

(2016) 04 GUJ CK 0100

GUJARAT HIGH COURT

Case No: Special Civil Application No. 18762 of 2015

New Asian Engineers

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: April 21, 2016

Citation: (2016) 336 ELT 600

Hon'ble Judges: Akil Kureshi and A.Y. Kogje, JJ.

Bench: Division Bench

Advocate: Hasit Dilip Dave, Advocate, for the Petitioner; Gaurang H. Bhatt, Advocate, for the Respondent

Final Decision: Disposed Off

Judgement

@JUDGMENTTAG-ORDER

Akil Kureshi, J.(Oral)—Petitioner has challenged an order dated 15-9-2015 passed by the Customs, Excise & Service Tax Appellate Tribunal rejecting the petitioner’s application for condonation of delay of about 300 days in filing the appeal.

2. Having heard learned counsel for the parties and having perused the material on record, we notice that the order under challenge before the Tribunal was passed on 29-3-2014. In the application for condonation of delay, the petitioner pointed out that such order was received by him on 8-5-2014. His business which was in the nature of the proprietary concern, was struggling financially on account of various reasons including his personal misfortune when his daughter has committed suicide in the year 2011. The proprietary concern was engaged in civil construction work, taking up contracts for various companies. The payments from such clients were also not coming-forth easily. The petitioner also pleaded that he was ignorant about the legal procedures and because of reduction of staff in his proprietary concern, he was not properly advised. Inter alia on such grounds, the petitioner had prayed for condonation of delay.

3. The Tribunal however, by the impugned order, rejected such application observing that the grounds in the application for condonation relate to the periods of 2012 and 2013 which would not sufficiently explained the delay which occurred after passing of the impugned order dated 8-5-2014.

4. In our opinion, the delay being explained as above, ought to have been condoned. Usually, the Courts prefer substantial justice when pitted against technical requirements. In this context, the question of condonation is approached and the same would be seen liberally. Unless if it is found that the delay is inordinate or not explained at all or that the same is caused deliberately, mala fide or on account of total neglect and lethargy on the part of the applicant, the same is as far as possible, condoned.

5. In the present case, the petitioner had pointed out that on account of his daughter's suicide followed by virtual standstill of his business on account of financial differences, there was scarcity of staff. These reasons combined together prevented the petitioner from preferring appeal in time.

6. In facts of the case, therefore, the delay should have been condoned even after putting the petitioner to some terms.

7. Under the circumstances, the petition is allowed. Impugned order dated 15-9-2015 passed by the Tribunal is set aside. Petitioner's prayer for condonation of delay is allowed. The Tribunal shall hear the petitioner's appeal on merits. The petitioner shall however pay cost of Rs. 10,000/- to the respondents.

8. Petition disposed of accordingly.