

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI**

(APPELLATE JURISDICTION)

**ORDER ON I.A. NO. 464 OF 2015
IN DFR NO. 2126 OF 2015**

Dated: 14th March, 2016

**Present: HON'BLE MR. JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER
HON'BLE MR. T. MUNIKRISHNAIAH, TECHNICAL MEMBER**

IN THE MATTER OF

Salasar Polytex Pvt. Ltd.

Having its registered office at
5007, World Trade Centre, Nr. Udhna Darwaja,
Ring Road, Surat-395002, Gujarat.

**..... Applicant/
Appellant**

VERSUS

**1. Gujarat Electricity Regulatory Commission,
6th Floor, GIFT One, GIFT City,
District Gandhinagar – 382355.**

**2. Dakshin Gujarat Vij Company Limited,
Nana Varchha Road, Near Kapodara Char Rasta,
Surat – 395006, Gujarat.**

**3. Gujarat Urja Vikas Nigam Limited,
Sardar Patel Vidyut Bhavan,
Race Course Circle, Vadodara -390007**

..... Respondents

Counsel for the Appellant ... Mr. S.B. Upadhyay, Sr. Adv.
Mr. Sakie Jakharia
Mr. Pawan Kumar Mishra

Counsel for the Respondent(s)... Ms. Ranjitha Ramachandran
Mr. Shubham Arya for R-2 & 3

ORDER

PER HON'BLE JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER

1. This Interlocutory Application, being IA No. 464 of 2015 in DFR No. 2126 of 2015, has been moved on behalf of Salasar Polytex Pvt. Ltd. (in short, the '**Applicant/Appellant**'), seeking condonation of delay of 133 days in filing the appeal against the Impugned Order, dated 31.3.2015, passed by the Gujarat Electricity Regulatory Commission (in short the '**State Commission**') in Petition No. 1464 of 2014, pleading that there is no provision in the MYT Regulations authorizing the State Commission to determine cross subsidy surcharge in proceedings for tariff determination because the public representation in tariff proceedings more often than not does not involve focus on such surcharge which becomes a lesser known component of tariff. Such surcharge is required to be separately determined in separate proceedings after inviting comments of stakeholders. Hence, the Applicant/appellant could not avail the opportunity to participate in the proceedings determining cross subsidy surcharge. He has gained knowledge of the impugned order from the website of the State Commission after learning about the same from newspaper reports on or around 30.4.2015. The copy of the impugned order was downloaded from the website of the State Commission and the Legal Officer promptly forwarded the same to the Director of the Appellant Company.

2. As per the IA No. 464 of 2015, after discussions and deliberations, the Management of the Appellant Company decided to seek advice of consultant for technical inputs. The said impugned order was sent to the consultants on 15.5.2015 and the consultant of the Appellant Company, after conducting a technical analysis, responded to the concerns of the Company in relation to various issues in the impugned order on or around 29.5.2015.

3. Thereafter, the impugned order was forwarded to the concerned official in the Appellant Company handling legal affairs on 12.6.2015. Then, a decision was taken by the Company to challenge the impugned order and the

specific issues for challenge were crystallized by 9.7.2015 after taking into consideration the financial implications of the impugned order in the said internal discussion.

4. Thereafter, the officer handling legal affair, was informed on 13.7.2015 that the preparations for an appeal be initiated. The consultants were requested on 16.7.2015 to prepare an analysis for facilitation of understanding by legal experts and the same received on 28.7.2015. Then, a draft of appeal was sent to the Appellant Association by the counsel in Gujarat on 17.8.2015.

5. As per this IA, seeking condonation of delay, it came to light that some more documents were required to finalize the appeal and requested the Appellant to provide certain additional documents and detailed explanation on some of the analysis tables on 27.8.2015, which were supplied by the Appellant to its counsel in first week of September, 2015. Revised appeal was sent to the Appellant for circulation for comments and inputs on 15.9.2015. It was, thereafter, felt that a counsel in Delhi was also required for filing of the appeal and attending and handling the proceedings before this Appellate Tribunal. The Legal Officer of the Appellant Company contacted the counsel in Delhi on 18.9.2015. The entire set of pleadings was received by its counsel in Delhi on 23.9.2015 with a request for examining the pleadings and for legal inputs. Thereafter, certain relevant inputs were sought by the counsel in Delhi on 29.9.2015. The requisite response and the documents from the Appellant Company were received by its counsel on 6.10.2015 and, on the basis of the detailed inputs and additional documents, the appeal was revised and the same was forwarded to the Appellant on 13.10.2015. Finally, the counsel in Delhi received the approved final copy of the appeal along with all the relevant annexure on 20.10.2015 from the Appellant Company. Thus, the appeal was filed before this Appellate Tribunal by the Applicant/Appellant on 26.10.2015.

6. We have heard Mr. S.B. Upadhyaya, learned senior counsel for the Applicant/appellant and Ms. Ranjitha Ramachandran, learned counsel for

the Respondent No. 2 & 3 in this delay condonation application at length. We also perused the objections/reply filed against the delay condonation application by the Respondents.

7. We have carefully gone through the contents of the said IA and the affidavit filed in support thereof. We find that the Applicant/appellant had gained knowledge of the impugned order from the website of the State Commission after learning about the same from newspaper reports on or around 30.4.2015. The copy of the impugned order was downloaded from the website of the State Commission by the Appellant.

8. The facts mentioned in the said IA and the accompanying affidavit indicate that the Applicant/Appellant has taken due steps towards preparation and ultimate filing of the appeal with the delay of 133 days. The facts mentioned therein satisfy us as they clearly explained the reasons causing delay in filing of the instant appeal. We are satisfied and convinced with the reasons explaining the said delay in filing the said appeal. Apart from it, we are of the view that, since, there is no provision in the MYT Regulations, authorizing the State Commission to determine cross subsidy surcharge in proceedings for tariff determination and such surcharge is required to be separately determined in separate proceedings after inviting comments from the stakeholders by the State Commission. The Applicant/Appellant should be granted opportunity for hearing the instant appeal on merits. The Applicant/appellant could not avail the opportunity to participate in the proceedings determining the cross subsidy surcharge and he gained knowledge of the impugned order only on 30.4.2015.

9. Further, it is evident from the contents of the application as well as affidavit in support that there is no negligence or gross inaction and lack of bonafide on the part of the applicant. We find sufficient cause for condoning the said delay of 133 days.

10. The Hon'ble Supreme Court, in the matter of *Apangshu Mohan Lodh v. State of Tripura*, (2004) 1 SCC 119, had held that the power of condonation of delay is discretionary and has to be liberally construed. We

have considered the factum of bonafides of the Applicant/appellant and sufficient cause resulting in delay in filing the instant appeal. The said delay appears to be unintentional and deserves to be condoned. In this view of the matter, we are satisfied with the grounds explaining the said delay of 133 days in filing the instant appeal. We allow the said IA, being IA No. 464 of 2015 in DFR No. 2126 of 2015, and hereby condone the said delay in filing this appeal. The instant appeal be treated as having been filed within the period of limitation prescribed for the appeal.

11. Since, the IA, being IA No. 464 of 2015 in DFR No. 2126 of 2015 is allowed, the Registry is directed to number the Appeal and list the matter for admission on **21st March, 2016.**

PRONOUNCED IN THE OPEN COURT ON THIS 14TH DAY OF MARCH, 2016.

**(T. Munikrishnaiah)
Technical Member**

**(Justice Surendra Kumar)
Judicial Member**

√ REPORTABLE/NON-REPORTABLE

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