**(1994) 01 P&H CK 0119**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Civil Writ Petition No. 6938 of 1993

Sthaneshwar Handmade Papers PCIS Limited APPELLANT

Vs

State of Haryana and Others RESPONDENT

**Date of Decision :** 27-01-1994

**Acts Referred:**
Constitution of India, 1950 — Article 226, 227

**Citation :** (1994) 107 PLR 22

**Hon'ble Judges :** N.K. Kapoor, J;Amrit Lal Bahri, J

**Bench :** Division Bench

**Advocate :** Rajan Bindal, for the Appellant; Arun Nehra, Addl. A.G., for the Respondent

**Final Decision :** Allowed

## Judgement

A.L. Bahri, J.

1.Vide this order C.W.P. No. 6938 of 1993 and S.T.C. No. 57 of 1993 are being disposed of as the same have been filed on the same facts.

M/s. Sthaneshwar Handmade Papers PCIS Limited is a Society duly registered with Haryana Khadi and Village Industries Board (herein after called ''the Board'') and is doing the business of handmade papers. Under the provisions of the Haryana General Sales Tax Act the petitioner-Society was granted exemption certificate which continued to be renewed every year. In 1991 an application was obtained from the petitioner-Society for renewal of the exemption certificate already granted. On that application order-Annexure P.3 was passed on March 14,1991 rejecting the same. An appeal was filed against aforesaid order. Along with the appeal an application for condonation of delay in filing the appeal was filed. The appeal was dismissed on February 17, 1992, vide order Annexure P.7. Further appeal was taken to the Tribunal which was dismissed on May 21, 1992 vide order Annexure P.9. An application was filed before the Tribunal for making a reference to the High Court which was dismissed on January 15, 1993. C.W.P.

No. 6938 of 1993 has been filed to impugn the aforesaid orders Annexures P.3, P.7 and P-9.

2. On notice of motion having been issued written statement has been filed by official respondents Nos. 1 to 3. A preliminary objection was taken therein that exemptions claimed were a concession and could not be claimed as a mater of right. The ground of condonation of delay in filing the appeal is disputed. The appeal being barred by time was rightly dismissed.

3. STC No. 57 of 1993 has been filed on the aforesaid facts for direction to the Tribunal to refer the question of law as arisen out of the order of the Tribunal dated May 21,1992. The following question of law was sought to be referred as mentioned in the order of the Tribunal:-

"Whether the illness of the counsel, who is presumed to be an officer of the Court having documents of the party in his possession is sufficient cause for the condonation of delay in filing of appeal?"

Although no notice of this case was issued, the same is also being disposed of along with the writ petition aforesaid.

4. Two-fold questions of law arise in the present case. Firstly, it relates to the procedure to be followed when an application for condonation of delay in filing an appeal is moved and the allegations made therein are disputed or denied. Whether the appellant should be called upon to establish the facts alleged in the application? The second question connected therewith is that if no such opportunity to lead evidence was given and in the further appeal the appellant produces material in the form of affidavit the same could be relied and acted upon.

5. Shri Vinod Kumar Jain, Advocate was engaged during the period of limitation to file the appeal before the Excise and Taxation Commissioner. He suffered severe heart attack and was hospitalised. When he suffered second heart attack, he was to be shifted to the PGI. When he recovered from the illness and noticed that the appeal was pending for filing, he filed the appeal along with the application giving aforesaid facts. As the pleadings show along with the application at that stage he did not attach his affidavit. Copy of the affidavit which was subsequently attached with the appeal before the Tribunal is Annexure P.8 giving full details as to when he suffered the attack and was hospitalised. Annexures P.5 and P.6 are copies of the out Patient Tickets issued by the PGI. Annexure P.4 is copy of the prescription slip of Dr. Sharda Ranjan Ambala City. While deciding the appeal, the Joint Excise & Taxation Commissioner referred to the plea taken up in the application for condonation of delay, however, in the concluding portion of the order, did not discuss the same and simply dismissed the appeal as barred by limitation. It was his duty to consider the grounds put forth for delay in filing the appeal. It was necessary at that stage to call upon the appellant either to produce affidavit or if need be to prove the allegations mentioned in the application for condonation of delay and to adjudicate

thereupon.

6. When the matter was taken up before the Tribunal in further appeal wherein affidavit of Shri Vinod Kumar Jain Advocate was filed, he described the plea to be not correct. He simply referred to the contradiction in the order of the Joint Excise and Taxation Commissioner that presence of the counsel was not marked, however, the order showed that the application for condonation of delay was argued. From such an assertion it could not ipso facto imply that the Advocate had appeared in the proceedings. Thus the Tribunal also failed to exercise jurisdiction in not deciding the question debated as to whether the Advocate was ill and thus unable to file the appeal. Rather no mention of the affidavit filed before the Tribunal stands made or discussed in the order. As quasi-judicial Tribunal, it was expected of it to adjudicate the plea raised.

7. When the petition has produced in this Court copy of the affidavit of Shri Vinod Kumar Jain Advocate giving details of his illness on suffering heart ailment and his hospitalisation in the PGI which is supported by Outdoor Patient Tickets referred to above, we find on reason to discard the same. Ordinarily this matter could have been remitted back to the Joint Excise and Taxation Commissioner for adjudication, but keeping in view that the matter is pending for a couple of years, it is thought fit to remit the case to the Joint Excise and Taxation Officer to decide the appeal of the petitioner on merits. This writ petition, is therefore, allowed. The impugned orders Annexures P.7 and P.9 are quashed. The mater is remitted to the Joint Excise and Taxation Commissioner to decide the appeal on merits S.T.C. No. 57 of 1993 stands disposed of as above.

 