

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP No. 5 of 2015 (O&M)

Date of Decision: 08.08.2016

M/s. Sharma Engineering Works

...Appellant

Versus

The State of Punjab and another

...Respondents

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

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

Mr. Piyush Bansal, DAG, Punjab

RAJESH BINDAL, J.

The assessee is in appeal before this Court against the order passed by the Value Added Tax Tribunal, Punjab (for short 'the Tribunal) on December 04, 2014 in appeal No. 548 of 2013 raising the following substantial questions of law: -

“(i)Whether on the facts and in the circumstances of the case, the Ld. Tribunal was justified in dismissing the appeal of appellant on the ground of delay whereas the appellant had filed the appeal within the period of limitation after the certified copy of order was supplied to him?

(ii)Whether on the facts and in the circumstances of the case, the Ld. Tribunal ought to have condoned the delay, if any, since there is a serious dispute with regard to the service of certified copy of order?

(iii)Whether on the facts and in the circumstances of the case, the Ld. Tribunal is justified in holding that the appellate authority is justified in dismissing the appeal in default even though section 20 of PGST Act, 1948 obliges the appellate authority to pass an order on merits of the case?

(iv) Whether the Ld. Appellate Authority was obliged to supply certified copy of order where an ex-parte order has been passed in the absence of the appellant?"

Learned counsel for the appellant submitted that penalty of ₹ 2,81,000/- was imposed upon the appellant by Assistant Excise and Taxation Commissioner vide order dated 10.03.2004 passed under Section 14 (B)(7) of the Punjab General Service Tax Act, 1948 (for short 'the Act'). Aggrieved against the aforesaid order, the appellant preferred appeal before the Excise and Taxation Commissioner-Cum-Joint Director (Enf.) Patiala Division, Patiala which was dismissed vide order dated 15.07.2005, in default.

As the appellant was not served notice for hearing of the appeal by the first Appellate Authority, it could not avail of its further remedy of appeal. The appellant came to know about the order passed only when recovery notice was issued to it on 22.07.2013. Immediately, thereafter, appeal was filed before the Tribunal which was dismissed vide order dated 04.12.2014.

The contention raised by learned counsel for the appellant is that neither the notice for hearing of the appeal was served by the first Appellate Authority nor the copy of the order finally passed. As the appellant did not receive the copy of the order passed by the first Appellate Authority, it could not avail of its remedy of appeal against the order. When the intimation was received by the appellant with the receipt of notice for recovery of the amount, immediately the appeal was filed before the Tribunal, hence, the same could not be dismissed on account of delay.

Learned counsel for the respondents on instructions from Amit Goyal (ETO) ICC, Shambhu (Import) submitted that on verification, it could

not be established that copy of the order passed by the first Appellate Authority was served upon the appellant.

After hearing learned counsel for the parties and considering the submissions noticed above, it is found that undisputedly copy of the order passed by the first Appellate Authority was not served upon the appellant and the appeal was filed by the appellant before the Tribunal within limitation from the date it received demand notice, hence, the same could not have been dismissed on account of delay and should have been considered on merits subject to any other statutory compliance.

Accordingly, the present appeal is allowed. The impugned order dated 04.12.2014 passed by the Tribunal is set aside and the matter is remitted back to Tribunal for decision on merits subject to other statutory compliance. The parties through counsels are directed to appear before the Tribunal on 29.08.2016.

The appeal stands disposed of.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

August 08, 2016

Divyanshi

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No