(2000) 05 P&H CK 0133

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 16973 of 1998

Shivam Riceland APPELLANT

Vs

State of Haryana RESPONDENT

Date of Decision : 10-05-2000

Acts Referred:

Haryana General Sales Tax Act, 1973 — Section 39
Limitation Act, 1963 — Section 5

Citation : (2001) 123 STC 23

Hon'ble Judges : N.K. Sud, J;N.K. Sodhi, J

Bench : Division Bench

Advocate : B.K. Jhingan, for the Appellant; N.K. Joshi, Assistant A.G., for the Respondent

Final Decision : Allowed

Judgement

N.K. Sodhi, J.—C.M. No. 7091 of 1999 is allowed as prayed. The replication is taken on record.

2. Challenge in this writ petition is to the order dated September 3, 1998, passed by the Sales Tax Tribunal II, Haryana, Chandigarh, whereby the appeal filed by the petitioner u/s 39(2) of the Haryana General Sales Tax Act, 1973 (for short, "the Act") was dismissed as barred by limitation. The Tribunal while dismissing the appeal was of the view that it had no power under the provisions of the Act to condone the delay and, therefore, dismissed the same. In our opinion the Tribunal was not right in holding that it had no power to condone the delay. As held by a Full Bench of this Court in Bharat Rubber and Allied Industries v. State of Punjab [1980] 46 STC 367, Section 5 of the Limitation Act would apply to proceedings under the Sales Tax Act. In this view of the matter, the Tribunal was in error and we hold that it had power to condone the delay in filing the appeal.

3. The Tribunal has also observed that even if it had the power, the explanation furnished by the petitioner for the delay in filing the appeal before it was not satisfactory. The delay in filing the appeal before the Tribunal was of 40 days and

the reason for the delay as explained by the petitioner was that the certified copy of the order of the first appellate authority had been received by its counsel though it was not communicated to the petitioner as a result of which the appeal could not be filed. The petitioner has placed before us a certificate of one Shri Balraj K. Gautam, Advocate, who was representing the petitioner before the Joint Excise and Taxation Commissioner. It is clear from this certificate that the delay in the filing of the appeal was attributable to the counsel for which the petitioner could not be blamed. We are, therefore, satisfied that the petitioner was prevented by sufficient cause from filing the appeal in time. The delay, in our opinion, should have been condoned.

4. Before concluding, we may notice the contention of the learned Assistant Advocate-General appearing on behalf of the respondents. His argument is that in view of the provisions of Section 39 of the Act, the Sales Tax Tribunal has no power to condone the delay. In support of this contention the learned State counsel placed reliance on a judgment of the Supreme Court in Commissioner of Sales Tax v. Parson Tools and Plants [1975] 35 STC 413. We are unable to accept this contention. The Full Bench of this Court in Bharat Rubber and Allied Industries case [1980] 46 STC 367, had after noticing this judgment of the Supreme Court held that Section 5 of the Limitation Act was applicable to the proceedings under the Sales Tax Act.

5. In the result, the writ petition is allowed, the impugned order of the Tribunal dated September 3, 1998 is set aside and the case remanded. The appeal is restored to the file of the Tribunal for decision in accordance with law.

