

BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL, CUTTACK.**S.A. NO: 10(ET) OF 2021**

M/s. UNITECH WIRELESS (TAMILNADU) PVT. LTD
C/o : Sachitra Kmar Das (Adv.)
Das House, Nuapada, Balisahi,
Madhupatna, Cuttack-753010

... Appellant

-Versus -

State of Odisha, Represented by
The Commissioner of Sales Tax,
Odisha, Cuttack.

... Respondent

Extract of order from Order Sheet bearing Sl. No. 11/14.09.2021 passed by the Full bench in S.A. No. 10(ET) of 2021.

Sl. No. 11/14.09.2021

This is an application filed by the dealer-Company for condonation of delay of 384 days in filing the present second appeal. Learned Counsel for the appellant-Company vehemently urged that there was no deliberate laches or negligence on the part of the appellant in filing the second appeal within statutory period of sixty days. The first appellate authority passed the impugned order on 31.10.2019 which was received on 30.11.2019. Accordingly, the appellant should have filed the appeal by 30.01.2020. But, unfortunately, the appeal could be filed only on 17.02.2021 causing delay of 384 days. He strenuously argued such delay of 384 days is due to merger of the appellant-Company with the other Company as per the order

of the National Company Law Tribunal (NCLT). At the relevant time, the original order and other documents related to the case were misplaced somewhere which could be only traced out on 01.02.2021 whereafter the second appeal was filed on 17.02.2021. The appellant-Company having explained satisfactorily the reason for delay in filing the second appeal, the delay should be condoned and the appeal should be admitted for hearing on merit. He submitted to allow the application for condonation of delay and condone the delay of 384 days.

2. The learned Addl. Standing Counsel (CT) for the State refuting the contention raised by the learned Counsel for the appellant strongly contended that the delay having not been satisfactorily explained, the application for condonation of delay deserves rejection. The Court has got the discretion to condone the delay of any period, but such discretion should be exercised judiciously and wisely. There is no statutory bar in condoning the delay of any length if satisfactorily explained, but if the delay is not satisfactorily explained, the Court should reject the application for condonation of delay even if there is few days delay only. The application for delay should be liberally considered does not mean the appellant-Company is exonerated

from explaining such inordinate delay in filing the appeal. He submitted to reject the application for condonation of delay as well as the second appeal being barred by time.

3. We have heard the rival submissions of respective learned Counsel for the parties vis-à-vis the grounds taken in the application for condonation of delay and documents filed to substantiate the grounds taken in the petition. Law is no more res integra that the application for condonation of delay should be liberally considered if delay has been explained satisfactorily. The words “sufficient cause” u/s. 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice. There is no statutory bar in condoning the delay of any length if sufficient cause is shown for such delay. What is “sufficient cause” that is to be considered in the facts and circumstances of the particular case. No straight jacket formula can be laid down for the same. It is further well settled that ordinarily a litigant does not stand to benefit by lodging an appeal late. If in any meritorious matter, the Court refuses to condone the delay, the same will defeat the cause of justice. But if the delay is condoned, the highest that can happen is that a

cause would be decided on merit after hearing the parties. When substantial justice and technical consideration are pitted against each other, cause of substantial justice deserves to be preferred.

4. The application for condonation of delay filed by the present appellant is to be considered in the backdrop of the aforesaid legal position. The appellant for the purpose of condonation of delay must show sufficient cause for delay in filing the appeal and must give satisfactory explanation as to why it could not file the appeal within the statutory period of limitation. If the delay occasioned in filing the appeal is satisfactorily explained, the Court is at its discretion to condone delay of any length. In the case at hand, the Company-appellant sought for condonation of delay on the ground that the original orders and documents were misplaced due to merger of the Company with other Company and the documents were only traced on 01.02.2021 whereafter the appeal was filed on 17.02.2021. The appellant in order to substantiate its contention, filed copy of the order dated 28.07.2017 passed by the learned Special Bench of NCLT. On going through the order dated 28.07.2017 we find that the Telenor (India) Communications Pvt. Ltd. was the Transferor Company and Bharti Airtel Ltd. is the Transferee Company who

were the parties before the NCLT on the application for merger. The merger order does not show that the present appellant M/s. Unitech Wireless (Tamil Nadu) Pvt. Ltd. was a party in the said proceeding. Neither the merger order nor the application for condonation of delay filed by the Company-appellant shows that Telenor (India) Communications Pvt. Ltd. and M/s. Unitech Wireless (Tamil Nadu) Pvt. Ltd. are same and one Company. When the present appellant was not at all a party to the merger proceeding, the plea taken by it for delay in filing the appeal becomes unbelievable. Further, the order of the NCLT is of dt 28.07.2017 whereas the FAA passed the impugned order on 31.10.2019. So it is not understood how delay was caused due to merger order passed by NCLT. There is inordinate delay of 384 days in filing the appeal, which has not been explained satisfactorily. The Company-appellant filed an application for condonation of delay in a very casual manner as if it has got statutory right for condonation of delay of any length even if not explained satisfactorily. Moreover, it appears from the application for condonation of delay that the documents were traced on 01.02.2021 whereas the second appeal was filed on 17.02.2021 after fifteen days of recovery of documents and

further delay of these fifteen days has not been explained by the appellant. The Company-appellant did not whisper a single word as to why it took fifteen days time in filing the second appeal after the documents were traced out on 01.02.2021. The Company-appellant having failed to show sufficient cause for such inordinate delay in filing the appeal, we are not inclined to entertain the application for condonation of delay.

5. In view of the foregoing discussions, the application for condonation of delay, being devoid of merit, stands rejected. Consequently, the second appeal filed by the appellant being barred by time is hereby dismissed.

Sd/-
Accts. Member-II

Sd/-
2nd Judicial Member

Sd/-
Chairman

Memo No : _____ / Dt. _____

Copy forwarded to the Appellant / Respondent for information.

Registrar
Odisha Sales Tax Tribunal,
Cuttack.