IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM No. 23224-CII of 2015 and
VATAP No. 51 of 2015

Date of Decision: 11.12.2015

State of Haryana

....Appellant.

Versus

M/s Luminous Power Technologies Pvt. Ltd. Baddi

...Respondent.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest?

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.**
**HON'BLE MR. JUSTICE RAMENDRA JAIN.**

PRESENT: Ms. Mamta Singla Talwar, DAG, Haryana with
Mr. Saurabh Mago, AAG, Haryana, for the appellant.

**AJAY KUMAR MITTAL, J.**

1. This appeal has been filed by the State of Haryana under Section 36 of the Haryana Value Added Tax Act, 2003 (in short "the Act") against the order dated 18.11.2011 (Annexure A-3) passed by the Haryana Tax Tribunal (hereinafter referred to as "the Tribunal") in STA No. 482 of 2010-11, claiming the following substantial questions of law:-

(a) Whether in the facts and in the circumstances of the case, the Ld. Tribunal was justified while observing that the Checking Officer was not empowered to go in the nature of transactions, whereas sec. 31(8) clearly

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provides that the Checking Officer was fully empowered to decide the nature of transactions at hand?

(b) Whether in the facts and circumstances the checking officer was justified in imposing the penalty on the difference of price as provided under proviso Ist to Section 31(8)?

(c) Whether in the facts and circumstances of the case, the Ld. Tribunal was justified in setting aside the well reasoned orders of both the authorities below?

(d) Whether in the facts and circumstances of the case even if the observations of Ld. Tribunal that the case should have been handed over to the Assessing Authority are taken to be correct, the Haryana Tax Tribunal was justified in not remanding the case to the Assessing Authority?

2. Before deciding the application under Section 5 of the Limitation Act, 1963 (for brevity "the 1963 Act") for condonation of inordinate delay of 1298 days in filing the appeal, few facts on merit may also be noticed. The respondent is engaged in the activity of manufacturing/ distribution of power supply equipments like UPS, Invertors, Stabilizers, Batteries and other related consumer Electrical/Electronic goods. The manufacturing units are at different places outside the State including at Baddi in Himachal Pradesh. On 7.2.2010, vehicle bearing registration No. HR-12A-6781 was intercepted during the course of roadside checking and the goods were detained

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under Section 31(6) of the Act. The Assessing Authority vide order dated 1.4.2010 (Annexure A-1) found the goods under invoiced and were charged to tax under Section 31(8) of the Act amounting to ₹ 74,434/- and also imposed penalty to the tune of ₹ 2,23,302/-. Feeling aggrieved, the respondent filed an appeal before the Joint Excise and Taxation Commissioner (Appeals) who vide order dated 3.8.2010 (Annexure A-2) dismissed the appeal. Still dissatisfied, the respondent filed an appeal before the Tribunal. The Tribunal vide order dated 18.11.2011 (Annexure A-3) set aside the orders of the authorities holding that no inquiries were made regarding the sale price and sent the case to the Assessing Authority. Hence, the present appeal.

3. Since the appeal is barred by time, an application bearing CM No. 23224-CII of 2015 has been filed under Section 5 of the 1963 Act for condonation of 1298 days' delay in filing the appeal.

4. We have heard learned State counsel.

5. Before proceeding with the merits of the controversy, it would be essential to examine whether the State has been able to give any satisfactory explanation for condonation of colossal delay of 1298 days in filing the present appeal.

6. Analyzing the legal position relating to condonation of delay under Section 5 of the Limitation Act, 1963, it may be observed that the Hon'ble Supreme Court in **Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation and another, (2010) 5 SCC 459** laying down the broad principles for adjudicating the issue of condonation of delay, in paras 14 & 15 observed as under:-

> "14. We have considered the respective

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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 (L.A.) v. Katiji N. Balakrishnan v. M. Krishnamurthy and Vedabai v. Shantaram Baburao Patil."

7. Adverting to the factual matrix in the present case, the plea

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for condoning the delay is that the impugned order was passed on 18.11.2011 and the certified copy thereof was received on 20.1.2012. The office of Excise and Taxation Commissioner, Haryana sought comments vide memo dated 11.1.2012 from the Assessing Authority which could not be sent and again the comments were sought vide memo dated 5.3.2012. Thereafter, on 19.3.2012, on the request of the Assessing Authority, the file was transferred to ward No.2 for comments. Since no comments were received, reminders were sent vide memos dated 17.4.2012 and 20.7.2012. Ultimately, the comments were sent but were not received and reminders dated 27.2.2013 and 2.9.2013 were sent which were duly replied informing that the comments had already been sent on 6.2.2013. The comments being not satisfactory were again called for which were received on 4.11.2014. Finally, on 30.12.2014, approval was received for filing the present appeal and a request was sent to the Legal Remembrancer and Secretary to Government of Haryana vide letter dated 12.1.2015. Due to these reasons, the appeal could not be filed within time. On these premises, condonation of delay has been prayed.

8. The question regarding whether there is sufficient cause or not depends upon each case and primarily is a question of fact to be considered taking into totality of events which had taken place in a particular case. There is a colossal delay of 1298 days in filing the appeal. The narration of cause for claiming condonation of delay in filing the present appeal does not satisfy the test of “sufficient cause” so as to entitle the State for condonation of inordinate delay of 1298 days in filing the appeal. Narration of above facts shows that the State was not

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serious in pursuing the litigation. The State should be more vigilant and serious in pursuing the litigation. It is very surprising and astonishing that it has taken such a long time for the decision making process for filing the appeal. The State must ensure in future that the matter is expedited and the responsibility is fixed on the officer/official dealing with the filing of the appeals in case any delay occurs on their part. Since no sufficient cause has been shown in the present case, no ground for condonation of delay is made out.

9. In view of the above, there is no merit in the application for condonation of delay and the same is hereby dismissed. Consequently, the appeal is also dismissed as barred by time.

**(AJAY KUMAR MITTAL)**
**JUDGE**

**December 11, 2015** **(RAMENDRA JAIN)**
gbs **JUDGE**

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