(2009) 09 BOM CK 0136

In the Bombay High Court

Case No : Writ Petition No. 1716 of 2009

Seva Enterprises and Another — APPELLANT

Vs

State of Maharashtra and Others — RESPONDENT

Date of Decision : 11-09-2009

Acts Referred:

Citation : (2010) 30 VST 391

Hon'ble Judges : F.I. Rebello, J;D.G. Karnik, J

Bench : Division Bench

Advocate : Nikita R. Badheka and M.M. Vaidya, for the Appellant; V.A. Sonpal, A Panel Counsel, for the Respondent

Judgement

1. Rule.

2. The petitioners have approached this Court against an order of the Sales Tax Tribunal, wherein various contentions had been raised. The petitioners had filed said appeal against the order of the Deputy Commissioner of Sales Tax (Appeal), dismissing the same as barred by limitation.

3. It is the case of the petitioner that the best judgment orders were served on the petitioner on April 7, 2003. On April 12, 2003, the petitioner was admitted in hospital and was kept in ICU ward.

4. In these circumstances, the petitioner totally lost sight of the orders which were served upon him.

5. The petitioner submits that the business was closed down some time in the year 2000. The other partner who is the son of the petitioner, is residing in England and in these circumstances, no steps had been taken for preferring an appeal in time. The petitioner came to know about non-filing of the appeal when the respondent wanted to dispose of his flat and had gone for a no objection certificate from the society. The petitioner was informed of the order of attachment passed by the sales tax authority.

6. In our opinion, considering the fact and circumstances, no point will be served to remand the matter to the second appellate Tribunal or the first appellate Tribunal.

7. Considering the cause shown, the petitioner has made out a case of sufficient cause and in these circumstances, in our opinion, the ends of justice will be met, if the orders of the first and second appellate authorities and the judgment/ orders passed by the assessing officer are set aside and restored to the file of the assessing officer and the petitioner is given an opportunity to produce whatever evidence he may have and, thereafter, to dispose of the matter according to law.

8. In the light of that, the orders of the Tribunal in Second Appeal Nos. 60 to 65 of 2008 dated July 15, 2008, the order of rectification dated April 27, 2009 in Tribunal Rectification Nos. 93 to 98 of 2008, and similarly, the orders of the first appellate authority dated November 7, 2007 as also the ex parte assessment orders for the assessment years 1996-1997, 1997-1998 and 1998-1999, all dated March 31, 2003, are set aside and the matter is restored to the file of the assessing officer on the petitioner paying costs quantified at Rs. 10,000 in favour of respondent No. 2, within 2 weeks from today. The petitioner to remain present before the assessing authority, on September 29, 2009 at 11 a.m. who thereafter will proceed with the matter and complete the proceedings not later than 6 months from that date. Rule made absolute accordingly.

9. We make it clear that we have not set aside the order of attachment, which will continue till final order passed by the assessing officer and recovery is made, of any dues if any, in terms of the fresh orders that may be so passed. We make it further clear that the assessing officer to proceed to dispose of the proceedings without considering the time-limit, if any, under the Bombay Sales Tax Act, 1959 and Maharashtra Sales Tax Tribunal, 1956. Both the parties have no objection to the same, considering the peculiar circumstances of the case.