(2007) 05 AHC CK 0380

In the Allahabad High Court

Shiv Construction Company APPELLANT

Vs

Commissioner of Trade Tax RESPONDENT

Date of Decision : 17-05-2007

Acts Referred:

Citation : (2008) 14 VST 408

Hon'ble Judges : Vikram Nath, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vikram Nath, J.—Heard Sri S.D. Singh, learned Counsel for the applicant and learned Standing Counsel for the respondent.

2. Both the above revisions arise out of the common order of the Tribunal dated March 26, 2004, whereby the appeals of the dealer for the assessment year 1994-95 (U.P.) and 1995-96 (U.P.) were dismissed affirming the order of the appellate authority dated March 16, 2002 rejecting the application for condonation of delay in filing the appeals and consequently the appeals also.

3. The questions of law sought to be raised in these applications are as follows:

(A) Whether the substantial right of appeal could be eclipsed on a delay of 18 days in filing the appeal before the Deputy Commissioner (Appeals)?

(B) Whether the finding of the Tribunal that the delay was not satisfactorily explained is perverse?

(C) Whether the finding of the Tribunal to disbelieve the explanation of delay is based on presumptions and conjectures?

(D) Whether the finding of dismissal of appeal for delay is wholly arbitrary and unjustified?

4. In effect the question of law which arises is whether the Tribunal was justified in the facts and circumstances of the case in refusing to condone the delay.

5. An ex parte assessment order was passed on February 28,1998 imposing tax liability of Rs. 1,01,500 for the assessment year 1994-95 (U.P.) and Rs. 1,28,500 for the assessment year 1995-96 (U.P.). Against the said ex parte order the dealer preferred appeal which was beyond the time period prescribed under law for filing the appeal by 18 days. The period of limitation was to expire on April 26, 1998 whereas the appeal was filed on May 13, 1998. Two appeals were filed for both the assessment years separately. Both the appeals were accompanied by application for condensation of delay supported by affidavit by one of the partners. The reason for the delay as explained in the affidavit was that the deponent was the sole working partner and he had fallen sick and other four partners were not actively involved in carrying on the business and therefore, the deponent could not inform his partners and as such the delay had been caused. In support of his illness, medical certificate of the in-charge Medical Officer, Primary Health Centre, Phulpur, Allahabad was also filed. The appellate authority rejected the delay condonation application by order dated February 26, 2000 and consequently the appeal was also dismissed on the ground that there were 5 partners, illness of one of the partners was not sufficient to explain the delay. The dealer preferred appeals before the Tribunal which were allowed on August 30, 2001 and the matter was remanded to the appellate authority to reconsider the explanation submitted by the dealer in the facts and circumstances of the case. After remand, the appellate authority again rejected the delay condonation application by order dated March 16, 2002 by detailed order giving same reasons. The appeals of the dealer against the same were also dismissed by the Tribunal by the impugned order dated March 26, 2004.

6. Aggrieved by the same, the present revisions have been filed,

7. The submission of the learned Counsel for the applicant is that there was delay of only 18 days in preferring the appeal and the dealer was not likely to reap any benefit by filing the appeal late or it would put him into any kind of advantage if the appeal was filed beyond time. In fact, the dealer would be put into adverse position as the recovery of tax against the dealer imposed by the assessing officer would have been recovered in the meantime and even the stay application could not be considered without the condonation of delay,

8. It is further submitted that the authorities below have taken a pedantic view in the matter and deprived him from availing the statutory right of appeal against the assessment order?)

9. It is further submitted that liberal approach should be adopted in such matters and ordinarily delay should be condoned so that the matters are heard on merit and are not shut out on technical grounds. In support of his argument he has relied upon the decision of this Court in the case Rum Plast Pvt. Ltd., Kanpur v. Commissioner of Trade Tax reported in [2006] UPTC 1081

10. It is further submitted that the authorities below have not disbelieved the medical certificate furnished by the deponent who was the only active partner in

carrying on the business. The application has been rejected on the ground that there were other four partners who could have filed the appeal within time

11. Learned Standing counsel submits that once the explanation tendered by the dealer was not accepted, the delay condonation application has rightly been rejected. It is further submitted that there were four other partners and with regard to them no reasons why they could not have preferred the appeal has been given and therefore, the authorities below were justified in rejecting the delay condonation application.)

12. Having considered the submissions made by the learned Counsel for the parties, in my view, where the delay is not intentional nor it gives any kind of advantage or benefit to the appellant, the delay should normally be condoned. However, reasonable explanation has to be furnished by the appellant. This is also the settled view of the apex court as laid down in the case of Collector, Land Acquisition v. Mst. Katiji reported in [1987] 66 STC 228; [1987] UPTC 2187 which has been relied upon in the decision of Rum Plast Pvt. Ltd. : Kanpur reported in [2006] UPTC 1081)

13. In the present case, I find that the dealer had given sufficient explanation by specifically alleging that the deponent, Indradev Singh was the sole working partner and the rest of the partners were not actively involved in carrying on the business. Therefore on account of illness of sole working partner the delay in filing the appeal appears to be sufficiently explained. Further there is no counter-affidavit to controvert the said averments. It is not the case of the department that the dealer had not disclosed the fact that there were other partners. The explanation in the circumstances ought to have been accepted.

14. In the circumstances, relying upon the decision referred to above, there does arise a question of law, i.e., the Tribunal, in the facts and circumstances of the case, erred in dismissing the appeal and affirming the order of the appellate authority rejecting the delay-condonation application?)

15. Revisions are, accordingly, allowed.

16. The orders passed by the Tribunal and the appellate authority on March 26, 2004 and March 16, 2002 respectively are hereby set side and the matter is remanded to the first appellate authority to decide the appeals of the dealer on merits.