* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment reserved on: 28th August, 2015
Judgment delivered on: 30th September, 2015

\+ **ST. APPL. 32/2015 & CM Nos. 16548-49/2015**

THE COMMISSIONER, VAT .... **Petitioner**

versus

PURE DRINKS (NEW DELHI) LTD. …. **Respondent**

<u>Advocates who</u> appeared in this case:

For the Petitioners : Mr Raj Kumar Batra, Advocate

For the Respondents : Mr. S.C. Ladi, Sr. Advocate with Ms. Deeksha L. Kak, Advocate.

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGEMENT

<u>SANJEEV SACHDEVA, J</u>

1. The appellant-Revenue has filed the present appeal impugning the order dated 20.09.2012 passed by the Appellate Tribunal (Value Added Tax) whereby the Tribunal has quashed the *suo moto* revision notice dated 01.07.1998, penalty notice under section 56 and *suo moto* revision order dated 11.07.2000.

2. The present appeal has been filed with a delay of 823 days.

3. An assessment order under Section 23 (3) of the Delhi Sales Tax Act, 1975 (hereinafter called as the Act) was passed on 18.04.1996. On 21.02.1997, the Commissioner Sales Tax exercising powers under Section 11 of the Act passed an order directing the assessing authority to transfer the files of the respondent to Appellant Commissioner, Zone-I for causing re-assessment proceedings under Section 24 of the Act and penalty proceedings under Section 56 of the said Act for the period 1979-80 to 1992-93.

4. Notice for re-assessment dated 01.07.1997 was issued by Assistant Commissioner, Zone-I to the respondent. Re-assessment proceedings were commenced but by 30.06.1998 as no orders were passed, the re-assessment proceedings became time barred resulting in abandonment of the re-assessment proceedings.

5. Thereafter Assistant Commissioner, Zone-I issued notice dated 01.07.1998 under Section 46 of the Act proposing to revise the assessment order dated 18.04.1996. On 26.03.2001, the original assessment order was revised, leading to filing of an appeal by the respondent before the Appellate Tribunal.

6. By the impugned order dated 20.09.2012, the Appellate Tribunal relying on the earlier decision of a coordinate bench of the Tribunal has held

that the impugned *suo moto* revision notice dated 01.07.1998 and the *suo moto* revision order dated 11.07.2000 deserve to be quashed and were accordingly quashed. By order dated 28.02.2013 an application filed by the respondent for rectification of the typographical error in the name of the respondent in the order dated 20.09.2012 was allowed and the rectification of error of name was accordingly made.

7. Impugning order dated 20.09.2012, the present appeal has been filed on 04.03.2015, with a delay of 823 days. The reasons for the delay as mentioned in the application seeking condonation of delay are as under: -

20.09.2012	Judgment delivered by the Appellate Tribunal in Appeal No. 208/ATVAT/205-06 for the year 1991-92 & 1992-93 respectively.
28.02.2013	Review orders of judgment delivered on 20.09.2012 in Appeal Nos. 207/ATV AT/05-06 and 208/ATV AT/205-06 for the year 1992-93 issued. The department was not aware of issuance of these judgments and the same came to the knowledge of the department only when the petitioner filed an application for claiming refund.
29.07.2013	The case put up for further course of action.
04.09.2013 to 26.09.2013	Opinion of Shri Pradeep Tara, Govt. Counsel was obtained.
05.11.2013 to 02.12.2013	Second legal opinion obtained from Sh. Sushil Verma, Advocate.
5.12.2013	Approval of Commissioner VAT for filing petition in High Court of Delhi and in view of the Approval the matter has been taken up accordingly.
24.12.2013	Documents delivered to Shri H.C. Bhatia, Advocate for preparation of Appeal Petition and filing before High

	Court of Delhi.
23.05.2014	Shri H.C. Bhatia returned the file and the file was entrusted to Shri Raj K. Batra, for doing the needful.
28.08.2014	The file is sent to Lt. Governor for approval of the appointment of Shri Raj K. Batra as Special Counsel.
03.01.2015	Shri Raj K. Batra, Special Counsel, is requested to prepare and file the appeal in the High Court of Delhi.

8. The reason mentioned by the appellant, that the department was not aware of the issuance of the judgment and the same came to the knowledge of the department only when the petitioner filed an application claiming refund, is not believable. The impugned order records the presence of the counsel for the department, which clearly shows that the impugned order was passed in the presence of the counsel for the department. In fact, the impugned order itself records that the counsel for the department was heard.

9. Even if it were to be assumed that the appellant was not aware of the passing of the impugned order and it became aware of the order from the application of the respondent seeking refund, there is still no sufficient explanation for delay. It is mentioned in the application that on 29.07.2013, the case was put up for further course of action. The application does not mention as to when the department allegedly became aware of the judgment from the application of the respondent claiming refund. The condonation application is silent about the date when the refund claim was made by the respondent. The application further records that between 04.09.2013 to

26.09.2013, opinion of Government counsel was obtained. Thereafter between 05.11.2013 to 02.12.2013, second legal opinion was obtained from another counsel. On 05.12.2013, approval of Commissioner (VAT) was obtained for filing the petition in the High Court. On 24.12.2013, documents were delivered to the Advocate for preparation and filing of the appeal. On 23.05.2014, the counsel who was entrusted with the filing of the appeal, returned the file and the same was entrusted to another counsel. On 28.08.2014, the file was sent to the Lt. Governor for approval of appointment of the Special Counsel. On 03.01.2015, the Special Counsel was requested to prepare and file the appeal in the High Court. The appeal is filed on 04.03.2015.

10. Even though, each days delay has to be explain, however, even if we were to take a liberal view of the matter, it is seen from the facts enumerated above that there is no explanation, for a substantial period of time. There is clearly no action taken by the appellant for several days and even for months at end. There is no explanation for the period 29.07.2013 to 04.09.2013, 26.09.2013 to 05.11.2013, 05.12.2013 to 24.12.2013, 24.12.2013 to 23.05.2014, 23.05.2014 to 28.08.2014, 28.08.2014 to 03.01.2015 and 03.01.2015 to 04.03.2015.

11. The dates mentioned in the condonation application shows gross lackadaisical attitude of the department in processing the file and filing of

the appeal. There is hardly any explanation leave alone a sufficient cause shown for the delay of over 800 days in filing of the appeal. Even though in the case of appeal by the department, there are bound to be some delays on account of administrative action but the department cannot be permitted to adopt a completely lackadaisical attitude in the matters of limitation. The law of limitation does not prescribe a different standard to be applied for the appeals filed by the department.

12. We find that the department proceeded in a very casual manner in the filing of the present appeal. The explanation tendered by the department, in our view, does not show any sufficient cause. The department does not appear to have acted in a bonafide and reasonable manner. We may note that there was also a delay of 118 days in re-filing of the appeal, which we have already condoned by order dated 28.08.2015.

13. We do not find any sufficient cause for condoning the delay of 823 days in the filing of the appeal. The application seeking condonation of delay is dismissed. The appeal is accordingly dismissed, leaving the parties to bear their own costs.

SANJEEV SACHDEVA, J

BADAR DURREZ AHMED, J

September 30, 2015/rs