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(2012) 08 P&H CK 0118

In the Punjab And Haryana At Chandigarh

Case No : VATAP No''s. 3 and 5 of 2012

Paliwal Overseas Pvt. Ltd. — APPELLANT

Vs

State of Haryana — RESPONDENT

Date of Decision : 21-08-2012

Acts Referred:

Haryana Value Added Tax Act, 2003 — Section 36
Limitation Act, 1963 — Section 5

Citation : (2012) 55 VST 367

Hon'ble Judges : G.S. Sandhawalia, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Avneesh Jhingan, for the Appellant;

Final Decision : Dismissed

Judgement

Ajay Kumar Mittal, J.—This order shall dispose of VATAP Nos. 3 and 5 of 2012 as according to the learned counsel for the appellant, the facts involved therein are similar and the grounds seeking condonation of delay before the first appellate authority in both the appeals are identical. In VATAP No. 3 of 2012, there was a delay of 789 days whereas in VATAP No. 5 of 2012, there was a delay of 654 days in filing the appeal before the first appellate authority. For brevity, the facts are being taken from VATAP No. 3 of 2012. 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 June 13, 2011 (annexure A3) passed by the Haryana Tax Tribunal (hereinafter referred to as, "the Tribunal") claiming the following substantial questions of law :

(I) Whether, in the facts and in the circumstances of the case, the Tribunal was justified in refusing to condone the delay ?

(II) Whether, in the facts and in the circumstances of the case, the cause given by the dealer could have been rejected as being insufficient ?

(III) Whether, in the facts and circumstances of the case, the Tribunal was right in law in dismissing the appeal for there being no ''sufficient cause'' to condone the delay especially when the first appellate authority had recorded a finding that the delay of appeal was actually because of the legal position which became clear in November, 2009 ?

(IV) Whether, in the facts and circumstances of the case, where substantial justice and procedure technicality of limitation were pitted against each other, was the dismissal of the case on technicality of limitation justified ?

(V) Whether, in the facts and circumstances of the case, when there was no mala fide for delaying the proceedings and a bona fide explanation has been tendered, was it not a case where the delay should have been condoned and at least the order of Assessing Authority could have been tested on merits at least once in appeal ?

(VI) Whether, in the facts and circumstances of the case, where bona fide explanation of delay has been tendered and where the matter is covered by a decision of the Tribunal, was the dismissal of the case on grounds of limitation justified ?

2. The facts necessary for adjudication of the present appeal as narrated therein are that the assessment for the assessment year 2003-04 was framed vide order dated March 5, 2007. It was found that the provisional refund which was allowed to the assessee-dealer as an exporter was excess amounting to Rs. 28,06,654. Thereafter, a notice was issued for charging of interest on excess refund and vide order dated September 10, 2007 (annexure A1), the assessing authority charged interest of Rs. 17,82,168. The said order was communicated to the assessee on September 17, 2007. Feeling aggrieved, the assessee filed an appeal before the appellate authority. As the appeal was delayed, an application for condonation of delay was also filed along with the appeal. The appellate authority vide order dated February 11, 2010 (annexure A2) dismissed the appeal being time-barred as there was delay of 789 days. Still being dissatisfied, the assessee filed an appeal before the Tribunal. The Tribunal vide order dated June 13, 2011 (annexure A3) upheld the order of the appellate authority and dismissed the appeal of the assessee. Hence, the present appeal.

3. The solitary question that arises for consideration in these appeals is whether there was sufficient cause for condonation of delay in filing the appeals which was belated ?

4. After having heard learned counsel for the appellant, we do not find any merit in the appeal. This court in VAT Appeal No. 47 of 2012 (Hansaflon Plasto Chem. Ltd. v. State of Haryana [2012] 55 VST 361 (P&H)) decided on July, 5, 2012, following the decision of the honourable Supreme Court in Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation and Another, and R. B. Ramlingam v. R. B. Bhuvaneshwari [2009] 1 RCR (Civil) 892 had analyzed the broad principles for condonation of delay u/s 5 of the Limitation Act, 1963 as under (pages 365 and 366 in VST 55) :

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7. 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 of 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.

8. The honourable apex court in Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation and Another, and R. B. Ramlingam''s case [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.

5. Examining the facts in the present case, no ground for condonation of colossal delay of 789 days has been made out. 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. In the present case after appreciating, the matter it cannot be said that there was sufficient cause for condonation of delay. The Assessing Authority had decided the matter and the order, was communicated to the dealer on September 17, 2007. The reason advanced for condonation of delay is that Shri Avinash Chander Sharma son of Shri Lal Chand Paniwal who is the Director of the assessee-company was looking after the taxation matters of the company who had fallen ill and after recovery from the said ailment, due to resulting weakness, it slipped out of his mind to file the appeal. It is pleaded that for this reason the appeal could not be filed within time. The affidavit of the Director filed does not specify the period of ailment and the nature of illness. Further, no details and supporting material had been produced to substantiate such, a plea. In the absence of definite averments and substantive proof, the ground taken for condonation of delay does not inspire confidence. Such a general plea without there being any material cannot be accepted and could be raised in all cases. The appellant was required to act with care and due diligence in pursuing litigation which is absent in the present case. In view of the above, no question of law much less a substantial question of law arises in this appeal. Accordingly, there is

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no merit in these appeals and the same are hereby dismissed.

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