting in particulars.

5. It is well settled that each day of delay in filing has to be explained. In the present case, there are large gaps in the time period for which no ostensible reason has been provided.

6. The appellant has not only delayed in filing the present appeal but there is also an unexplained and inordinate delay in re-filing the appeal. The above captioned appeal was filed on 31.05.2019. It was returned under objection on 10.06.2019. This was because the court fee was missing and the title was incorrect, apart from other defects. The defects were not cured for more than two months thereafter. The appeal was re-filed on 19.08.2019, however, the same was still defective. It is material to note that the appellant had not filed a hard copy as required. Thus, the appeal was returned on 20.08.2019. Thereafter, there was complete inaction for more than two years and five months. Even if the period commencing from 15.03.2020 is excluded on account of disruption caused due to outbreak of covid 19. There was a period of six months between the date on which the appeal was marked as

defective and the date when the lockdown was imposed in the wake of the pandemic.

7. There is no explanation for this inordinate delay as well.
8. In the case of *Post Master General and Ors. v. Living Media India Ltd and Anr.: (2012) 3 SCC 563*; the Supreme Court had observed as under:

“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.”

9. In view of the above, the applications seeking condonation of delay in filing and re-filing the appeal, are dismissed. Consequently, the appeal is dismissed as well.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

MARCH 28, 2023
Ch

