

THE HIGH COURT OF MADHYA PRADESH: JABALPUR
(DIVISION BENCH)

WP-15783-2019

(M/S HAWKINS COOKERS LTD HAMIDIA ROAD BHOPAL Vs THE STATE OF MADHYA PRADESH)

WITH

WP-15787-2019

(M/S HAWKINS COOKERS LTD HAMIDIA ROAD BHOPAL Vs THE STATE OF MADHYA PRADESH)

AND

WP-15788-2019

(M/S HAWKINS COOKERS LTD HAMIDIA ROAD BHOPAL Vs THE STATE OF MADHYA PRADESH)

Coram:

Hon'ble Shri Justice Ajay Kumar Mittal, Chief Justice
Hon'ble Shri Justice Sanjay Yadav

Shri Mukesh Agrawal, Advocate for the petitioners.

Shri Harjas Singh Chhabra, Govt. Advocate for the respondents/State.

Whether approved for reporting: Yes

ORDER (Oral)
{ 04.11.2019 }

Per: Ajay Kumar Mittal, Chief Justice:

This order shall govern the disposal of three writ petitions bearing WP Nos.15783/2019, 15787/2019 and 15788/2019, as according to the learned counsel for the parties, the issues involved therein are identical. However, for the sake of convenience, the facts are extracted from WP No.15783/2019.

2. In WP No.15783/2019, the petitioner has filed the instant writ petition under Article 226 of the Constitution of India challenging the order dated 10.05.2019 passed by the M.P. Commercial Tax Appellate Board, Bhopal (respondent No.2) in Reference No.234/CTAB/08 for the year 1997-98 whereby the Board has declined to condone the delay in filing reference application and resultantly, dismissed the application under Section 5 of the Limitation Act, 1963 (for short "the Act of 1963") as well as the reference application.

3. Brief facts, relevant for the disposal of present petition, are that the petitioner was assessed under the M.P. Entry Tax Act, 1976 for the period 01.04.2000 to 31.03.2001. Feeling aggrieved by the order of the Assessing Officer levying the entry tax, the petitioner preferred second appeal before the respondent No.2, which was dismissed vide order dated 01.03.2008. Against the order of the Appellate Board, the petitioner preferred reference application under Section 70(1) of the M.P. Commercial Tax, 1994 read with Section 13 of the M.P. Entry Tax Act, 1976 before the respondent No.2 for referring the matter to the High Court for its opinion. The application was required to be filed within a period of 60 days from the date of communication of such order. Since the reference application was filed on 16.12.2008, which was barred by limitation, the petitioner also filed an application for condonation of delay of four months. The Board vide impugned order dated 10.05.2019 has dismissed the application for condonation of delay holding that the application was barred by four months whereas the petitioner has given the reasons for three months' delay but the

same is not sufficiently explained and further, for remaining one month, the delay has not been explained at all. Hence, this petition has been filed.

4. Learned counsel for the petitioner submits that the Board has dismissed the reference application merely on technical and procedural ground and not on merits. The reason for delay were specifically mentioned in the application that order dated 01.03.2008 was first served on C&F Agent of the petitioner Company located at Indore and thereafter, the same was forwarded to the Head Office situate at Mumbai only on 12.06.2008. It is stated that due to the sudden resignation tendered by the then General Manager, Shri Nadeem A. Ghazani, who was well aware of the facts and circumstances of the case, the Management could not get updated about the development in the case till their legal counsel apprised the Management about the same when the order was published in one of the Sales Tax Journal and thus, the delay was caused due to the *bona fide* reason and it was not deliberate. Learned counsel further contends that the respondent No.2 has adopted a pedantic approach while dismissing the application for condonation of delay.

5. On the other hand, learned counsel for the respondents-State has argued in support of the impugned order and prayed that the present petition deserves to be dismissed.

6. We have heard learned counsel for the parties and find that the present petition deserves to be allowed.

7. The question which emerges for consideration in this writ petition is whether the Board was right in declining to condone the delay of four months in filing the reference application by the petitioner.

8. Examining the legal position relating to condonation of delay under Section 5 of the Act of 1963, it may be observed that the Supreme Court in **Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation and another, (2010) 5 SCC 459** laying down the broad principles for adjudicating the issue of condonation of delay, in paras 14 and 15 observed as under:-

"14. We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time.

15. The expression "sufficient cause" employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate-*Collector (L.A.) v. Katiji (1987) 2 SCC 107, N. Balakrishnan v. M. Krishnamurthy (1998) 7 SCC 123 and Vedabai v. Shantaram Baburao Patil (2001) 9 SCC 106.*"

9. The meaning to be assigned to the expression "sufficient cause" occurring in Section 5 of the 1963 Act should be such so as to do substantial justice between the parties. The existence of sufficient cause depends upon facts of each case and no hard and fast rule can be applied in deciding such cases.

10. The Supreme Court in **Oriental Aroma Chemical Industries Ltd.** (supra) and **R.B. Ramlingam v. R.B. Bhavaneswari, (2009) 2 SCC 689** noticed that the Courts should adopt liberal approach where delay is of short period whereas the proof required should be strict where the delay is inordinate. Further, it was also observed that judgments dealing with the condonation of delay may not lay down any standard or objective test but is purely an individualistic test. The court is required to examine while adjudicating the matter relating to condonation of delay on exercising judicial discretion on individual facts involved therein. There does not exist any exhaustive list constituting sufficient cause. The petitioner is required to establish that in spite of acting with due care and caution, the delay had occurred due to circumstances beyond his control and was inevitable.

11. We find that the explanation furnished by the petitioner, as noticed hereinbefore, being plausible, leads to the conclusion that there was sufficient cause for delay in filing the reference application. Once that was so, the application for condonation of delay ought to have been allowed.

12. In view of the above, the impugned order dated 10.05.2019 (Annexure P/4) is set aside. The delay of four months in filing reference application is condoned by holding that there was sufficient cause for condonation of

delay. As a result, the writ petition is **allowed** and the matter is remitted to the Board/respondent No.2 to redecide the reference application in accordance with law.

13. Let a signed order be placed in the file of W.P. No.15783/2019 and copy whereof be placed in the file of the connected writ petitions.

(AJAY KUMAR MITTAL)
Chief Justice

(SANJAY YADAV)
Judge

S/