NC: 2026:KHC:12033-DB
STRP No. 7 of 2024

HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF FEBRUARY, 2026

PRESENT

THE HON'BLE MR. JUSTICE S.G.PANDIT

AND

THE HON'BLE MR. JUSTICE K. V. ARAVIND

SALES TAX REVISION PETITION NO.7/2024

BETWEEN:

1. THE JOINT COMMISSIONER OF
COMMERCIAL TAXES
(APPEALS-4), 2ND FLOOR
TTMC, BMTC COMPLEX
SHANTHINAGAR
BENGALURU - 560 027.

2. THE DEPUTY COMMISSIONER OF
COMMERCIAL TAXES
(AUDIT 4.6)
VANIJYA THERIGE KARYALAYA -2
'A' BLOCK, 5TH FLOOR
NEAR NATIONAL GAMES VILLAGE
COMPLEX, 80 FEET ROAD,
KORAMANGALA
BENGALURU - 560 047.

...PETITIONERS

(BY SRI. ADITYA VIKRAM BHAT, AGA)

AND:

M/S. SUN MICRO SYSTEMS INDIA PVT. LTD.,
(NOW ORCALE INDIA PVT. LTD.,)
6TH FLOOR, DIVYASHREE
CHAMBERS
OFF LANGFORED ROAD
BENGALURU - 560 064.

...RESPONDENT

(BY SRI. BHARAT B. RAICHANDANI, ADV.
A/W SRI RAAGHUL PIRAANESH, ADV.)

THIS STRP IS FILED UNDER SEC.65(1) OF THE KARNATAKA VALUE ADDED TAX ACT, 2003 AGAINST THE JUDGMENT AND ORDER DATED 26.07.2022 PASSED IN STA.NO. 3502 TO 3549/2013 ,3550 TO 3597/2013 AND CROSS STAS 135-230/2016 ON THE FILE OF KARNATAKA APPELLATE TRIBUNAL AT BANGALORE, DISMISSING THE CROSS APPEALS AND ALLOW THE APPEAL FILED AGAINST THE ORDER DATED 30.09.2013 PASSED IN VAT NO.527 TO 538/2010-11, 539 TO 550/2010-11, 551 TO 562/2010-11, 563 TO 574/2010-11, 2191 TO 2202/2010-11, 2203 TO 2214/2010-11, 2215 TO 2226/2010-11 AND 2227 TO 2238/2010-11 ON THE FILE OF JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS-4), SHANTHINAGAR, BENGALURU, PARTLY ALLOWING THE APPEALS AND FILED AGAINST THE ORDER DATED 07.06.2010 PASSED BY ASSISTANT COMMISSIONER OF COMMERCIAL TAXES (ENF.)-7, SOUTH ZONE, BENGALURU FOR THE TAX PERIODS FROM 2005 TO MARCH 2009.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.G.PANDIT
AND
HON'BLE MR. JUSTICE K. V. ARAVIND

ORAL ORDER

(PER: HON'BLE MR. JUSTICE S.G.PANDIT)

This Sales Tax Revision Petition by the State Authorities is directed against the order dated 26.07.2022 passed by the Karnataka Appellate Tribunal in STA.Nos.3502-3549/2013, 3550-3597/2013 and Cross ST Appeal Nos.135-230/2016 insofar as it holds that the respondent herein is entitled to claim exemption of stock transfer (Common Point No.1 in STA.No.3502 to 3549 of

2013 and STA.No.3550 to 3597 of 2013); and consequently, restoring the order of the FAA dated 30.09.2013 insofar as it disallows the claim for exemption on stock transfers made by the respondent herein to hear arguments afresh.

2. Heard learned Additional Government Advocate Sri.Aditya Vikram Bhat for petitioners/State and learned counsel Sri.Bharat B. Raichandani along with Sri.Raaghul Piraanesh for respondent through video conference. Perused the entire petition papers.

3. Along with the appeal, I.A.No.1/2024 is filed by the State under Section 5 of the Limitation Act, 1963 to condone the delay of 435 days in preferring the above petition. The above petition is filed under Section 65(1) of the Karnataka Value Added Tax Act, 2003 (for short, 'KVAT Act'). Any party invoking Section 65(1) of KVAT Act shall prefer the revision petition within 180 days from the

date on which the order under Sub-Section (9) of Section 63 was communicated to him.

4. Affidavit is filed in support of I.A.No.1/2024 and better affidavit is filed on 17.11.2025 in support of I.A.No.1/2024.

5. In the case on hand, the impugned order under challenge is passed by the Tribunal on 26.07.2022 whereas, it is submitted by learned Additional Government Advocate that the said order was communicated to the Department on 19.10.2022, after nearly 85 days from the date of passing the order. The approval to file Revision Petition was passed on 30.01.2023 and the present petition is filed before this Court on 21.06.2024, i.e., more than 1 ½ years from the date of order granting approval to file Revision Petition. Learned Additional Government Advocate taking us through the affidavit in support of I.A.No.1/2024 as well as better affidavit filed before this Court on 17.11.2025 would submit that the State has

explained the cause for delay in preferring the revision petition and further submits that the concerned officer was on medical emergency and as such the draft could not be approved. Further, learned Additional Government Advocate would submit that the substantial questions of law raised in the Revision Petition needs consideration and if the delay is not condoned, the State would suffer huge revenue loss. Thus, learned Additional Government Advocate would pray for accepting the cause shown in the affidavit accompanying the application and in the better affidavit. Thus, he prays for allowing the I.A.1/2024 for condonation of delay and to entertain revision petition.

6. On the other hand, learned counsel Sri.Bharat B. Raichandani appearing for respondent vehemently opposes the condonation by stating that no reasons much less sufficient reasons are assigned by the State in seeking condonation of delay. Learned counsel would submit that the order was passed by the Tribunal on 26.07.2022 and even assuming that the order was communicated to the

Department on 19.10.2022, the Revision Petition was filed on 21.06.2024 i.e., more than 2 years from the date of receipt of the impugned order. Further, learned counsel for respondent would submit that the Government after approving the filing of Revision petition, order was passed on 30.01.2023 and thereafter the State has taken more than 1 ½ years to file the revision petition, for which, there is no plausible reason. Learned counsel would place reliance on the decision of the Hon'ble Apex Court in the case of ***SHIVAMMA (DEAD) BY LRS VS. KARNATAKA HOUSING BOARD AND OTHERS***[1] as well as the order passed by this Bench in the case of the ***ASSISTANT COMMISSIONER OF COMMERCIAL TAXES (AUDIT-1.4) AND ANOTHER VS. BHARATH PETROLEUM CORPORATION LTD.,***[2]**.**

[1] *2025 SCC OnLine SC 1969*

[2] *Civil Revision Petition No.116/2025 and Connected Matters, Dated 05.12.2025*

7. Having heard the learned counsel appearing for the parties and on perusal of I.A.No.1/2024 along with affidavits filed in support of I.A., the only point which falls for our consideration is as to,

> *Whether the State has assigned sufficient cause to allow I.A.No.1/2024 and to condone the delay?*

8. Answer to the above point would be in the negative and I.A.No.1/2024 is liable to be rejected for the following reasons:

Condonation of delay depends on the facts and circumstances of each case. No straight jacket formula can be followed in the matter of condonation of delay. Further, the length of delay is not determinable factor, but how the delay is explained is the main factor to be considered to condone the delay.

9. The Hon'ble Apex Court in the recent decision in ***SHIVAMMA (DEAD) BY LRS*** (supra) in the matter of

condonation of delay at paragraph 128 to 134 has observed as follows:

> "***128.*** *When it comes to condonation of delay, the length of delay is immaterial, and what matters is the acceptability of the explanation. A short delay may still warrant dismissal if unsupported by sufficient cause, whereas even a long delay may be condoned if justified by circumstances demonstrating bona fides.*
>
> ***129.*** *Delay by itself is not inherently indicative of negligence. In certain cases, unavoidable circumstances such as illness, fraud, miscommunication, or bona fide mistake may stretch over long periods, yet remain excusable if they are explained with candour and supported by material. Conversely, an unexplained delay of even a few days may reveal inaction or deliberate disregard of statutory timelines, and therefore disentitle the party to indulgence.*
>
> ***130.*** *The quantum of delay has no direct nexus in law with sufficiency of the cause. The law are independent and diverse factors. Hence the extent of delay should not determine whether the cause is sufficient or not. Section 5 of the Limitation Act does not say that such discretion can be*

exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the criterion. The criterion for condoning the delay is sufficiency of reason and not the length of the delay.

131. *The decisive factor is the adequacy of the cause shown, not the length of delay. What is critical is whether the party seeking condonation acted with reasonable diligence during the prescribed period and whether the reasons advanced demonstrate a genuine inability to file within time. Thus, the test is qualitative rather than quantitative.*

132. *This is not to say that the length of delay is irrelevant. A long delay naturally casts a heavier burden on the applicant to furnish cogent, credible, and convincing explanations. The proof required becomes stricter in proportion to the delay. The longer the time elapsed, the stronger the justification that must be put forth. Hence, length is instructive in determining the degree of scrutiny, but it is not determinative of the outcome.*

133. *The length of the delay functions as a contextual indicator but not a determinative factor. It alerts the court to the degree of rigour required in examining the explanation, yet the ultimate focus* *remains on whether "sufficient cause" has been shown. The doctrine thereby preserves both the integrity of statutory timelines and the imperative of doing justice in deserving cases.*

134. *Thus, in exercising discretion under Section 5 of the Limitation Act the courts should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case the consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach but in the latter case, no such consideration may arise and such a case deserves a liberal approach. No hard-and-fast rule can be laid down in this regard. The court has to exercise the discretion on the facts of each case keeping in mind that in construing the expression "sufficient cause", the principle of advancing substantial justice is of prime importance."*

10. A reading of the above portion of the order of the Hon'ble Apex Court, would make it clear that while exercising the discretion under Section 5 of the Limitation

Act, the Court shall adopt a pragmatic approach and the consequences of both the sides shall have to be weighed.

11. As noted above, the impugned order is dated 26.07.2022 and the same was according to the petitioners, communicated to them on 18.10.2022; from the said date, the State has taken nearly 3 ½ months to grant approval for filing this petition.

12. Admittedly, the approval for filing the Revision Petition was granted on 30.01.2023 and the present petition is filed on 22.06.2024 i.e., nearly 1 ½ years from the date of granting of approval. There is no acceptable explanation for the delay of 1 ½ years from the date of approval to the date of filing the present petition. It is stated that the Law Officer in-charge was on medical leave and hence could not file petition within time. The State cannot depend on a particular officer and that particular officer is not indispensible for the State. The State machinery shall function irrespective of individuals.

Moreover, no material whatsoever is placed on record to demonstrate that Law Officer was on medical leave. The explanation that, one Law Officer was on medical leave and therefore, there was delay in getting the approval of the draft petition cannot be accepted in the facts and circumstances of the case.

13. As we do not find acceptable or plausible reason to condone the delay, we reject I.A.No.1/2024 and consequently the present STRP.

Sd/-
(S.G.PANDIT)
JUDGE

Sd/-
(K. V. ARAVIND)
JUDGE

NC
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