IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP No. 56 of 2015 (O&M)

Date of Decision: 4.5.2016

M/s Bhawani Industries (P) Ltd., Ajnali, Mandi Gobindgarh

....Appellant

Versus

The State of Punjab

...Respondent.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE SHEKHER DHAWAN.

PRESENT: Mr. Rishab Singla, Advocate for the appellant.

Mr. Jagmohan Bansal, Additional Advocate General, Punjab.

AJAY KUMAR MITTAL, J.

1. This appeal has been filed by the assessee under Section 68 of the Punjab Value Added Tax Act, 2005 (in short "the Act") against the order dated 14.8.2015 (Annexure A-7) passed by the Value Added Tax Tribunal, Punjab, Chandigarh (hereinafter referred to as "the Tribunal") in Appeal No. 190 of 2014, claiming the following substantial question of law:-

> Whether on the facts and in the circumstance of the case the Ld. Tribunal was justified in not condoning the delay wherein there exists a sufficient cause for the same?

2. Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The appellant is engaged in the business of Iron and Steel goods at Mandi Gobindgarh having TIN No. 03221136481. It had placed an order for import of heavy melting scrap from United States of America. The said goods entered India through Gateway Rail Freight India Limited in sealed containers. Each container was transported through a separate truck and the entry tax was paid. The consignment of the imported goods was detained by the Excise and Taxation Officer (Mobile Wing), Ludhiana near Khanna under Section 51(6)(b) of the Act. The assessing authority vide order dated 31.1.2013 (Annexure A-1) under Section 51(7)(c) of the Act imposed penalty of ₹ 6,39,436/-. The copy of the said order was received by the appellant on 14.5.2013 after a passage of more than four months. Thereafter, it handed over the papers to Shri Subhash Chander Satija, Advocate. However, due to liver ailment, the said counsel fell seriously ill and despite treatment from various doctors, he could not recover. He was referred to MIOT Hospital, Chennai for liver transplant where he remained admitted from 23.5.2013 to 7.8.2013 and ultimately died on 7.8.2013 as per death certificate dated 11.12.2014 (Annexure A-2). Due to this unfortunate incident, the appellant collected the file from the office of Shri Subhash Chander Satija, Advocate and thereafter filed the appeal on 17.10.2013 (Annexure A-3) before the Deputy Excise and Taxation Commissioner (Appeals) [DETC(A)], Ludhiana. Since the appeal was barred by time of 120 days, an application, Annexure A-4, was filed for condonation of the delay in filing the appeal. The DETC(A) vide order dated 10.3.2014 (Annexure A-5) dismissed the appeal being time barred. Feeling aggrieved, the

appellant filed an appeal on 13.5.2014 (Annexure A-6) before the Tribunal. The Tribunal vide order dated 14.8.2015 (Annexure A-7) dismissed the appeal. Hence, the present appeal.

3. We have heard learned counsel for the parties.

4. The primary question that arises for consideration in this appeal is whether the delay of 120 days in filing the appeal before the DETC(A) was liable to be condoned in the facts and circumstances of the present case.

5. Examining the legal position relating to condonation of delay under Section 5 of the Limitation Act, 1963 (in short, the "1963 Act") it may be observed that the Hon'ble Supreme Court in **Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation and another, (2010) 5 SCC 459** laying down the broad principles for adjudicating the issue of condonation of delay, in paras 14 & 15 observed as under:-

> "14. We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is

shown for not availing the remedy within the stipulated time.

15. The expression "sufficient cause" employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate-Collector (L.A.) v. Katiji N. Balakrishnan v. M. Krishnamurthy and Vedabai v. Shantaram Baburao Patil."

6. It was further noticed by the Hon'ble Apex Court in **R.B. Ramlingam v. R.B. Bhavaneshwari 2009(1) RCR (Civil) 892** as under:-

".....It is not necessary at this stage to discuss each and every judgment cited before us for the simple reason that Section 5 of the Limitation Act, 1963 does not lay down any standard or objective test. The test of "sufficient cause" is purely an individualistic test. It is not an objective test. Therefore, no two cases can be treated alike. The statute of limitation has left the concept of "sufficient cause" delightfully undefined, thereby leaving to the Court a well-intentioned discretion to decide the individual cases whether circumstances exist establishing sufficient cause. There are no categories of sufficient cause. The categories of sufficient cause are never exhausted. Each case spells out a unique experience to be dealt with by the Court as such."

It was also recorded that:-

"For the aforestated reasons, we hold that in each and every case the Court has to examine whether delay in filing the special leave petition stands properly explained. This is the basic test which needs to be applied. The true guide is whether the petitioner has acted with reasonable diligence in the prosecution of his appeal/petition...."

7. From the above, it emerges that the law of limitation has been enacted which is based on public policy so as to prescribe time limit for availing legal remedy for redressal of the injury caused. The purpose behind enacting law of limitation is not to destroy the rights of the parties but to see that the uncertainty should not prevail for unlimited period. Under Section 5 of the 1963 Act, the courts are empowered to condone the delay where a party approaching the court belatedly shows sufficient cause for not availing the remedy within the prescribed period. The meaning to be assigned to the expression "sufficient cause" occurring in Section 5 of the 1963 Act should be such so as to do substantial justice between the parties. The existence of sufficient cause depends upon facts of each case and no hard and fast rule can be applied in deciding such cases.

8. The Hon'ble Apex Court in **Oriental Aroma Chemical**

Industries Ltd. and R.B. Ramlingam's cases (supra) noticed that the courts should adopt liberal approach where delay is of short period whereas the proof required should be strict where the delay is inordinate. Further, it was also observed that judgments dealing with the condonation of delay may not lay down any standard or objective test but is purely an individualistic test. The court is required to examine while adjudicating the matter relating to condonation of delay on exercising judicial discretion on individual facts involved therein. There does not exist any exhaustive list constituting sufficient cause. The applicant/petitioner is required to establish that inspite of acting with due care and caution, the delay had occurred due to circumstances beyond his control and was inevitable.

9. The question regarding whether there is sufficient cause or not, depends upon each case and is to be decided taking totality of events which had taken place in a particular case. Learned counsel for the appellant submitted that the order dated 31.1.2013 passed by the Assistant Excise and Taxation Commissioner (Mobile Wing) was received by the appellant on 14.5.2013 and the appeal was to be filed on or before 14.6.2013. The appellant after receiving the order handed over the complete file to Shri Subhash Chander Satija, Advocate, who at that time was undergoing the treatment of liver transplant at Chennai. He remained admitted there from 23.5.2013 to 7.8.2013 and ultimately died on 7.8.2013. The appellant collected the papers from the office of the said counsel after two months from his death and filed the appeal against the order, Annexure A-1, on 17.10.2013. The appeal was filed late by 120 days. In such circumstances, delay in filing the appeal before the DETC(C) was unintentional and due to the circumstances beyond

the control of the appellant.

10. The explanation furnished by the appellant appears to be plausible and, therefore, leads to the conclusion that there was sufficient cause for delay in filing the appeal. Once that was so, the delay in filing the appeal before the DETC(A) deserves to be condoned and appeal heard on merits by the DETC(A).

11. In view of the above, it is held that the DETC(A) had erred in refusing to condone the delay in filing the appeal. The substantial question of law is answered accordingly. As a sequel, the appeal is allowed and the orders dated 10.3.2014 (Annexure A-5) passed by the DETC(A) and dated 14.8.2015 (Annexure A-7) passed by the Tribunal are set aside. The matter is remitted to the DETC(A) to adjudicate the appeal on merits after hearing learned counsel for the parties in accordance with law .

(AJAY KUMAR MITTAL)
JUDGE

May 4, 2016 **(SHEKHER DHAWAN)**
gbs **JUDGE**