(2012) 01 P&H CK 0014

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 23592 of 2011

A.P.S. Enterprises APPELLANT

Vs

State of Haryana and Others RESPONDENT

Date of Decision : 31-01-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Limitation Act, 1963 — Section 5

Citation : (2013) 57 VST 474

Hon'ble Judges : M.M. Kumar, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Sandeep Goel, for the Appellant; Roopak Bansal, Additional Advocate-General, Haryana, for the Respondent

Final Decision : Disposed Off

Judgement

Ajay Kumar Mittal, J.—In this writ petition under articles 226 /227 of the Constitution of India, challenge is to the order dated September 15, 2011, annexure P9, passed by the majority members of the Haryana Tax Tribunal, Chandigarh, whereby they have refused to condone the delay for restoration of appeal which was filed by the petitioner. Brief facts as narrated in the petition may be noticed. The petitioner is a partnership firm duly registered under the provisions of the Indian Partnership Act, 1932. It is engaged in the business of manufacturing ayurvedic medicines/drugs for VLCC Company. For the assessment year 2002-03, the assessing authority vide order dated August 5, 2005, annexure P1, framed assessment. The plea of the petitioner that the goods were ayurvedic medicines was not accepted. It was observed by the assessing authority that the products fall under the category of cosmetics, perfumes, toilet goods, etc. Accordingly, the tax was imposed under the Haryana General Sales Tax Act, 1973 (in short, "the Act"). Under the Central Sales Tax Act, 1956, the stock transfers were disallowed and were treated as inter-State Sales and tax was accordingly levied. Similar assessment was made for the assessment year 2003-04 vide order dated June 27, 2005, annexure P2, wherein again the assessing authority levied penalty after refusing to accept the plea of the petitioner that its products are ayurvedic medicines. The petitioner preferred appeals against the said orders before the Joint Excise and Taxation Commissioner (Appeals) who vide order dated May 9, 2007, annexure P3, rejected the same. Feeling aggrieved, the petitioner filed appeals before the Tribunal which were fixed for hearing on January 21, 2011. Notice was sent to Shri Mohit Malik, advocate, who was counsel for the petitioner before the Tribunal at his address at 4, Civil Lines, 1st Floor, Near Hotel Park Inn, Gurgaon. On January 18, 2011, Shri Mohit Malik, advocate, sent a request for an adjournment for January 21, 2011 as he was suffering from viral fever. The application was accompanied by medical certificate. However, the Tribunal did not accept the request of the counsel and decided the matter ex parte on merits vide order dated January 21, 2011, annexure P6. The said order was dispatched by the registry of the Tribunal on February 11, 2011 and received by the petitioner on February 16, 2011. Hence this writ petition by the petitioner.

2. The learned counsel for the petitioner submitted that the appeals were dismissed on January 21, 2011, for which an application was filed for restoration on April 15, 2011. The notice which was sent for hearing fixed on January 21, 2011, was at the address of Shri Mohit Malik, advocate, who was counsel for the petitioner before the Tribunal at 4, Civil Lines, 1st Floor, Near Hotel Park Inn, Gurgaon and counsel had sent a request for an adjournment as he was suffering from viral fever along with medical certificate. However, the request of the counsel for the petitioner before the Tribunal was not accepted and the case was dismissed on January 21, 2011. Learned counsel submitted that the said order was dispatched by the Tribunal on February 11, 2011 and received by the petitioner on February 16, 2011. However, the application which was filed on April 15, 2011, was delayed by 30 days. Accordingly, application u/s 5 of the Limitation Act, 1963, for condonation of delay of 30 days was filed.

3. The learned counsel for the petitioner further submitted that the petitioner was under bona fide belief that the restoration application could be filed within a period of 60 days whereas actually it was 30 days as provided under the Act. In such circumstances, delay of 30 days had occurred. He submitted that the order passed on January 21, 2011 was in the absence of the counsel who was suffering from viral fever which had caused great prejudice to the petitioner and in the interest of justice, it needs to be recalled and the appeal may be heard on the merits after affording an opportunity to the petitioner.

4. Reply has been filed controverting the submissions made on behalf of the petitioner and supporting the order passed by the majority members of the Tribunal.

5. After giving thoughtful consideration to the rival submissions, we find merit in the submissions made by learned counsel for the petitioner.

6. The petitioner under a bona fide belief that the period of limitation of 60 days

was prescribed for filing restoration application, had filed the application on April 15, 2011 which, however, turned out to be delayed by 30 days. The plea of the assessee is plausible one and under the circumstances, it cannot be said that the delay was intentional or with mala fide intention. Further, the petitioner would not gain anything intentionally by filing the restoration application belatedly. Accordingly, the delay in filing the restoration application is condoned. While taking up the order dated January 21, 2011 passed by the Tribunal, it needs to be referred that counsel for the petitioner before the Tribunal Shri Mohit Malik had sent an application seeking an adjournment stating that he was suffering from viral fever which was supported by medical certificate. In such circumstances, it cannot be said that the medical certificate, a copy of which has been appended as annexure P5 with this petition was not a genuine document. The Tribunal was, thus, not justified in passing the order dated January 21, 2011 in the absence of the counsel for the petitioner.

7. In view of the above, in the interest of justice, the order dated January 21, 2011 is set aside and the matter is remanded to the Tribunal to decide the same afresh on merits in accordance with law. The writ petition stands disposed of accordingly.

