

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**

NOTICE OF MOTION NO.1907 OF 2016  
IN  
MAHARASHTRA VALULE ADDED TAX APPEAL(L)  
NO. 41 OF 2016  
IN  
VAT SECOND APPEAL NO.195 OF 2014

WITH  
MAHARASHTRA VALULE ADDED TAX APPEAL(L)  
NO. 41 OF 2016  
IN  
VAT SECOND APPEAL NO.195 OF 2014

The Additional Commissioner  
of Sales Tax, Mumbai

..Applicant / Appellant

Vs.

Bebitz Flanges Works Pvt Ltd

..Respondent

Mr. V. A. Sonpal, Special Counsel, for the Applicant /  
Appellant State.

Mr. S. P. Surte a/w Mr. D. B. Avhad, for the Respondent.

CORAM :- S.C. DHARMADHIKARI &  
B.P.COLABAWALLA, JJ.  
DATE :- JANUARY 31, 2017.

**P. C.:**

This application seeks condonation of delay in filing a statutory Appeal.

2 It is conceded in the affidavit in support that such Appeal and traceable to Section 27 of the Maharashtra Value Added Tax Act, 2002 has to be filed within a specified period, namely, 180 days. The period of limitation in this case expired on 9th July, 2015 but the Appeal is filed on 17th June, 2016. That is how the delay of 344 days is computed.

3 In the affidavit in support of this Notice of Motion seeking condonation of delay, in paragraph 5, this is what is stated:-

03/03/15	Order of Maharashtra Sales Tax Tribunal in VAT Second Appeal No.195 of 2014
11/03/15	Date of Service of copy of Maharashtra Sales Tax Tribunal Order in VAT Second Appeal No.195 of 2014.
20/03/15	Deputy Commissioner of Sales tax (Legal) Mumbai submitted the file along with copy of Maharashtra Sales Tax Tribunal Order in VAT Second Appeal NO.195 of 2014 for persual and acceptance to Joint Commissioner of Sales Tax (Legal)Mumbai

23/03/15	Joint Commissioner of Sales Tax (Legal) returned file to Deputy Commissioner of Sales Tax (Legal) for his remarks on some points
02/12/15	Deputy Commissioner of Sales Tax (Legal) submitted the file with his remarks to Joint Commissioner of Sales Tax (Legal) Mumbai
10/12/15	Joint Commissioner of Sales Tax (Legal) Mumbai submitted the file to Commissioner of Sales Tax, M. S. Mumbai
05/02/16	In a meeting held with Commissioner of Sales Tax, M. S. Mumbai, it was decided to file MVAT Appeal.
05/03/16	Accordingly Joint Commissioner of Sales Tax (Legal) Mumbai submitted file to Additional Commissioner of Sales Tax, VAT-III, M. S. Mumbai seeking permission to file appeal
05/03/16	Additional Commissioner of Sales Tax, VAI-III, M. S. Mumbai recommended the proposal to file MVAT Appeal to Commissioner of Sales Tax, M. S. Mumbai
05/03/16	Date of approval to the proposal to file MVAT Appeal against Order of Maharashtra Sales Tax Tribunal dated 11.3.2015 from office of the Commissioner of Sales Tax, M. S. Mumbai
11/03/16	Appointed Mr. V. A. Sonpal, Special Counsel to prepare draft of MVAT Appeal
20/04/16	Received draft of MVAT Appeal from Mr. V. A. Sonpal, Special Counsel
06/06/16	Received approval to final draft of MVAT Appeal from office of the Commissioner of Sales Tax, M. S. Mumbai

4 Mr. Sonpal would, therefore, submit that a liberal view may be taken on account of several procedural

formalities and administrative requirements. The files have to be processed and at several levels. It is not possible for every officer to find out time and there could be genuine and bonafide difficulties faced by them. That is how he would request that we should proceed to condone the delay by accepting the above as a sufficient cause.

5           Mr. Surte, learned counsel appearing on behalf of the Respondent on the other hand would submit that the rigor of law of limitation applies equally to a Government. The Government is not a special litigant. Wherever an assessee commits an act like this, he or she is called upon to furnish an explanation which would constitutes sufficient cause. The explanation must be reasonable and bonafide. It cannot be any reason and for which none other than the party alone has to be blamed. This is such a case and if the period of limitation prescribed by law is insufficient, then, that cannot be a reason to condone the delay.

6           After having heard both sides at great length, we

are of the opinion that there is much substance in the objections of Mr. Surte. The explanation is a routine one. In the case of **Office of the Chief Post Master General and Others v/s Living Media India Limited and Another** reported in AIR 2012 Supreme Court 1506, the Hon'ble Supreme Court was concerned precisely with such a reason. The hierarchy of Government and revenue officials, the powers that they are conferred with and the manner of discharging their duties and functions as prescribed by some procedural rules, are placed as impediment in not being able to meet the deadline. Precisely this is commented and very adversely by the Supreme Court. The Supreme Court has deduced from this a tendency on the part of the Government and State officials to claim some special benefits. Like every other litigant, the Government is also obliged and duty bound to adhere to the period of limitation and if the law enables seeking of condonation of delay in filing of proceedings beyond the statutory limit, then, by invoking the principles enshrined in Section 5 of the Limitation Act, 1963, these authorities have to make out sufficient cause. The cause

which has been shown above can hardly be termed as sufficient much less reasonable. The Hon'ble Supreme Court held as under:-

“11) We have already extracted the reasons as mentioned in the "better affidavit" sworn by Mr. Aparajeet Pattanayak, SSRM, Air Mail Sorting Division, New Delhi. It is relevant to note that in the said affidavit, the Department has itself mentioned and is aware of the date of the judgment of the Division Bench of the High Court in LPA Nos. 418 and 1006 of 2007 as 11.09.2009. Even according to the deponent, their counsel had applied for the certified copy of the said judgment only on 08.01.2010 and the same was received by the Department on the very same day. There is no explanation for not applying for certified copy of the impugned judgment on 11.09.2009 or at least within a reasonable time. The fact remains that the certified copy was applied only on 08.01.2010, i.e. after a period of nearly four months. In spite of affording another opportunity to file better affidavit by placing adequate material, neither the Department nor the person in-charge has filed any explanation for not applying the certified copy within the prescribed period. The other dates mentioned in the affidavit which we have already extracted, clearly show that there was delay at every stage and except mentioning the dates of receipt of the file and the decision taken, there is no explanation as to why such delay had occasioned. Though it was stated by the Department that the delay was due to unavoidable circumstances and genuine difficulties, the fact remains that from day one the Department or the person/persons concerned have not evinced diligence in prosecuting the matter to this Court by taking appropriate steps.

12) 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.

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 fide, 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.

13) 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 Government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. 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. Accordingly, the appeals are liable to be dismissed on the ground of delay.”

7 We have noticed that the files may have to be placed before several officials and have to pass through channels but when the Joint Commissioner of Sales Tax returned the file to the Deputy Commissioner of Sales Tax (Legal) for his remarks on some points, that Deputy

Commissioner sat on it from 23<sup>rd</sup> March, 2015 to 2nd December, 2015. There is no reason assigned as to why this long and enormous time is required to return the file after answering the Joint Commissioner's queries. There is absolutely no explanation why the Deputy Commissioner could not endorse his remarks and give his clarification for nearly seven months. Thereafter, from 10th December, 2015, the file passed through the hands of the Joint Commissioner of Sales Tax (Legal) but with the Commissioner it was not possible to seek any meeting until February 2016. Then, the Joint Commissioner of Sales Tax (Legal) submitted the file to the Additional Commissioner of Sales Tax seeking permission to file an Appeal. This was on 5<sup>th</sup> March, 2016.

8 We do not see why in important matters and which the State feels, involves substantial questions of law has such a lapse and as serious as this occurred. It is time we caution and warn the State officials that this Court will not countenance the explanations as forwarded and placed



before us in this Motion. The impersonal manner of dealing with files and the requirement of obtaining approvals from superiors are not matters we should concern or bother us. How the department should function and how many officials are to be deployed for attending legal cases and matters should be really bothering the State and the higher-ups in Mantralaya. We do not think that the High Court by accepting such explanations can condone the delay by invoking the interests of public. The scales of justice have to be evenly balanced. In such circumstances, the cause and explanation as furnished is neither reasonable nor bonafide. We, therefore, proceed to dismiss the Notice of Motion.

9 In view of dismissal of the Notice of Motion for condonation of delay, nothing survives in the above Appeal and the same is also dismissed.

**(B. P. COLABAWALLA, J.) (S. C. DHARMADHIKARI, J.)**