(2018) 04 P&H CK 0434

In the Punjab And Haryana At Chandigarh

Case No : Vat Appeal No. 34 Of 2018 (O&M)

M/s Parkash Brick Co. — APPELLANT

Vs

State Of Haryana And Another. — RESPONDENT

Date of Decision : 27-04-2018

Acts Referred:
Haryana Value Added Tax Act, 2003 — Section 36

Citation : (2018) 04 P&H CK 0434

Hon'ble Judges : Ajay Kumar Mittal, J;Anupinder Singh Grewal, J

Bench : Division Bench

Advocate : Raj Kapoor Malik

Final Decision : Dismissed

Judgement

1. This order shall dispose of VATAP Nos. 34 to 39 of 2018 as according to the learned counsel for the appellant-assessee, the issue involved in all these six appeals is identical. However, the facts are being extracted from VATAP No. 34 of 2018.

2. VATAP No. 34 of 2018 has been preferred by the appellant-assessee under Section 36 of the Haryana Value Added Tax Act, 2003 (in short, "the HVAT Act") against the impugned order dated 23.11.2017, Annexure A.6, passed by the Haryana Tax Tribunal, (in short, "the Tribunal") for the assessment year 2009-10 in STA No.422 of 2014-15, claiming following substantial questions of law:-

(i) "Whether the appellate court as well as Tribunal, on the facts and in the circumstances of the case, were legally justified in refusing to condone the delay, and dismissing the appeals as barred by limitation?

(ii) Whether the appellate court as well as Tribunal did not consider the documentary evidence of the appellant for the purpose of condonation of delay in filing the appeal?

(iii) Whether on the facts and the circumstances of the case, appellant could be made to suffer on account of fault of his counsel, when the appellant has handed over all the medical documents for placing on record before the appellate authority and counsel has withheld the medical document of appellant and filed the application of delay without supporting such documents?

3. A few facts relevant for the decision of the controversy involved as narrated in VATAP No.34 of 2018 may be noticed. The appellant-assessee is a proprietor/ owner of the brick Company. The said company was working under the name and style of M/s Parkash Brick Company situated at Village Narar District Kaithal. It was duly registered under the provisions of the HVAT Act and the Central Sales Tax Act 1956 (in short, "the CST Act). The assessee company is manufacturing bricks. The registration of this brick company under the HVAT Act was granted to the appellant-assessee w.e.f. 01.04.2005. Vide order dated 24.01.2012, Annexure A.1 the assessing authority, Kaithal framed the demand against the appellant-assessee amounting to ` 2,78,500/- for the assessment year 2009-10. The assessment order was challenged by the appellant-assessee before the Joint Excise & Taxation Commissioner (Appeals), Ambala on different grounds in six appeals for different assessment years. The chart of relevant dates for different assessement years is given below:-

Assessment

Date of order

Received on

Date of filing

year

2008-09

10.08.2010

21.03.2012

06.06.2013

2009-10

24.01.2012

21.03.2012

06.06.2013

2003-04

08.10.2012

03.11.2012

22.11.2013

2010-11

08.10.2012

03.11.2012

22.11.2013

2011-12

08.10.2012

03.11.2012

22.11.2013

2002-03

08.10.2012

03.11.2012

22.11.2013

A delay application for condonation of 382 days for assessment years 2008-09 and 2009-10 whereas an application of condonation of delay of 323 days in filing the remaining four appeals was also filed along with the appeal. Vide common order dated 18.02.2014, Annexure A.4, the first Appellate Authority dismissed all the six appeals filed by the appellant-assessee on the ground of delay as time-barred without going into the merits of the case. Aggrieved by the order, the appellant-assessee filed an appeal before the Tribunal on 16.06.2014, Annexure A.5. It was inter alia pleaded that no business was being conducted in the concerned firm since 2010. The proprietor Parkash Chahal developed certain complications with regard to his health in March 2012. He was taking treatment from the local doctor and was not able to do his day to day activity. On account of his deteriorating health condition, he was admitted in Government Medical College, Sector-32, Chandigarh. He was found suffering from Hepatitis C. The medical record of Parkash Chahal was produced before the Tribunal. Vide order dated 23.11.2017, Annexure A.6, the Tribunal upheld the order dated 18.02.2014 passed by the Joint Excise & Taxation Commissioner (Appeals), Ambala and the appeal was dismissed by the Tribunal only on the ground of delay being barred by limitation. Hence, the instant six appeals by the appellant-assessee.

4. We have heard learned counsel for the appellant-assessee.

5. After perusal of all the documents produced by the assessee-appellant, it has been categorically recorded by the Tribunal that although, Parkash Chahal, proprietor of the appellant-assessee was taking treatment regarding his illness for some period during that time but it could not be said that he was unable to file the appeals thereafter. There was thus no explanation for the long delay of

382 days in filing two appeals and 323 days delay in filing the remaining four appeals. It was further recorded that except the document regarding admission of Parkash Chahal in the hospital from 21.11.2012 to 04.12.2012, no other documents were produced. The appeals were filed on 06.06.2013 and 22.11.2013. It was, thus, rightly concluded by the Tribunal that there was no sufficient ground to condone the long and inordinate delay in filing the first appeal as there was no satisfactory explanation furnished by the appellant. The relevant findings recorded by the Tribunal in this regard read thus:

"We have very carefully perused all the documents produced today regarding illness of Parkash Chahal, proprietor of the assessee. As regards treatment of depression etc. taken by Parkash Chahal since 05.02.2012 onwards, no such plea was even raised before the first Appellate Authority. Even in the present second appeals, it is alleged that Parkash Chahal developed certain health complications in March, 2012. The documents now produced are regarding treatment since 05.02.2012. Moreover, from the said documents regarding treatment of depression etc. from 05.02.2012 to 08.10.2012, it cannot be said that Parkash Chahal was unable to file the first appeals during that period due to only depression etc.

In addition to the aforesaid, two first appeals for assessment year 2008-09 and 2009-10 were filed on 06.06.2013 whereas the remaining four appeals were filed on 22.11.2013. There is no explanation whatsoever as to why the four appeals which were filed on 22.11.2013 could also not be filed on 06.06.2013 when the other two appeals were filed. There is thus no explanation for the said long delay of 5 ½ months in filing of four first appeals even after filing of remaining two appeals.

The long and inordinate delay of 382 days in filing two first appeals and 323 days in filing the remaining four appeals cannot be condoned on the basis of averments made and documents produced by the appellant. It may be added that before the first Appellate Authority, except document regarding admission of Parkash Chahal in hospital from 21.11.2012 to 04.12.2012, no other documents were produced.

For the reasons aforesaid, we find that first appeals filed by the assessee have been rightly dismissed as time barred by the first Appellate Authority. Despite liberal approach, there is no sufficient ground to condone the long and inordinate delay in filing the first appeals. There is, therefore, no ground to interfere with impugned order dated 18.02.2014 of first Appellate Authority dismissing all the six first appeals of the assessee as time barred."

6. Even before this Court, learned counsel for the appellant-assessee has not been able to produce any material on record to justify the delay in filing the appeals before the authorities below or to controvert the findings recorded by the first appellate authority and the Tribunal warranting interference by this Court. Thus, no substantial question of law arises and consequently, all the six appeals

are dismissed. In view of the dismissal of the appeals, the applications for condonation of delay in filing the appeals in this Court are also dismissed.