

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 30<sup>TH</sup> DAY OF SEPTEMBER 2009

PRESENT

THE HON'BLE MR.JUSTICE JAWAD RAHIM

AND

THE HON'BLE MR. JUSTICE B.SREENIVASE GOWDA

W.A.NOS.3472-73 OF 2009(T-RES)

**BETWEEN**

M/S.DECCAN HARDWARE MART  
AGED ABOUT 40 YEARS  
B.D ROAD, CHITRADURGA  
REPRESENTED BY ITS PARTNER  
SRI ABDUL AZEEZ.

... APPELLANT

(BY SMT. N.S SANDHYA, ADV.,)

**AND**

1. THE ADDL. ASST. COMMISSIONER OF  
COMMERCIAL TAXES  
CHITRADURGA
2. THE JOINT COMMISSIONER OF  
COMMERCIAL TAXES (APPEALS),  
DAVANERE DIVISION  
DAVANGERE

... RESPONDENTS

(GA SERVED)



WRIT APPEAL FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED IN THE WRIT PETITION 1409/2008 DATED 30/01/2008.

THIS APPEAL COMING ON FOR PRELIMINARY HEARING THIS DAY JAWAD RAHIM J, DELIVERED THE FOLLOWING:

JUDGMENT

The assessee is in Writ Appeal against the order of the learned Single Judge dated 30.1.2008 in WP No.1409/2008, by which the Writ Petition was dismissed on the ground of delay and latches.

2. Assailing the said order of the learned Single Judge, the appellant/assessee has averred while doing business under the name and style 'M/s. Deccan Hardware Mart', he had meticulously computed the tax payable on the Annual turnover. He had adhered to the rules relating to Karnataka Sales Tax Act (for short 'the Act') and had paid the tax as found due.

3. It is alleged the Revenue/Commercial Tax officer embarked to asses the tax payable and issued



notice to the appellant. The notice was suitably replied, despite which, without giving an opportunity of being heard, an ex-parte order is passed directing the appellant to pay the amount of tax quantified vide in Annexure-A. Aggrieved by it, he filed protest before the Assistant Commissioner of Commercial Tax and the said appeal was heard, but even the Assistant Commissioner of Commercial Tax/ the competent authority by endorsement dated 24.4.2000 rejected the application, against which the appellant assessee was in appeal before the Joint Commissioner of Commercial Tax. The Appellate Authority heard the appeal, but directed the appellant/assessee to substantiate his claim that tax was paid. Since the assessee did not substantiate that the admitted tax(on his own calculation) was paid, the Appellate Authority dismissed the appeal referring to Section 20(3)(a) of the Act.

4. The grievance of the appellant is that the Appellate Authority has passed the order against the



principles of natural justice and depriving the assessee the reasonable opportunity to substantiate payment of tax. However, it is urged in order to avoid any further controversy, vide Annexure-H the assessee paid Rs.3,451/- being the balance tax. Reference is also made to Annexure-J second period of assessment.

5. In short the contention is, the Appellate Authority had failed to consider that the assessment order passed was an ex-parte order without taking into consideration the grounds urged by the assessee against the assessment order and also failed to notice that admitted tax was paid. It is further urged that the Appellate Authority in the course of its order records that the appellant had quantified the turnover at Rs.92,000/- and calculated the tax to be paid thereon and paid the same. Despite such undisputed fact regarding payment of admitted tax, the Appellate Authority was wrong in dismissing the appeal.



6. Learned counsel would further contend that as against the order at Annexure-G passed by the Appellate Authority, the appellant had right of appeal before the Tribunal, but the appellant due to certain circumstance could not take. Thus he invoked writ jurisdiction of this court and filed WP No. 1409/2008 which failed. Referring to the order passed by the learned Single Judge, the learned counsel submits without considering the merits of the case the learned Single Judge referring to the delay in filing the Writ Petition has dismissed it depriving right to question the appellate order passed at Annexure-G. She would further contend that the learned Single Judge was required to consider the grounds urged against the impugned order but has failed to notice genesis of the proceedings. She would urge with vehemence that the settled position of law as to what should be the approach of the Court regarding consideration of explanation regarding delay in filing the appeal or initiation of proceedings has been ignored by the learned Single Judge.



7. Regarding delay of 527 days in filing this Writ Appeal against the impugned order at learned Single Judge she submits delay has been explained. In this regard, the learned counsel would submit that the appellant had to face certain unforeseen circumstance in the family due to ill-health of his mother. She would further contend that the delay regarding 527 days has been satisfactorily explained and therefore, the Writ Appeal may be admitted and the matter may be considered on merits.

8. The citational support she drives is from the following decisions;

- i) Canara Bank vs. V.K. Awasthy  
(AIR 2005 SC 2090)
- ii) Collector, Land Acquisition vs. Mst. Katiji  
(ILR 1987 KAR 2844)
- iii) The State of Karnataka represented by  
Revenue Secretary vs. H.B. Munivenkatappa.  
(ILR 2007 KAR 1983)



9. We have given our due consideration to all the grounds urged.

10. Firstly, it is to be noticed the assessment order relates to assessment of turnover tax for the period from 1.4.1996 to 31.3.1997. Thereafter, the assessment order came to be passed vide Annexure-A which was questioned by the appellant unsuccessfully before the competent authority. The competent authority has considered the objections raised by the appellant. However, not satisfied with the order, the appellant also was in appeal before the Joint Commissioner of Commissioner Tax the Appellate Authority.

11. It is material to note necessarily the appellant was required to comply with the requirements of Section 20(3)(a) which envisages that no appeal against the order of assessment would be entertained by the Appellate Authority unless it is accompanied by satisfactory proof of payment of tax and penalty not disputed in the appeal. Therefore, it was imperative on the appellant to produce



'proof' of payment of undisputed tax. The Appellate Authority has recorded that the appellant was called upon to produce proof regarding payment of admitted tax on the basis of his own assessment which was quantified at Rs. 10,603/-. It is noticed that out of the said amount, the appellant admitted of having paid Rs.7,152/- only leaving out the balance of Rs.3,451/-. Thus, the admitted tax was also not shown to have been paid and no proof in that regard was placed as required under Section 20(3)(a) of the Act. On this ground, the Appellate Authority had dismissed the appeal.

12. The learned counsel would contend that in order to avoid controversy, the appellant paid in as much as the worked out balance vide Annexures-H and J. Undoubtedly, the said payment is subsequent to disposal of the appeal and cannot be taken as a cure for the condition imposed by Section 20(3)(a) of the Act. In such circumstance, we cannot find fault with the order impugned passed vide Annexure-G by the Appellate Authority. Be that as it may. The appellant had recourse to





statutorily provided remedy of appeal before the Tribunal, which the appellant has not availed.

13. The learned Single Judge has noticed these aspects and has also recorded that the explanation regarding the delay was only found at para -7 of the Writ Petition and that did not constitute sufficient cause. The contention of the learned counsel is that such an explanation should have been accepted.

14. Let us therefore see what is the explanation. The explanation offered at para -7 is extracted below;

" It is submitted that during year 1997, the Deputy Commissioner, Chitradurga, has issued notification for shifting of the petitioner's building for widening of the Highway. A copy of the said notification is herewith produced and marked as Annexure-K. It is further submitted that the father of the petitioner was expired on 2.6.2000. A copy of the death certificate is herewith produced and marked as Annexure-L. In view of the road widening notification, the petitioner was forced



to close down his business. In view of the closure of the business and also the demise of the petitioner's father, the petitioner was unable to look into the business transaction and also the petitioner was not keeping well during relevant period and unable to contact his tax practitioner to file an appeal against the impugned appellate order, hence there was some delay in preferring this petition which is bonafide and unintentional. The petitioner has got good case on merits. Hence, if the delay is condoned no hardship will be caused to the other side and the matter will be decided on merits."

15. From the said explanation hardly any sufficient cause much less any cause could be noticed. Besides even this appeal has been preferred after delay of 527 days and the reasons assigned do not constitute any sufficient cause.

16. The decision of the Apex Court in the case of Canara Bank -vs - V.K.Awasthy relied on by the learned counsel no doubt would indicate that there has to be



liberality in considering the cause that could be shown by the appellant if the Court finds that there is merit in the proceedings and that merit would be defeated if the delay is not condoned. In this case, we have referred to the factual matrix to know as to whether there is any merit in the appeal. Since we do not find any merit, the question of stretching with elasticity, the approach to condone the delay may infact be against the interest of justice as the litigation has been from 1996-97 and at each stage, the appellant has approached the authorities with sufficient latches. Apart from it, it noticed that the learned Single Judge has dismissed the Writ Petition only the ground of delay and latches and against the said order also, this appeal is filed with 527 days delay, the reason to condone the delay shown is also too feeble and cannot be considered as sufficient. In the resultant position, we are unable to persuade ourselves to condone the delay of 527 days in fling of this appeal and as such we should have dismissed it on that ground itself. However, we have considered the case on merit as well and we find no merit.



The appeal is therefore rejected confirming the order of learned Single Judge.

Sd/-  
JUDGE

Sd/-  
JUDGE

MV\*