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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SALEX TAX APPEAL No.4 OF 2014
IN
VAT SECOND APPEAL No.182 of 2011.

M/s Prism Enterprises Pvt Ltd }Appellant.
Vs
The State of Maharashtra
through Commissioner of Sales Tax }Respondent.

Mr Chandrakant B. Thakkar for the appellant.
Mr D.A. Nalawade, Government Pleader for the respondent.

CORAM : S.C. DHARMADHIKARI &
S.P. DESHMUKH, JJ.
DATE : 6th JANUARY,2015.

P.C.

1] This appeal challenges the order passed by the Second Bench of the Maharashtra Salex Tax Tribunal in VAT Second Appeal No. 182 of 2011. The Tribunal has passed a substantive order on the second appeal, by which, on 23rd January, 2014, it brought down the amount of penalty from Rs.1,70,747/-to Rs.1,00,000/-. The penalty was imposed on the present appellant/dealer for not filing the report within the meaning of sub-Sections (1) and (2) of Section 61 of the Maharashtra Value Added Tax Act, 2002.

2] Mr Thakkar appearing on behalf of the appellant submits that the appeal raises a substantial question of law, inasmuch as the Tribunal failed to take into consideration the fact that there was no *mala fides* on the part of the appellant. The delay which has occurred in filing of this report was on account of an Accountant in the services of the appellant leaving the job abruptly. The Accountant did not inform the Management that such a report was received and ought to be filed within the stipulated period or else the same would attract penalty.

3] The report was thereafter filed but the delay occurred as there was an arrangement made by the appellant. That was to substitute the Accountant with fresh employee. That employee took time to acquaint himself/herself with the job and on being aware of the delay, promptly arranged to file the report. The report was filed on 6th April, 2009. There was, thus, a delay of seven months and six days but all this was not vitiated by any *mala fides* or deliberate act on the part of the appellant. Therefore, the Tribunal failed to exercise its discretion judiciously.

4] We have perused the order passed by the Tribunal carefully and in order to satisfy ourselves whether any substantial question of law arises from the order passed by the Tribunal.

5] We are not in agreement with Mr Thakkar that in the given facts and circumstances, the penalty could not be imposed at all.

6] The discretion that is vested in the Tribunal in matters of imposition of penalty is circumscribed by the fact that if the report is filed within the period as specified in proviso, namely, one month and the dealer proves to the satisfaction of the Commissioner that the delay was on account of factors, beyond his control, then the penalty is not to be imposed at all. Sub-Section (2) of Section 61 contains this proviso and which, thus, enables the Tribunal to condone the delay, which occurs beyond the period stipulated therein. However, the Tribunal is empowered to impose penalty and that discretionary power is not being challenged or questioned. In the present case, the Tribunal imposed the penalty after recording a finding that the Accountant may have left the job on 30th August,2008. But there is no reasonable explanation forthcoming for the delay in filing the report thereafter belatedly in April, 2009. That the appellant, therefore, was not prevented by any factors, beyond its control, is apparent from the reading of this finding of the Tribunal. In these circumstances, so as to discourage the dealers or parties like the appellant from delaying the filing of the report that the penalty has been imposed. In fact, the penalty imposed of Rs.1,70,747/- in the first appellate order has been brought down and reduced to Rs.1,00,000/- in the second appeal by the Tribunal. In such circumstances, we do not find that the order raises any substantial questions of law. The appeal is, therefore, devoid of merits and is dismissed with no order as to costs.

(S.P. DESHMUKH, J.) **(S.C. DHARMADHIKARI,J)**