(2009) 12 P&H CK 0101

In the Punjab And Haryana At Chandigarh

State of Punjab and Another APPELLANT

Vs

Shreyans Industries Limited RESPONDENT

Date of Decision : 21-12-2009

Acts Referred:
Punjab Value Added Tax Act, 2005 — Section 68(2)(a)

Citation : (2010) 29 VST 474

Hon'ble Judges : Ram Chand Gupta, J;M.M. Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This order shall dispose of a bunch of 9 appeals. A common question of law has been raised in all these appeals, namely:

Whether the delay in filing of the appeal beyond the period of 60 days prescribed by Section 68(2)(a) of the Punjab Value Added Tax Act, 2005, could be condoned by entertaining an application u/s 5 of the Limitation Act, 1963 ?

2. In all the appeals there is an application invoking the provisions of Section 5 of the Limitation Act, 1963 (for brevity, "the Limitation Act"), seeking condonation of delay in filing the appeal.

3. The aforesaid question is no longer res integra as the honourable Supreme Court in the case of Commissioner of Customs & Central Excise v. Hongo India (P) Ltd. [2009] 24 VST 298 : [2009] 5 SCC 791, has laid down that the Central Excise Act, 1944 (for brevity, "the Excise Act") is a complete code by itself which alone is to govern the matters provided by that Act. It has further been held that in the presence of special law providing for limitation with regard to filing of appeal, the court could examine the extent of exclusion of the Limitation Act by such special law. On examination of the language used in Sections 35, 35B, 35EE, 35G and 35H of the Excise Act, it has been concluded in paras 32 and 33 that the provisions of the Limitation Act were not to apply. The view expressed by the honourable Supreme Court in the aforesaid paras reads thus (at page 307

of 24 VST):

32. As pointed out earlier, the language used in Sections 35, 35B, 35EE, 35G and 35H makes the position clear that an appeal and reference to the High Court should be made within 180 days only from the date of communication of the decision or order. In other words, the language used in other provisions makes the position clear that the Legislature intended the appellate authority to entertain the appeal by condoning the delay only up to 30 days after expiry of 60 days which is the preliminary limitation period for preferring an appeal. In the absence of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. The High Court was, therefore, justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days.

33. Even otherwise, for filing an appeal to the Commissioner, and to the Appellate Tribunal as well as revision to the Central Government, the Legislature has provided 60 days and 90 days, respectively, on the other hand, for filing an appeal and reference to the High Court larger period of 180 days has been provided to enable the Commissioner and the other party to avail of the same. We are of the view that the Legislature provided sufficient time, namely, 180 days for filing reference to the High Court which is more than the period prescribed for an appeal and revision.

4. When we examine the provisions of the Punjab Value Added Tax Act, 2005 (for brevity, "the VAT Act"), the position is no different than the one prevailing under the Excise Act. A perusal of Section 62(4) of the VAT Act provides for a period of 30 days for filing the first appeal. According to Section 62(5) no appeal could be entertained unless it is accompanied by satisfactory proof of the prior minimum payment of twenty five per cent of the amount of tax, penalty and interest, if any. Likewise, u/s 63(2) a period of 30 days from the date of the communication of the order of the first appellate authority has been provided. The delay in filing the appeal beyond the period specified u/s 62(4) and 63(2) could be condoned in the interest of justice and for the reasons to be recorded in writing by the appellate authority. However, in Section 68(2)(a) a period of 60 days for filing the appeal before this Court has been provided but there is no provision parallel to Section 64 providing for condonation of delay. The aforesaid provision clearly shows that the VAT Act like the Excise Act is a complete code in itself. The reasoning adopted by the honourable Supreme Court in the case of Hongo India (P) Ltd. [2009] 24 VST 298 : [2009] 5 SCC 791 is fully applicable to the question raised in the present appeals. Therefore, we are of the view that the application(s) seeking condonation of delay filed u/s 5 of the Limitation Act cannot be accepted.

5. The learned State counsel has requested for adjournment so as to enable the appellant-State to amend the provisions of the VAT Act, as has been done by making addition of Sub-section (2A) in Section 35G of the Excise Act, which has been added by the Parliament by way of amendment on August 19, 2009 by the

Finance (No. 2) Act, 2009. We do not know how it will help the pending appeals.

6. For the reasons aforementioned, the application(s) filed u/s 5 of the Limitation Act seeking condonation of delay in filing the appeals are dismissed. Consequently, the appeals also fail and are dismissed being time-barred.

