

State Of Gujarat Vs. Award Engineers

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Court : Gujarat

Decided On : Nov-03-2014

Judge : Akil Kureshi & Vipul M. Pancholi

Appeal No. : Civil Application (Oj) No. 583 of 2014 in Stamp Number No. 2674 of 2014 with Stamp Number No. 2675 of 2014

Appellant : State Of Gujarat

Respondent : Award Engineers

Judgement :

Akil Kureshi, J.

Oral Order:

1. This application is filed by the State Government seeking condonation of delay of 2432 days in filing the Tax Appeal. The Tax Appeal is directed against the judgement dated 22.10.2007 passed by the Gujarat Value Added Tax Tribunal ("the Tribunal" for short) in Appeal No.27/2005. The issue before the Tribunal arose out of an appeal filed by the respondent assessee questioning the decision of the Commissioner of Sales Tax under section 62 of the Sales Tax Act, 1969. Such provision envisage determination by the Commissioner, any question which arises otherwise than in proceedings before the Court or proceedings under section 41 or 44 of the said Act.

2. In the present case, the question came up for consideration was whether the contract for fabrication of different goods entered into by the respondent assessee with the Surat Municipal Corporation was in the nature of a works contract. The Tribunal overturned the decision of the Commissioner and allowed the appeal of the assessee holding that the contract in question was one of works contract and that the assessment under the Sales Tax Act should be made accordingly. The operative portion of the Tribunal's order reads as under :

"1. This appeal is allowed and the impugned determination order u/s.62 of the Gujarat Sales Tax Act, 1962 dated 16/02/2005 passed by the learned Jt. Commissioner of sales Tax (Legal), Gujarat State, ahead is set aside and it is held that the contract between the appellant and Surat Municipal Corporation is a works contract and the appellant has purchased raw materials from registered dealers and has used them for execution of work contract as above and therefore the said contract and fabrication of iron garbage containers are required to be considered accordingly for the purpose of assessment of the appellant."

3. Against this order, the State has preferred the present tax appeal. In the process there has been a delay of 2432 days for which this application for condonation of delay has been filed. Much of the content of this application is in the nature of formal declarations and reference to various decisions of the Supreme Court on the question of delay, principally that caused by the Government or its agencies. In order to explain such lengthy delay, all that has been stated in this application is as under :

"6. The applicant further says that in the present case, the Tribunal passed the order on 22/10/2007 in Appeal No. 27 of 2005. The applicant states that the order dated 22/10/2007 was communicated to the applicant on 16/11/2007. Thereafter on 14/03/2014 the proposal to file the tax appeal was sent to the Finance Department and on 10/04/2014 the Finance Department approved the proposal. After receiving the proposal from Finance Department all necessary documents along with order of the Tribunal were handed over to the G.P. Office on 21/04/2014 to file the Tax appeal. The applicant says that the tax appeal was required to be filed on or before 15/02/2008. However, the same was filed on

17/9/14 and thus there is a delay of 2432 days in preferring the tax appeal."

4. It may be noted that the factual contents are found only in para.6 where while explaining the delay, it is stated that the order dated 22.10.2007 was communicated to the State on 16.11.2007. Thereafter, on 14.3.2014, the proposal to file the Tax Appeal was sent to the Finance Department which is approved on 10.4.2014. It can thus be seen that the entire between 22.10.2007 when the order of the Tribunal was communicated to the State till 14.3.2014 when the proposal to file appeal was sent to the Finance department, there is absolutely no explanation at all. There is not a word, a whisper in this application explaining the entire period for nearly six and half years. The deponent has simply jumped over the span of nearly six and half years while rendering the explanation for delay caused in filing the appeal. We must therefore, proceed on the basis that there is absolutely no explanation for this entire period.

5. The question is in such scenario, would it be possible to condone the delay. The answer has to be in the negative. Statutory provisions of limitations are principally aimed at assuring the litigating party that a certain decision of a Court would achieve finality, if not questioned within the period prescribed for filing the appeal. There would of course be in most cases some flexibility, if the appellant who is late in preferring the appeal can explain by rendering sufficient cause for preferring appeal beyond the period of limitation. Such powers for condonation of delay come either with a maximum limitation beyond which delay simply cannot be condoned or in large number of cases without any limitation, thus essentially relying on the explanation that may be rendered by the appellant. In essence, therefore, question of condonation of delay is one of facts to be decided in each individual case on the basis of available material on record. No party, be it a private litigant or State, can have a free license to prefer appeal after long number of years without even slightest explanation for such gross and inordinate delay. In the present case, the State has rendered no explanation. It is not a case of insufficient explanation which would not cover the entire span of delay. Here is a case where for delay of six and half years of inaction on part of the State machinery, there is no explanation at all. Under no circumstances, such application can be accepted.

6. Learned AGP Shri Gandhi for the State however, made two fold submissions. He firstly relied on the decision of this court dated 23.8.2013 in Civil Application No.385/2013 in case of State of Gujarat v. Tolat Electronics where long delay of 1710 days was condoned. His second submission was that the issue arose under section 62 of the Sales Tax Act which is paramateria to section 80 of the Gujarat Value Added Tax Act and a question so determined under such provision would cover bilateral relations between the parties permanently. The decision of the Tribunal therefore, would have everlasting effect.

7. In our opinion, neither of the two contentions are sufficient to permit us to gloss over such inordinate delay with no explanation whatsoever. The decision of this Court in case of State of Gujarat v. Tolat Electronics (supra), was rendered in facts of its own case. Each case for condonation of delay being substantially a question on fact, must rely on its own facts. In the present case, when we find that the State has rendered no explanation whatsoever for inordinate delay of six and half years, the course adopted by this Court in case of State of Gujarat v. Tolat Electronics (supra), would not deviate our opinion. However, the State has also not been able to demonstrate what would be the tax effect in order to argue that the tax effect being considerable, delay should be considered more liberally. Even presuming that we were to accept such proposition, delay itself being enormous with no matching explanation and tax effect not being presented before us, this contention must fail. Further, the question answered by the Tribunal pertained to a particular contract entered into by assessee with the Surat Municipal Corporation. The answer must therefore, be confined to such a contract and by the very nature of the proceedings under section 62 of the Sales Tax Act, 1969, or section 80 of the Gujarat Value Added Tax Act, may not have a permanent impact as suggested by the learned AGP.

8. In the result, Civil Application for condonation of delay is dismissed. Resultantly, Tax Appeal as well as civil application for stay stands dismissed.