IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.11781 of 1994 (O&M)
Date of Decision: 15.01.2015

M/s Indo-Pirin Gloves Limited

.....Petitioner

Versus

State of Haryana & others

....Respondents

CORAM: **HON'BLE MR. JUSTICE RAJIVE BHALLA**
HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Jagmohan Bansal, Advocate
for the petitioner.

Ms. Mamta Singhal Talwar, AAG, Haryana.

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RAJIVE BHALLA, J (ORAL)

The petitioner prays for issuance of a writ for quashing orders Annexure P-8 passed by the Sales Tax Tribunal, Haryana (hereinafter referred to as “the Tribunal”), Annexure P-4 passed by the Assessing Authority and Annexure P-6 passed by the Joint Excise and Taxation Commissioner (Appeal), Faridabad (hereinafter referred to as the “JETC”).

Counsel for the petitioner submits that as no sale has been proved or even took place within the State of Haryana, the assumption of jurisdiction by the Assessing Officer to assess the transport of machines from Gurgaon to Delhi to sale tax, is not warranted. Counsel for the petitioner further submits that the machinery was imported into India, pursuant to a joint venture between the State Trading Corporation of India Limited (A Government of India undertaking), ITC Pirin Sofia, Bulgaria and M/s Liberty Footwear, Karnal with share holding of 40%, 40% and 20% respectively. The machinery was stored in the godown in Gurgaon as the project had to be executed at Gurgaon but on account of certain difficulties in the project, the project was abandoned and eventually the joint venture company went into liquidation. To avoid payment of rent, the machine was being transported to the premises of the State Trading Corporation in Delhi, when it was stopped at Haryana-Delhi Border and eventually the Assessing Officer, by inferring a sale passed order (Annexure P-4), assessing the petitioner to sales tax. The petitioner thereafter filed an appeal before the JETC, which was dismissed on 06.11.1990. A review petition filed against the order passed by the JETC was dismissed on 23.03.1992. Appeal filed by the petitioner against the original order passed by the JETC was dismissed by the Sales Tax Tribunal as barred by limitation. The petitioner filed a writ petition against this order. In the meantime, the petitioner filed an appeal against the order passed by the JETC, dismissing the application for review. The writ petition was dismissed by holding that this order shall not affect the pending review petition. The appeal filed by the petitioner challenging order passed passed by the JETC dismissing the application for review was dismissed, by the Tribunal by holding that an appeal against an order of review is not maintainable. Counsel for the petitioner further submits that as Section 39 (2) of the Haryana Sales Tax, Act, 1973, uses the word “an order”, the Tribunal has erred in dismissing the appeal. The Tribunal has itself in other cases, by orders Annexures P-9 and P-10 held that an appeal is maintainable against an order dismissing an application for review. Counsel for the petitioner prays that the impugned order may be set aside and the matter may be remitted to the Tribunal for adjudication afresh.

Counsel for the revenue submits that the writ petition is mis-conceived. The petitioner filed an appeal before the Tribunal against, order dated 06.11.1990, passed by the JETC on 06.11.1990. The Tribunal dismissed the appeal as barred by limitation. The petitioner filed a writ petition challenging this order. The writ petition was dismissed. The Tribunal, therefore, rightly dismissed the appeal against the order dismissing the application for review.

We have heard counsel for the parties and perused the impugned order.

The petitioner is before us challenging order passed by the Tribunal, dismissing his appeal against the order passed by the JETC refusing to review its order. A perusal of the impugned order reveals that the Tribunal dismissed the appeal by holding that an appeal against an order of review is not maintainable. A bare reading of Section 39 (2) of the Haryana General Sales Tax Act, 1973, reveals that Section 39 (2) of the Act commences with the words “An order” thereby leaving no ambiguity that an appeal is maintainable against any and every order, including an order dismissing an application for review, unless prohibited by any statutory provision. The question before us is, however, entirely different namely whether an appeal against an order dismissing an application for review is maintainable after challenge to the original order has failed.

The petitioner was assessed to sale tax. An appeal filed by the petitioner before the JETC was dismissed on 06.11.1990. The petitioner filed an application for review of this order. The application for review was dismissed on 23.03.1992. The appeal, filed by the petitioner against order dated 06.11.1990 was dismissed as barred by limitation. The petitioner filed CWP No.1214 of 1993 which was dismissed by holding as follows:-

> *“The appellate Authority dismissed the appeal, as barred by time, holding that there was no sufficient cause for condoning the delay. Whether there existed sufficient*

grounds for condoning the delay or not, is a question of fact and can not be gone into in writ jurisdiction. The contention of learned counsel for the petitioner is that ground for condonation of delay in filing the appeal was taken that the petitioner was wrongly advised by the counsel to file a review application against the order of the First Appellate Authority, it has not been shown to us that affidavit of the counsel, who had given such wrong advice, was filed before the appellate Authority. We find no ground to entertain this writ petition and dismiss the same. It may be further observed, as stated by counsel for the petitioner that an appeal has already been filed against the order rejecting the review application, that any observation made in this order will not affect the decision of such an appeal on merits."

A perusal of the aforesaid order dismissing the writ petition reveals that order passed by the Tribunal, dismissing the appeal, filed to challenge order passed by the JETC, was affirmed by holding that the petitioner is unable to show sufficient cause for condonation of delay, thereby shutting out any further challenge to the assessment order. The mere fact that the order records that any observation in the order shall not affect the decision of the appeal on merits in the pending review cannot be construed as an affirmation of the maintainability of the appeal against the order dismissing the review petition. The petitioner's contention that the order passed in the writ petition should be read as directing the Tribunal to decide the appeal against the order of review on merits, disregards the fact that challenge to the original order passed by the JETC and the Tribunal having attained finality with dismissal of the writ petition, the filing of any appeal against dismissal of the review petition by the JETC was meaningless. It was in this context that the appeal filed by the petitioner was not maintainable before the Tribunal. Consequently, we have no option but to dismiss the writ petition.

Dismissed accordingly.

[RAJIVE BHALLA]
JUDGE

15.01.2015
Vinay

[B.S. WALIA]
JUDGE