IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

PVR-7-2017 (O&M)
Date of Decision: 21.11.2017

The State of Punjab
....Petitioner.

Versus

M/s Dasm Construction Co. Pvt. Ltd., Mohali
...Respondent.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE AMIT RAWAL.

PRESENT: Mr. Pankaj Gupta, Additional Advocate General, Punjab, for the petitioner.

AJAY KUMAR MITTAL, J.

1. This order shall dispose of a bunch of three Punjab VAT Revisions bearing PVR Nos. 7 to 9 of 2017 as according to learned counsel for the petitioner, the issues involved therein are identical. For brevity, the facts are being extracted from PVR-7-2017.

2. PVR-7-2017 has been filed by the State of Punjab under Section 68 of the Punjab Value Added Tax Act, 2005 (in short "the Act") against the orders dated 27.8.2015, 31.8.2015 and 24.9.2015 (Annexure P-4 Colly) dismissing the prayer of the petitioner to entertain the revision only after deposit of 25% of the additional demand created vide order dated 7.4.2014 (Annexure P-2) passed by the Revisional Authority.

3. A few facts relevant for the disposal of the present revisions as narrated therein may be noticed. The respondent is a works contractor and was granted Registration No. 03132056139. The dealer filed all the quarterly returns and annual statement for the assessment year 2009-10. The assessment was finalized by the Assessing Officer vide order dated 30.10.2012 (Annexure P-1) without any additional demand as there was

excess Input Tax Credit (ITC). The said assessment order was taken up in revision under Section 65(1) of the Act and a notice was issued to the respondent. The petitioner-revisional authority vide order dated 7.4.2014 (Annexure P-2) created an additional demand of ₹ 29,31,331/- including penalty and interest. Feeling aggrieved, the respondent filed a revision under Section 65(2) of the Act before the Punjab Value Added Tribunal (hereinafter referred to as “the Tribunal”) on 20.6.2014 (Annexure P-3). Along with the revision, the respondent also filed an application (Annexure P-3) for entertainment of revision without deposit of 25% of the demand. The Tribunal vide orders dated 27.8.2015, 31.8.2015 and 24.9.2015 (Annexure P-4 Colly) entertained the revision without any deposit of the additional demand by the respondent. Hence, the present revisions. Since, all the three revisions were barred by time, applications under Section 5 of the Limitation Act, 1963 (in short “the 1963 Act”) were also filed for condonation of 709 days' delay.

4. We have heard learned State counsel.

5. The primary question that arises for consideration in this revision is whether there is sufficient cause for condonation of delay of 709 days in filing the revision before this Court.

6. Examining the legal position relating to condonation of delay under Section 5 of the 1963 Act, it may be observed that the 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 and 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.**"

7. It was further noticed by the 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...."

8. 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.

9. The 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.

10. According to the learned State counsel, the petitioner had applied to the Government on 1.10.2015 seeking sanction to challenge the order dated 24.9.2015 passed by the Tribunal before this Court. The said sanction was received on 4.11.2016. It was urged that the delay, if any, has occurred in the aforesaid circumstances in filing the revision before this Court. Learned State counsel further argued that the delay was unintentional and due to the circumstances beyond the control of the petitioner.

11. Adverting to the factual matrix in this case seeking condonation of inordinate delay of 709 days in filing the revision, we do not find any merit in the same. The question regarding whether there is sufficient cause or not depends upon each case and primarily is a question of fact to be considered taking into totality of events which had taken place in a particular case. In the present case after appreciating the matter it cannot be said that there was sufficient cause for condonation of delay. The Tribunal had passed the interim order on 24.9.2015 which has been impugned in the present revision petition. However, the revision before this Court was required to be filed within the stipulated period of limitation. But the petitioner filed the revision before this Court on 3.10.2017, after a delay of 709 days. The plea of the petitioner praying for condonation of delay in filing the revision, as noticed hereinabove, would not satisfy the test of sufficient cause. The explanation of the petitioner is bereft of sufficient cause for delay caused in filing the revisions.

12. Accordingly, finding no merit in the applications for condonation of 709 days' delay in filing the revisions, the same are hereby dismissed. Consequently, the revisions are also dismissed as barred by time.

(AJAY KUMAR MITTAL)
JUDGE

November 21, 2017
gbs

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned **Yes**

Whether Reportable **Yes**