

Kerala High Court

State Of Kerala Rep.By Joint vs Department Of Sacred Music And on 7 August, 2009

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C).No. 13914 of 2009(H)

1. STATE OF KERALA REP.BY JOINT
... Petitioner

Vs

1. DEPARTMENT OF SACRED MUSIC AND
... Respondent

For Petitioner :GOVERNMENT PLEADER

For Respondent :SRI.RAMESH CHERIAN JOHN

The Hon'ble MR. Justice P.R.RAMACHANDRA MENON

Dated :07/08/2009

O R D E R

P.R. RAMACHANDRA MENON J.

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W.P. (C) No. 13914 of 2009  
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Dated, this the 7th day of August, 2009

JUDGMENT

The assessment orders passed in the case of the respondent, who is a dealer of Cassettes and CD's, in respect of the assessment years 1999-'00, 2000- '01 and 2001 - '02 granting exemption as 'second sale' were reopened under Section 19. The finding rendered by the assessing officer was set aside by the appellate authority, under which circumstance, the State filed appeals before the Tribunal with a petition to condone the delay of '90' days in filing the appeals. The grievance of the petitioner/State is that, the Tribunal dismissed the applications for condoning the delay without proper application of mind and also without referring to the available materials on record.

2. Heard the learned counsel for the respondent as well.

3. The learned Government Pleader appearing for the petitioner submits that, the appeals preferred by the State were dismissed as per Ext.P5 order without considering the merits, as a natural consequence to dismissal of the petitions filed for condoning the delay vide Ext.P6. The specific case of the petitioner as projected in paragraph 4 of the Writ Petition is that, the reasoning given by the Tribunal for dismissing the petitions for condoning the delay cannot be held as correct or sustainable under any circumstances, for the obvious fact that the WP (C) No. 13914 of 2009 additional affidavit filed by the Deputy Commissioner, Kollam on 2.8.2008 rectifying the mistake in the earlier affidavit has not been adverted to by the Tribunal at all. For the very same reason (i.e. when the Tribunal omitted to advert to the contents of the additional affidavit dated 2.8.2008 filed from the part of appellant), the reliance placed on the decision rendered by the Apex Court in Ramachandran Vs. State of Kerala (1997 (2) KLT 647) has no significance or consequence.

4. That apart, it is to be noted that the delay involved in the present case is only of '90' days. It has been observed by the Supreme Court as per many a decision rendered in Special Tehsildar, Land Acquisition, Kerala Vs. K.V. Ayisumma (AIR 1996 SC 2750); State of Madhya Pradesh Vs. S.S. Akolkar (AIR 1996 SC 1984) and State of Haryana Vs. Chandra Mani and others (AIR 1996 SC 1623) holding that, the delay on the part of the 'Government' has to be liberally construed; particularly since much 'public money' is involved. Above all, it has also been made clear by the Apex Court as per the decision reported in M. Balakrishnan Vs. M. Krishnamoorthy (1998 (7) SCC 123) that the 'extent of delay' is not the matter that weighs and the question to be considered is, whether the explanation offered by the party is acceptable or not. In the instant case, particularly since the facts and circumstances pointed by the petitioner/State vide the WP (C) No. 13914 of 2009 additional affidavit dated 2.8.08 have not been considered by the Tribunal, the impugned orders are not correct or sustainable.

5. Accordingly Exts. P5 and P6 are set aside. Considering the dictum laid down by the Apex Court as per the decisions referred hereinbefore, the delay of '90' days on the part of the petitioner/State is condoned and the Tribunal is directed to consider the appeals on merits, after hearing both the sides, as expeditiously as possible.

P. R. RAMACHANDRA MENON, JUDGE kmd