(2014) 05 P&H CK 0184

In the Punjab And Haryana At Chandigarh

Case No : V.A.T. Appeal No. 27 of 2013 (O&M)

Super Metal APPELLANT

Vs

State of Haryana RESPONDENT

Date of Decision : 12-05-2014

Acts Referred:

Haryana Value Added Tax Act, 2003 — Section 36
Limitation Act, 1963 — Section 5

Citation : (2014) 72 VST 296

Hon'ble Judges : Jaspal Singh, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Rajiv Agnihotri, Advocate for the Appellant; Tanisha Peshawaria, Deputy Advocate-General, Advocate for the Respondent

Judgement

Ajay Kumar Mittal, J.—This appeal has been filed by the assessee u/s 36 of the Haryana Value Added Tax Act, 2003 (in short, "the Act") against the orders dated March 29, 2010 (annexure A1) passed by the assessing officer, dated October 4, 2010 (annexure A2) passed by the Joint Excise and Taxation Commissioner (Appeals), dated February 22, 2012 (annexure A4) passed by the Haryana Tax Tribunal, Chandigarh (hereinafter referred to as "the Tribunal") in STA No. 61 of 2011-12 and dated December 12, 2012 (annexure AT), passed by the Tribunal in STM No. 1 of 2012-13, for the assessment year 2006-07, claiming the following substantial questions of law:

"(i) Whether the delay in filing appeal before the first appellate authority late by five months is so fatal to be dismissed as barred by limitation and particularly when apparently Mr. Amit Garg, who received the copy of the order was suffering from mental depression and was undergoing treatment and could not deliver the copy of the order for further appeal?

(ii) Whether the Tribunal should not have taken cognizance of decision of the honourable Punjab and Haryana High Court in case of Gheru Lal Bal Chand Vs. State of Haryana and Another, cited in CWP No. 6573 of 2007 dated September

23, 2011 keeping in view the merits of the case that the additional demand is only on account of input tax disallowing on the basis the seller did not discharge tax obligation?"

Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The appellant-M/s. Super Metals, Faridabad, was engaged in the trading of iron and steel, etc. It had been filing its returns and discharging tax obligations. The assessment for the year 2006-07 was framed by the assessing authority vide order dated March 29, 2010 (annexure A1) making additional demand of Rs. 1,02,605. However, the benefit of input tax amounting to Rs. 2,00,086 on account of purchases made from M/s. Ayush Metals and M/s. Swastik Trading Company was disallowed as the selling dealer did not discharge their tax obligations. Feeling aggrieved, the appellant filed an appeal before respondent No. 4-Joint Excise and Taxation Commissioner (Appeals) who vide order dated October 4, 2010 (annexure A2) confirmed the order passed by the assessing authority. Still dissatisfied, the appellant filed an appeal dated March 21, 2011 (annexure A3) before the Tribunal. As the appeal was barred by limitation, an application u/s 5 of the Limitation Act was also filed for condonation of 159 days'' delay. The Tribunal vide order dated February 22, 2012 (annexure A4) rejected the application for condonation of delay and dismissed the appeal. Thereafter, the assessee filed an application (annexure A5) for restoration of the appeal. The assessee filed written submissions (annexure A6). The Tribunal vide order dated December 12, 2012 (annexure A7) dismissed the application for restoration of the appeal. Hence, the present appeal.

2. We have heard learned counsel for the parties.

3. The primary question that arises for consideration in this appeal is whether the delay of 159 days in filing the appeal before the Tribunal was liable to be condoned in the facts and circumstances of the present case.

4. Examining the legal position relating to condonation of delay u/s 5 of the Limitation Act, 1963 (in short, "the 1963 Act") it may be observed that the honourable Supreme Court in Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation and Another, laying down the broad principles for adjudicating the issue of condonation of delay, in paras 14 and 15, observed as under:

"14. We have considered the respective submissions. The law of limitation is founded on public policy. The Legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the Legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time.

15. The expression ''sufficient cause'' employed in section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate-- Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, , N. Balakrishnan Vs. M. Krishnamurthy, and Vedabai @ Vaijayanatabai Baburao Pateil Vs. Shantaram Baburao Patil and Others,

5. It was further noticed by the honourable apex court in R.B. Ramlingam Vs. R.B. Bhvaneswari, as under:

... It is not necessary at this stage to discuss each and every judgment cited before us for the simple reason that section 5 of the Limitation Act, 1963 does not lay down any standard or objective test. The test of ''sufficient cause'' is purely an individualistic test. It is not an objective test. Therefore, no two cases can be treated alike. The statute of limitation has left the concept of ''sufficient cause'' delightfully undefined, thereby leaving to the court a well-intentioned discretion to decide the individual cases whether circumstances exist establishing sufficient cause. There are no categories of sufficient cause. The categories of sufficient cause are never exhausted. Each case spells out a unique experience to be dealt with by the court as such."

It was also recorded that:

"For the aforestated reasons, we hold that in each and every case the court has to examine whether delay in filing the SLP stands properly explained. This is the basic test which needs to be applied. The true guide is whether the petitioner has acted with reasonable diligence in the prosecution of his appeal/petition..."

6. From the above, it emerges that the law of limitation has been enacted which is based on public policy so as to prescribe time-limit for availing of legal remedy for redressal of the injury caused. The purpose behind enacting law of limitation is not to destroy the rights of the parties but to see that the uncertainty should not prevail for unlimited period. u/s 5 of the 1963 Act, the courts are empowered to condone the delay where a party approaching the court belatedly shows sufficient cause for not availing of the remedy within the prescribed period. The meaning to be assigned to the expression "sufficient cause" occurring in section 5 of the 1963 Act should be such so as to do substantial justice between the parties. The existence of sufficient cause depends upon facts of each case and no hard and fast rule can be applied in deciding such cases.

7. The honourable apex court in Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation and Another, and R.B. Ramlingam Vs. R.B. Bhvaneswari, noticed that the courts should adopt liberal approach where delay is of short period whereas the proof required should be strict where

the delay is inordinate. Further, it was also observed that judgments dealing with the condonation of delay may not lay down any standard or objective test but is purely an individualistic test. The court is required to examine while adjudicating the matter relating to condonation of delay on exercising judicial discretion on individual facts involved therein. There does not exist any exhaustive list constituting sufficient cause. The applicant/petitioner is required to establish that inspite of acting with due care and caution, the delay had occurred due to circumstances beyond his control and was inevitable.

8. The question regarding whether there is sufficient cause or not, depends upon each case and is to be decided taking totality of events which had taken place in a particular case. Learned counsel for the appellant submitted that the order dated October 4, 2010 passed by the Joint Excise and Taxation Commissioner (Appeals) was received by their counsel on October 15, 2010 and handed over to their representative Mr. Amit Garg on December 1, 2010 who was suffering from depression and was undergoing treatment and most of the time was out of office. Therefore, they could not file the appeal. Thereafter, the said order was handed over to the counsel for the appellant on May 20, 2011 and the appeal was filed late by 159 days. In such circumstances, delay in filing the appeal before the Tribunal was unintentional and due to the circumstances beyond the control of the appellant.

9. The explanation furnished by the appellant appears to be plausible and, therefore, leads to the conclusion that there was sufficient cause for delay in filing the appeal. Once that was so, the delay in filing the appeal before the Tribunal deserves to be condoned and appeal heard on merits by the Tribunal.

10. This court in Aptech Engineers Vs. State of Haryana and Others, while examining the legal position had condoned the delay and remitted the matter to the Tribunal to adjudicate the dispute on merits in accordance with law. In view of the above, it is held that the Tribunal had erred in refusing to condone the delay in filing the appeal. The substantial questions of law are answered accordingly. As a sequel, the appeal is allowed and the orders dated February 22, 2012 (annexure A4) and dated December 12, 2012 (annexure A7) passed by the Tribunal are set aside. The matter is remitted to the Tribunal to adjudicate the dispute on merits in accordance with law.