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

VATAP No.33 of 2010 (O&M)
Date of decision: 17.8.2016

M/s Varun Export

..... Appellant

Versus

The State of Punjab

......Respondent

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr. Avneesh Jhingan, Advocate, for the appellant(s).
Mr. Jagmohan Bansal, Additional Advocate General, Punjab.

RAJESH BINDAL, J

1. This order will dispose of a bunch of appeals bearing VATAP Nos.33 to 35, 80 to 83, 85 and 87 to 96 of 2010, as common questions of law and facts are involved therein.

2. The appellants have approached this Court raising the following substantial questions of law:-

i. Whether in the facts and circumstances of the case the order of the tribunal annexure 'A-6' is not a Non Speaking order?

ii. Whether in the facts and circumstances of the case, the Department has explained the delay by a 'sufficient cause' and has been able to show due diligence in perusing the remedy?

iii. Whether in the facts and circumstances of the case, the decision of the Tribunal in K. Ajesh and Company which was not a binding precedent and was under challenged before the High Court by the department could form a 'sufficient cause' for condonation of delay?

iv. Whether in the facts and circumstances of the case, the prejudice being caused to the dealer by condonation of such a long delay was not factor to the considered.

v. Whether in the facts and circumstances of the case tribunal ought to considered the objection raised by the dealer against condoning the delay and should have decided the same?

vi. Whether in the facts and circumstances of the case delay of 1485 days is not a long delay?

vii. Whether in the facts and circumstances of the case decision of K. Ajesh came on 10.01.2005 and last notice for revision was received for 31.1.2005. Even sanction was given by the Govt. in December, 2006 still the appeals had been filed on 26.11.2007 after more than four years still it could be said the department had been diligent in perusing the remedy and delay should be condoned?

viii. Whether in the facts and circumstances of the case the tribunal is justified in granting a special status to State for condoning such a long delay?

3. The detail of assessment years involved and the dates on which assessment orders were passed in the bunch of appeals are as under:-

Sr. No.	Case No.	Name of the Appellant	Assessment year	Assessment order
1.	VATAP No.33/2010	M/s Varun Export	1996-97	29.04.2002

2.	VATAP No.34/2010	M/s Sachdeva Oil and Chemicals Pvt. Ltd.	1992-93	16.04.2002
3.	VATAP No.35/2010	M/s Varun Export	1995-96	29.04.2002
4.	VATAP No.80/2010	M/s Sachdeva and Sons Rice Mills Pvt. Ltd.	1983-84	22.04.2002
5.	VATAP No.81/2010	M/s Sachdeva and Sons Rice Mills Pvt. Ltd.	1984-85	22.04.2002
6.	VATAP No.82/2010	M/s Sachdeva and Sons Rice Mills Pvt. Ltd.	1995-96	22.04.2002
7.	VATAP No.83/2010	M/s Varun Export	1994-95	29.04.2002
8.	VATAP No.85/2010	M/s Sachdeva and Sons Rice Mills Pvt. Ltd.	1988-89	22.04.2002
9.	VATAP No.87/2010	M/s Sachdeva and Sons Rice Mills Pvt. Ltd.	1989-90	22.04.2002
10.	VATAP No.88/2010	M/s Sachdeva and Sons Rice Mills Pvt. Ltd.	1992-93	22.04.2002
11.	VATAP No.89/2010	M/s Sachdeva and Sons Rice Mills Pvt. Ltd.	1991-92	22.04.2002
12.	VATAP No.90/2010	M/s Varun Export	1995-96	29.04.2002
13.	VATAP No.91/2010	M/s Sachdeva Oil and Chemicals Pvt. Ltd.	1994-95	16.04.2002
14.	VATAP No.92/2010	M/s Sachdeva and Sons Rice Mills Pvt. Ltd.	1994-95	22.04.2002
15.	VATAP No.93/2010	M/s Sachdeva and Sons Rice Mills Pvt. Ltd.	1990-91	22.04.2002
16.	VATAP No.94/2010	M/s Sachdeva Oil and Chemicals Pvt. Ltd.	1991-92	16.04.2002
17.	VATAP No.95/2010	M/s Sachdeva and Sons Rice Mills Pvt. Ltd.	1996-97	22.04.2002
18.	VATAP No.96/2010	M/s Sachdeva and Sons Rice Mills Pvt. Ltd.	1993-94	22.04.2002

4. Learned counsel for the appellants submitted that the assessments for the years in question as framed by the assessing authority, were time barred, if considered in the light of the provisions of Section 11 (4) of the Punjab General Sales Tax Act, 1948 (for short, 'the Act'). The appellants preferred appeals before the Deputy Excise and Taxation

Commissioner (Appeals), who vide orders passed on different dates, set aside the orders of assessment and found that the orders were beyond the period of limitation as provided under Section 11 (4) of the Act. Finally, aggrieved against the orders passed by the Deputy Excise and Taxation Commissioner (Appeals), the State preferred appeals before the VAT Tribunal, Punjab (for short, 'the Tribunal'). Along with the appeals, applications seeking condonation of delay of 1,485 days in filing the thereof, were also filed. The Tribunal in the first round of litigation, vide order dated 3.7.2008, accepted the applications seeking condonation of delay in filing the appeals and consequently, the appeals were also accepted on merits. Considering the fact that the Deputy Excise and Taxation Commissioner (Appeals) had not decided the appeals on merits, remitted the cases back to him for fresh decision on merits. Aggrieved against the order, the appellants preferred appeals bearing VAT Appeal No.2 of 2009 decided on 18.3.2009, 37 to 52 of 2009 decided on 13.8.2009 and 75 of 2009 decided on 15.2.2010 before this Court. This Court while accepting the appeals set aside the order passed by the Tribunal and remitted the cases back to the Tribunal for fresh consideration. Thereafter, the Tribunal again vide order dated 8.10.2009, accepted the applications filed by the State seeking condonation of huge delay in filing the appeals and directed that the appeals be listed for final hearing.

5. Impugning the aforesaid orders, learned counsel for the appellants submitted that there was no ground made out in the applications seeking condonation of huge delay of 1,485 days, hence, the same could not be condoned. The facts mentioned in the applications merely suggested that at different stages, the officers of the Department had been sleeping. Even

if, the State is given latitude in condonation of delay, the same cannot be to the extent sought in the case in hand. In support of the plea, reliance has been placed upon the judgment of Hon'ble the Supreme Court in Vedabai alias Vaijayantabai Baburao Patil vs. Shantaram Baburaon Patil and others, AIR 2001 SC 2582, and judgments of this Court in M/s Hansaflon Plasto Chem. Ltd. vs. State of Haryana and others, (2012) 43 PHT 182 (P&H), State of Punjab and another vs. M/s Tata Iron & Steel Co. Ltd., (2011) 38 PHT 391 (P&H), VATAP No.3 of 2012 -- M/s Paliwal Overseas Pvt. Ltd. vs. State of Haryana, decided on 21.8.2012 and VATAP No.41 of 2014 -- State of Haryana vs. M/s Windorz India Pvt. Ltd., Faridabad and another, decided on 22.9.2014.

6. He further submitted that in The State of Punjab vs. M/s Jain Bharat Industries, Raman Mandi, District Bathinda, VSTI 2008 C-248 and The State of Punjab vs. M/s Ganesh Oil Mills, Maur Mandi, District Bathinda, VSTI 2008 C-251, the Tribunal had dismissed the applications filed by the State seeking condonation of delay of six years on similar grounds. It was further submitted that it would be appropriate, if the matters are considered by this Court on merits. In terms of the Division Bench judgment of this Court in State of Punjab and others vs. Patiala Cooperative Sugar Mills Limited, Rakhra, District Patiala, (2015) 50 PHT 118 (P&H), the assessment orders passed by the assessing authority were clearly barred by limitation. There was no error in the appellate order passed by the Deputy Excise and Taxation Commissioner (Appeals). Before Section 11 of the Act was amended w.e.f. 3.3.1998, there was no limitation provided for framing of assessment. After the amendment, three years period was prescribed. This Court opined that three years can be taken as period of

limitation for framing assessment after the amendment. It was opined that for the assessment years upto 1997-98, the assessment could be framed only upto April, 2001 and not thereafter. In all these appeals, assessments years involved are from 1983-84 to 1996-97 and the assessments were framed on different dates in April, 2002. Hence, the orders passed by the First Appellate Authority, namely, the Deputy Excise and Taxation Commissioner (Appeals) were not illegal and do not call for any interference by the Tribunal, even if the matter is remitted back and is considered by the Tribunal on merits.

7. On the other hand, learned counsel for the State while referring to the judgments of Hon'ble the Supreme Court in State of Nagaland vs. Lipok Ao and others, (2005) 3 SCC 752, State of Haryana vs. Chandra Mani and others, (1996) 3 SCC 132 and State of Bihar and others vs. Kameshwar Prasad Singh and another, 2000 (2) RSJ 712 submitted that the applications for condonation of delay filed by the State were rightly allowed by the Tribunal. The machinery in the State being impersonal, the words 'sufficient cause' should be given liberal consideration. Ultimately, the revenue of the State is concerned, it is the public exchequer, which will suffer. As far as merit of the controversy is concerned, in response to the contention raised by counsel for the appellants, learned counsel for the State could not dispute the fact that the dates on which, the assessment orders were passed by the assessing authority for the assessment years in question, the same were time barred, if considered in the light of the judgment of this Court in Patiala Cooperative Sugar Mills Limited's case (supra).

8. Heard learned counsel for the parties and perused the paper book.

9. The undisputed facts, which are on record are that in the case of the appellants, the assessment for the years from 1983-84 to 1996-97 were framed by the assessing authority by passing orders on different dates in April, 2002. The details are mentioned in para No.3 of the judgment. The issue regarding limitation for passing the orders of assessment was considered by the Division Bench of this Court in Patiala Cooperative Sugar Mills Limited's case (supra) and it was opined that the assessments upto the years 1997-98 could not validly be passed after April, 2001. Relevant para thereof is extracted below:-

> "14. As noticed before, there was no limitation prescribed under Section 11 of the PGST Act for passing an assessment order before the amendment. Therefore, the period of three years prescribed for passing an assessment order would be counted for all those assessment years as per the amended provision effective from 3.3.1998. In other words, in respect of assessment years falling upto 1997-98, no assessment order could be validity passed after 30.4.2001."

10. In the cases in hand, the Deputy Excise and Taxation Commissioner (Appeals) had set aside all the assessment orders taking the same view. However, the State preferred appeals before the Tribunal along with applications seeking condonation of delay of 1,485 days. This is the second round of litigation. In the first round, the applications for condonation of delay was allowed by the Tribunal and consequently, the appeals were remitted back to the Deputy Excise and Taxation Commissioner (Appeals) for fresh decision on merits. The order was set aside by this Court. On re-consideration, the Tribunal again accepted the

applications seeking condonation of delay and directed the matter to be listed for hearing on merits.

11. Considering the totality of the facts, as noticed above, in our opinion, it will be futile exercise, if the matters are remitted back to the Tribunal, even if the present appeals are dismissed. On merits also, the appellants are entitled to get relief in view of the judgment of this Court in Patiala Cooperative Sugar Mills Limited's case (supra), as all the assessment orders are barred by limitation as prescribed in Section 11 (4) of the Act. All the assessment orders were passed beyond the period of limitation as prescribed in Section 11 (4) of the Act.

12. Hence, without going into the issue of delay in filing the appeals by the State before the Tribunal, we deem it appropriate to conclude the matters here finally as on merits the issue is covered in favour of the appellants. Even if, we take a lenient possible view in favour of the State in dealing with applications for condonation of delay and dismiss the present appeals, the matter will have to be considered on merits by the Tribunal. In view of conceded position in law as per judgment of this Court in Patiala Cooperative Sugar Mills Limited's case (supra), all the assessment orders passed by the assessing authority were beyond the period of limitation, hence, could not be legally sustained. The orders passed by the Deputy Excise and Taxation Commissioner (Appeals) were strictly in conformity with the aforesaid judgment of this Court. Hence, without opining on the issue of limitation we find that even if the appeals filed by the State before the Tribunal are considered on merits, those are totally mis-conceived. We instead of throwing the parties to another round of litigation and keeping in view the settled position of law on merits of controversy, dispose of the

bunch of appeals while upholding the orders passed by the Deputy Excise and Taxation Commissioner (Appeals) and dismissing the appeals filed by the State before the Tribunal even on merits.

13. The appeals stand disposed of, accordingly.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

17.8.2016
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No