(2014) 01 P&H CK 0009

In the Punjab And Haryana At Chandigarh

Case No : VATAP No. 156 of 2013 & VATAP No. 56 of 2013

Riteek Steels Pvt. Ltd. APPELLANT

Vs

State of Haryana and Others RESPONDENT

Date of Decision : 15-01-2014

Acts Referred:

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

Citation : (2014) 01 P&H CK 0009

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

Bench : Division Bench

Advocate : Rajiv Agnihotri, Advocates for the Appellant

Judgement

Ajay Kumar Mittal, J.—This appeal has been filed by the assessee under Section 36 of the Haryana Value Added Tax Act, 2003 (in short "the Act") against the order dated 19.8.2013 (Annexure A-4) passed by the Haryana Tax Tribunal (hereinafter referred to as "the Tribunal") claiming the following substantial questions of law:-

(i) Whether the delay in filing appeal before the appellate authority late by 4 years and 7 months is so fatal to be dismissed as barred by limitation and particularly when the issue was pending before the Hon''ble High Court?

(ii) Whether the Tribunal should not have taken cognizance of decision of Hon''ble Punjab & Haryana High Court in case of Gheru Lal Bal Chand cited in CWP 6573 of 2007 dated 23.9.2011 keeping in view the merits of the case that the additional demand is only on account of input tax disallowing on the basis the seller did not discharge tax obligation?

2. Briefly stated, the facts for adjudication of the present appeal are that the assessee had been engaged in the business of trading of iron and steel in the State of Haryana and purchased goods after payment of tax for the assessment year 2003-04 and deposited due tax according to the returns after adjusting the

input tax. The assessing authority vide order dated 26.3.2007 (Annexure A-1) framed the assessment for the year 2003-04 by disallowing the input tax benefit on the basis of instruction issued by the Joint Excise & Taxation Commissioner (Range), Faridabad. Feeling aggrieved, the appellant filed an appeal on 18.9.2012 and the first appellate authority vide order dated 18.9.2012 (Annexure A-2) rejected the said appeal as belated. Still dissatisfied, the appellant filed an appeal dated 27.11.2012 (Annexure A-3) before the Tribunal who vide order dated 19.8.2013 (Annexure A-4) rejected the appeal which gave rise to the present appellant to approach this Court by way of instant appeal.

3. Learned counsel for the appellant relying upon the decisions of this Court dated 10.1.2013 in LPA No. 856 of 2012 (M/s. Nathu Ram Pawan Kumar v. State of Haryana and others), LPA No. 945 of 2012 (M/s. Goyal Enterprises v. State of Haryana and others) and LPA No. 1140 of 2012 (M/s. Goyal Enterprises v. State of Haryana and others) urged that the delay of 4 years and 7 months in this case be condoned.

4. Examining the legal position relating to condonation of delay under Section 5 of the Limitation Act, 1963 (in short, the "1963 Act") it may be observed that the Hon''ble 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 & 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 Indian 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 (L.A.) v. Katiji N. Balakrishnan v. M. Krishnamurthy and Vedabai v. Shantaram Baburao Patil."

5. It was further noticed by the Hon''ble Apex Court in R.B. Ramlingam Vs. R.B. Bhvaneswari, 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 special leave petition 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 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. Under Section 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 Hon''ble Apex Court in Oriental Aroma Chemical Industries Ltd. and R.B. Ramlingam''s cases (supra) 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. After hearing learned counsel for the appellant, we do not find any justification to condone the delay. The assessee-appellant against the order of the Assessing Officer preferred an appeal before the Joint Excise and Taxation Commissioners (Appeals), Rohtak [hereinafter referred to as JETC(A)"] after the expiry of more than 4 years and 7 months. It was urged that in view of decision of this Court in Gheru Lal Bal Chand''s case, CWP No. 6573 of 2007 decided on 23.9.2011, the

order of the Assessing Officer was sought to be challenged. We do not find any sufficient reason for filing the appeal belatedly before the JETC (A). The subsequent decision of the High Court cannot be a justified reason for filing the appeal belatedly. In case the appellant had any grievance against the assessment order, the assessee was required to file appeal within the time period before the assessing authority. The cases of M/s. Nathu Ram Pawan Kumar and M/s. Goyal Enterprises''s cases (supra) were decided on its facts and no benefit can be derived by the assessee from the said decisions.

9. In view of the above, no question of law much less a substantial question of law arises in this appeal. Accordingly, there is no merit in this appeal and the same is hereby dismissed.

