IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP No.2 of 2016 (O&M)
Date of decision: 19.2.2016

M/s Conell Bros. Co. (India) Pvt. Limited

……Appellant

vs.

State of Punjab

…..Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE RAJ RAHUL GARG

1. Whether Reporters of 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?

Present: Mr. Avneesh Jhingan, Advocate for the appellant-assessee.

Mr. Jagmohan Bansal, Addl.A.G.Punjab with
Ms. Sudeepti Sharma, DAG, Punjab.

Ajay Kumar Mittal,J.

<u>CM No.973 CII of 2016</u>

1. This is an application under Section 5 of the Limitation Act, 1963 for condonation of delay of 45 days in filing the appeal.

2. Notice of the application was given to the respondent. For the reasons stated in the application and after hearing learned counsel for the

parties, the delay of 45 days in filing the appeal is condoned. CM stands disposed of.

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3. This appeal has been preferred by the assessee under Section 68 of the Punjab Value Added Tax Act, 2005 (in short, "the PVAT Act") against the order dated 13.8.2015, Annexure A.6 in STA No.25 of 2014, claiming following substantial questions of law:

> "i) Whether in the facts and circumstances of the case, the delay in filing the appeal ought to have been condoned by the Tribunal?
>
> ii) Whether in the facts and circumstances of the case, the reasonable cause should have been liberally construed by the Tribunal while dealing the application for condonation of delay?
>
> iii) Whether in the facts and circumstances of the case, the delay of 124 days should have been condoned as the same occurred because of the death of the representative of the company?
>
> iv) Whether in the facts and circumstances of the case, the order Annexure A.6 is contradictory and perverse?"

4. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant sold frozen lemon concentrate to M/s Epicu Agro Products Pvt. Limited, Village, Mohra, Ambala vide invoice dated 28.4.2009. The goods were transported through M/s MP Bombay Transport Careers, Mumbai. As per instructions of the buyer, the goods were consigned to M/s Snowman Frozen Foods Limited, Village Ganna Pind, Phillaur with whom the buyer had agreement. The transaction was against Form C and 2% CST was charged. The said

goods were detained at ICC on the ground that neither M/s Epicu Agro Products Pvt. Limited nor M/s Snowman Frozen Foods Limited was registered in Punjab. Ultimately, penalty of ₹ 12,19,335/- was imposed under Section 51(7) (b) of the PVAT Act vide order dated 22.5.2009, Annexure A.2. Aggrieved by the order, the assessee filed appeal before the Deputy Excise and Taxation Commissioner (Appeals) [DETC(A)]. Vide order dated 4.6.2013, Annexure A.3, the DETC(A) dismissed the appeal. The said order was received on 14.8.2013 by Vinod Kumar Grover, representative of the company who was dealing with the matter. Before the appeal could be filed in the Tribunal, Mr. Grover expired on 8.10.2013. Mr. Rajesh Chhabra took over the charge on the demise of Mr. Grover. In this way, there was delay in filing the appeal. Ultimately, the appeal was filed alongwith an application for condonation of delay of 124 days before the Tribunal. Vide order dated 13.8.2015, Annexure A.6, the Tribunal dismissed the appeal on the ground of delay. Hence the instant appeal by the assessee.

5. We have heard learned counsel for the parties.

6. After perusing the averments made in the grounds of appeal, the impugned order dated 13.8.2015, Annexure A.6, passed by the Tribunal and hearing learned counsel for the parties, we find that the appeal before the Tribunal against the order of DETC(A) could not be filed in time due to the death of the representative of the company dealing with the matter. When the charge was taken over by another person, immediately thereafter, steps for filing of appeal before the Tribunal were taken. There was no malafide intention on the part of the appellant-assessee. The explanation

tendered by the appellant-assessee appears to be plausible. Thus, the delay of 124 days in filing the appeal before the Tribunal is condoned. The impugned order dated 13.8.2015, Annexure A.6 passed by the Tribunal is set aside. Consequently, the matter is remanded to the Tribunal to hear the appeal after hearing learned counsel for the parties in accordance with law. The appeal stands disposed of accordingly.

(Ajay Kumar Mittal)
Judge

February 19, 2016
'gs'

(Raj Rahul Garg)
Judge