**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

VATAP No.214 of 2014
Date of decision : 10.08.2015

M/s B.K. Steels

..... Appellant

Versus

State of Punjab and Anr.

.... Respondents

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

Present: Mr. Sandeep Goyal, Advocate
for the appellant.

Mr.Jagmohan Bansal, Addl. A.G. Punjab.

RAMENDRA JAIN, J.

The appellant has approached this Court *inter alia* for setting aside the impugned order dated 29.04.2013 passed by the learned Value Added Tax, Tribunal, Punjab ('the Tribunal' for short) dismissing its application seeking condonation of 907 days' delay in filing the appeal as well as the appeal, being barred by limitation.

2. Brief facts, are that on 04.03.2006 a vehicle transporting M.S. Bars from U.P. to Punjab was intercepted by the Excise and Taxation Officer, Rajpura. The documents in the custody of driver were found not proper. Hence, the goods were detained under Section 51(6)(a) of the Punjab Value

Added Tax Act, 2005 ('Act' for short). After affording an opportunity to the owner of the goods, the detaining officer being not satisfied referred the case to the Enquiry Officer, who after conducting the inquiry imposed a penalty of ₹ 1,51,687/- under Section 51(7)(b) of the Act upon the appellant, being owner of the goods.

3. Feeling aggrieved, the appellant preferred an appeal before the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala, who after hearing the appellant as well as the department's representative remanded the case back to the Enquiry Officer vide order dated 15.05.2006. The appellant preferred an appeal before the learned Tribunal against the said order of remand, but remained unsuccessful. Thereafter, in remand the Enquiry Officer i.e. Assistant Excise and Taxation Officer, Patiala, again imposed a penalty of ₹ 1,51,687/- under Section 51(7)(b) of the Act vide order dated 29.04.2008. Again, the appellant preferred an appeal which was dismissed by the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala vide order dated 22.05.2009. Since, the appellant was still unsatisfied with the aforesaid order dated 22.05.2009, therefore, he preferred an appeal along with an application under Section 64 of the Act seeking condonation of 907 days' delay in filing the appeal, which were dismissed vide order dated 29.04.2013.

4. It is contended that it was obligatory upon the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala to dispatch the copy of the order dated 22.05.2009 passed by him to the dealer of the appellant on the address given in the memorandum of appeal, but it was never sent there, rather was sent to its branch office at Rajpura. Since the said order was never communicated to the appellant, therefore, it wrote two letters on 16.03.2011 and then on 15.11.2011 to the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala to know about the status of its appeal. When the above letters went un-responded, the appellant made personal inquiry and came to know on 04.04.2012 that its appeal has already been decided on 22.05.2009 and the order was sent to the address of its branch office at Rajpura. However, the same was never received. Hence, the delay of 907 days in filing the appeal was not intentional or deliberate, rather was on account of above facts and circumstances.

5. It is further contended that the learned Tribunal taking presumption of service upon the appellant under Section 27 of the General Clauses Act, 1897 and the illustration (f) to Section 114 of the Indian Evidence Act, rejecting the above contention of the appellant, wrongly dismissed its application seeking condonation of 907 days delay in filing the appeal as well as the appeal vide impugned order dated 29.04.2013.

6. This Court has to decide the following question of law:

> *i) Whether on the facts and circumstances of the case, the learned Tribunal was justified in dismissing the appeal of the appellant on the ground of delay even though there was a serious dispute with regard to the communication of the order?*

7. It is not in dispute that the appellant in its memorandum of appeal before the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala has shown its address as "M/s B.K. Steels, G.T. Road, Rajpura, Head Office, Mandi No.1, Abohar C/o Sh. S.L. Bansal, Advocate, 5-Circular Road, Abohar 152116 (Punjab)". Hence, it was mandatory upon the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala under Rule 71(1)(a) of Punjab Value Added Tax Rules, 2005 to send the copy of his order dated 22.05.2009 to the above address of the appellant at Abohar. However, he instead of sending the above order at the aforesaid address of the appellant at Abohar had sent the same to the Branch Office of the appellant at Rajpura, which as per appellant was never received. More so, when no response was received by the appellant against its letters dated 02.11.2010 and 16.03.2011, its counsel personally went to the office of DETC on 04.04.2012 to know the status of its appeal and then only came to know

about the order dated 22.05.2009 passed by him, dismissing the appeal.

8. In view of the above factual position, the learned Tribunal has wrongly drawn presumption of service upon the appellant under Section 27 of the General Clause Act, 1897 and the illustration (f) to Section 114 of the Indian Evidence Act, more particularly when it was incumbent upon the Deputy Excise and Taxation Commissioner (A), Patiala to send the copy of order dated 22.05.2009 to the appellant at its address given in the memorandum of appeal.

9. In ***'The Commissioner of Income Tax, Punjab, Haryana, Jammu and Kashmir, Himachal Pradesh and Chandigarh, Patiala V/s Lalita Kapur' (P&H)(DB), 1970 CurLJ 523,*** a Division Bench of this Court has held that presumption under Section 27 of the General Clauses Act, 1897 stands rebutted in case the service is effected on an assessee under Section 63 (1) of the Income Tax Act, 1922 through its agent never appointed by it, as it shall not be a valid service.

10. In the instant case, the appellant never requested the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala to send the copy of the order upon the address of its branch office at Rajpura.

11. Learned counsel for the respondents could not give any satisfactory explanation for not sending the copy of the

order dated 22.05.2009 to the appellant, upon its address given in the memorandum of appeal.

12. More so, by this time, it is well settled that a party should not be condemned unheard and the case should not be rejected on technical grounds, rather should be decided on merit unless delay is attributable to gross negligence of a party. Since learned counsel for the respondents has miserably failed to prove proper service of the order dated 22.05.2009 upon the appellant at its proper address, therefore, we are of the considered view that the impugned judgment dated 29.04.2013 passed by the learned Tribunal is liable to be set aside and consequently, the same is hereby set aside.

13. The application of the appellant filed before the learned Tribunal seeking condonation of 907 days' delay in filing the appeal is hereby allowed and the aforesaid delay in filing the appeal is condoned. Consequently, appeal of the appellant is also restored.

14. The learned Tribunal is directed to decide the appeal of the appellant on merit in accordance with law.

**(RAMENDRA JAIN )**
**JUDGE**

10.08.2015 **( AJAY KUMAR MITTAL )**
'yogesh' **JUDGE**