
(1993) 08 P&H CK 0025
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 975 of 1993

Ashoka Trading Co.

APPELLANT

Vs

Excise and Taxation Officer cum-Assessing Authority and
Another

RESPONDENT

Date of Decision : 05-08-1993

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Haryana General Sales Tax Act, 1973 — Section 39(5)

Citation : (1993) 104 PLR 698

Hon'ble Judges : N.K. Kapoor, J;A.L. Bahri, J

Bench : Division Bench

Advocate : A.K. Mittal, for the Appellant; Arun Nehra, A.A.G., for the Respondent

Judgement

A.L. Bahri, J.—Vide this Order two writ petitions bearing Nos. C. W. P. 975 of 1993 and C W. P 976 of 1993 are being disposed of filed by the same petitioner raising common question of law. These two writ petitions pertain to assessment years 1985-86 and 1986-87. The main judgment is prepared in C.W P. No. 975 of 1993. The petitioner was granted exemption certificate by the authorities under the Haryana General Sales Tax Act for two years aforesaid. The assessing authority framed assessment. However, the Deputy Excise and Taxation Commissioner on issuing notices u/s 40(1) of the Act revised assessment on September 30, 1991 Annexure P-4 is copy of the order. The petitioner filed an appeal before Sales Tax Tribunal. Ultimately, the Tribunal dismissed the appeals as well as application filed therein for not showing sufficient cause for non-payment of the tax on October 22, 1992. Copy of the order is Annexure P-8, which is challenged in this petition. .

2. On notice of motion having been issued, reply has been filed on behalf of the respondents supporting the order of the Tribunal.

3. Short question that arises for consideration is with respect to interpretation to Section 39 (5) of the Act which is reproduced below:--

"(5) No appeal shall be entertained unless it is filed within sixty days from the date of the order appealed against the appellate authority is; satisfied that the amount of the tax assessed, and the penalty and interest, if any, recoverable from the person has been paid ;

Provided that the said authority, if satisfied that the person is unable to pay the whole of the amount of tax assessed, or the penalty imposed, or the interest due, he may, if the amount of tax and interest admitted by the appellant to be due has been paid, for reasons to be recorded in writing entertain the appeal and may stay the recovery of the balance amount subject to the furnishing of the bank guarantee or adequate security in the prescribed manner to the satisfaction of the appellate authority ;

Provided further in the ease of an appeal against any order which has to be communicated by the appropriate authority to the appellant, the period of sixty days shall commence from the date of receipt of the copy of the order by the appellant and in the case of an appeal against any other order made under this Act, the time spent in obtaining the certified copy of the order shall be excluded in computing the period of sixty days".

On January 30, 1992, the appeal was sent to the Tribunal by registered post and it was received in the office of the Tribunal well within the period of sixty days from the date of the communication of the order. However, alongwith the appeal no application was filed showing sufficient cause for non-deposit of tax and the penalty imposed. It was subsequently on July 21, 1992, such an application was filed which was dismissed by the Tribunal. The appeal was also dismissed. The question thus for consideration is as to whether the Tribunal was justified in dismissing the aforesaid application without recording any reasons. The same was dismissed on the ground of limitation. On perusal of Section 39 (5) of the Act as reproduced above, we find that no period of limitation as such was prescribed for filing such like application. The same could be filed either alongwith the appeal or separately. The question of satisfaction of the appellate authority could be determined even after expiry of sixty days as provided u/s 39 (5) The satisfaction of the appellate authority in the contest has to be judicial satisfaction. If alongwith appeal material was produced by the appellant with respect to payment of the amount of tax, penalty and interest imposed the appeal could be entertained. If the appellate authority was satisfied with respect to cause for nonpayment of such amount of the tax etc., this satisfaction could be on the basis of the material available, at the time when the appellate authority was to determine the question of entertainment of the appeal. Such a cause could be shown either in the grounds of appeal it-self or in a separate application or even orally if the appellant happened to be present before the assessing authority. Present is the case where before the matter was taken up by the appellate authority an application has already been made showing the cause of nonpayment of tax etc. The matter was under consideration of the Supreme Court in Shyam Kishore and others Vs. Municipal Corporation of Delhi and

another, . Section 170 for the Delhi Municipal Corporation Act provides for hearing and determination of the appeal. Such an appeal can be entertained within a period of thirty days. The proviso to the aforesaid provision reads as under :-

"Provided that an appeal may be admitted after the expiration of the period prescribed therefore by this section if the appellant satisfied the court that he had sufficient cause for not preferring the appeal within that period".

The reading of the provision aforesaid will show that the appeal can be entertained after expiry of the period prescribed if sufficient cause for not preferring the appeal has been shown. The appeal could be admitted or entertained but could not be heard or disposed of without ore deposit of the disputed tax. The appellate authority could adjourn hearing of appeal for giving time to deposit tax. The Court observed as under :-

"This apart, an assasse may not be able to deposit the tax while filing the appeal but may be able to pay it up within a short time, or at any rate, before the appeal comes on for hearing in the normal course. There is no reason to construe the provision so rigidly as to disable him from doing this".

The ratio of the above decision could be applicable to the case in hand The appellate authority is to entertain the appeal filed within limitation on payment of the amount of tax, penalty or interest as the case may be. The appellate authority is also to entertain the appeal if sufficient cause is shown for nonpayment of the tax etc. and pass appropriate orders if the appellant shows his inability to pay the tax etc. as mentioned u/s 39(5) of the Act, Such determination of cause can also be at the time of hearing of the appeal, on reasons to be recorded in writing i. e the appellate Authority can direct the stay of recovery of amount or part thereof subject to furnishing of bank guarantee or adequate security in the prescribed manner. In the present case, the appellate-Tribunal did not advert to exercise jurisdiction in the matter of disposal of the application filed by the appellant on merits As already stated above, no specific limit is prescribed for filing such like application. The order of the Tribunal, therefore, cannot be sustained in law. The same is quashed. The matter is sent back to the Tribunal. Parties through counsel are directed to appear before the Tribunal on 25.8 1993. For interim directions, if any, the petitioner will approach the Tribunal. In the meantime, no further recovery will be effected.