(2014) 01 P&H CK 0171

In the Punjab And Haryana At Chandigarh

Case No : VATAP No. 81 of 2013

Aptech Engineers APPELLANT

Vs

State of Haryana and Others RESPONDENT

Date of Decision : 10-01-2014

Acts Referred:
Haryana Value Added Tax Act, 2003 — Section 33(3), 33(5), 33(6), 36
Limitation Act, 1963 — Section 5

Citation : (2014) 174 PLR 102 : (2014) 69 VST 369

Hon'ble Judges : Anita Chaudhary, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Rajiv Agnihotri, Advocate for the Appellant

Judgement

Ajay Kumar Mittal, J.—This appeal has been filed by the assessee u/s 36 of the Haryana Value Added Tax Act, 2003 (in short, "the Act") against the order dated November 29, 2012 (annexure A4) passed by the Haryana Tax Tribunal, Chandigarh (hereinafter referred to as "the Tribunal") in STA No. 224 of 2011-12, for the assessment year 2006-07, claiming the following questions of law:

(i) Whether, in the facts and circumstances of the case, the Haryana Tax Tribunal was right in dismissing the appeal being barred by limitation as it did not condone the delay caused on account of misguidance of the chartered accountant which misguided itself with provision of section 33(6) instead of section 33(5) of the Act that the appeal can be filed in 180 days instead of 60 days?

(ii) Whether, in the facts and circumstances of the case, the Haryana Tax Tribunal was right in not appreciating that the appellate authority was wrong in not providing an opportunity to the appellant to plead its case before the assessing authority and the first appellate authority was further wrong in misinterpreting the provision of section 33(3) of the Act which never says that once the case is decided ex parte, no opportunity exists for the assessee under the Act?

(iii) Whether, in the facts and circumstances of the case, the Tribunal was not wrong in not appreciating the settled law that powers of the appellate authority are co-terminus with that of the assessing authority?

(iv) Whether, in the facts and circumstances of the case, the Haryana Tax Tribunal as well as the first appellate authority was wrong in not appreciating that the initiation of the proceedings and framing of assessment itself is bad and further that notices were not properly and legally communicated when the business of the appellant is lying closed and application for cancellation of registration certificate is pending cancellation?

(v) Whether, in the facts and circumstances of the case, the Tribunal is not wrong in dismissing the appeal in limine when on merits the appellant is conducting job-work of painting and power coating material supplied by the contractee and when there is no transfer of property in goods and hence question of tax does not arise which is also clear from the previous year''s assessment orders?

The facts necessary for adjudication of the present appeal as narrated therein are that the appellant-M/s. Aptech Engineers was engaged in the job-work of painting and powder coating and the material used for execution was being supplied by the contractee and it was providing only labour job. The appellant had been filing returns and discharging its obligations, if any, though there was no tax liability as there was no transfer of property in goods. The assessment for the year 2006-07 was framed by the assessing authority ex parte vide order dated March 22, 2010 (annexure A1). The notice was pasted on the last known business address whereas the appellant had already closed its business on March 31, 2008. Feeling aggrieved, the appellant filed an appeal before the appellate authority who vide order dated June 20, 2011 (annexure A2) dismissed the appeal. Still dissatisfied, the appellant filed an appeal before the Tribunal on December 15, 2011 which was barred by 70 days. Accordingly, an application for condonation of delay was filed pleading that the appellant was wrongly advised that the appeal before the Tribunal can be filed within 180 days whereas the appeal was to be filed within 60 days. The Tribunal vide order dated November 29, 2012 (annexure A4) rejected the application for condonation of delay and dismissed the appeal as barred by limitation. Hence, the present appeal.

2. We have heard learned counsel for the appellant.

3. The primary question that arises for consideration in this appeal is whether the Tribunal was right in declining to condone the delay of 70 days in filing the appeal by the appellant.

4. Examining the legal position relating to condonation of delay u/s 5 of the Limitation Act, 1963 (in short, "the 1963 Act") it may be observed that the honourable Supreme Court in Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation and Another, laying down the broad principles for adjudicating the issue of condonation of delay, in paras 14 and 15, observed as under:

14. We have considered the respective submissions. The law of limitation is founded on public policy. The Legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the Legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time.

15. The expression ''sufficient cause'' employed in section 5 of the Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard-and-fast rule can be laid down in dealing with the applications for condonation of delay, this court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate-- Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, , N. Balakrishnan Vs. M. Krishnamurthy, and Vedabai @ Vaijayanatabai Baburao Pateil Vs. Shantaram Baburao Patil and Others, .

5. It was further noticed by the honourable apex court in R.B. Ramlingam v. R.B. Bhvaneswari [2009] (1) RCR (Civil) 892 as under:

... It is not necessary at this stage to discuss each and every judgment cited before us for the simple reason that section 5 of the Limitation Act, 1963 does not lay down any standard or objective test. The test of ''sufficient cause'' is purely an individualistic test. It is not an objective test. Therefore, no two cases can be treated alike. The statute of limitation has left the concept of ''sufficient cause'' delightfully undefined, thereby leaving to the court a well-intentioned discretion to decide the individual cases whether circumstances exist establishing sufficient cause. There are no categories of sufficient cause. The categories of sufficient cause are never exhausted. Each case spells out a unique experience to be dealt with by the court as such.

It was also recorded that:

For the aforestated reasons, we hold that in each and every case the court has to examine whether delay in filing the SLP stands properly explained. This is the basic test which needs to be applied. The true guide is whether the petitioner has acted with reasonable diligence in the prosecution of his appeal/petition . . .

6. From the above, it emerges that the law of limitation has been enacted which is based on public policy so as to prescribe time-limit for availing of legal remedy for redressal of the injury caused. The purpose behind enacting law of limitation is not to destroy the rights of the parties but to see that the uncertainty should not prevail for unlimited period. u/s 5 of the 1963 Act, the courts are empowered to condone the delay where a party approaching the court belatedly shows sufficient cause for not availing the remedy within the prescribed period. The

meaning to be assigned to the expression "sufficient cause" occurring in section 5 of the 1963 Act should be such so as to do substantial justice between the parties. The existence of sufficient cause depends upon facts of each case and no hard and fast rule can be applied in deciding such cases.

7. The honourable apex court in Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation and Another, and R.B. Ramlingam''s cases [2009] (1) RCR (Civil) 892 noticed that the courts should adopt liberal approach where delay is of short period whereas the proof required should be strict where the delay is inordinate. Further, it was also observed that judgments dealing with the condonation of delay may not lay down any standard or objective test but is purely an individualistic test. The court is required to examine while adjudicating the matter relating to condonation of delay on exercising judicial discretion on individual facts involved therein. There does not exist any exhaustive list constituting sufficient cause. The applicant/petitioner is required to establish that inspite of acting with due care and caution, the delay had occurred due to circumstances beyond his control and was inevitable.

8. The question regarding whether there is sufficient cause or not, depends upon each case and primarily is a question of fact to be considered taking into totality of events which had taken place in a particular case. The plea taken by the appellant was that there is a different period of limitation prescribed under the Act. Learned counsel for the appellant submitted that the limitation for filing the appeal where the assessee was aggrieved by the first appellate authority was 60 days whereas in case of the Department is 180 days. It was wrongly advised to the appellant that the delay in filing the appeal was 180 days. It was under those circumstances that the delay of 70 days had occurred in filing the appeal. Accordingly, the explanation furnished by the appellant being plausible leads to the conclusion that there was sufficient cause for delay in filing the appeal. Once that was so, the application for condonation of delay ought to have been allowed. In view of the above, it is held that the Tribunal was not right in refusing to condone the delay in filing the appeal. Accordingly, the substantial questions of law are answered by holding that there was sufficient cause for condonation of delay in filing the appeal before the Tribunal. As a sequel, the appeal is allowed and the matter is remitted to the Tribunal to adjudicate the dispute on merits in accordance with law.

