IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 21 OF 2017

M/s. Khandelwal and Sons
16, Diamond Chambers,
1st floor, 18th June road
Opposite Pharmacy College,
Panaji. Goa 403 001. ..... Applicant

Versus

The Assistant Commissioner of Commercial
Tax Panaji,
Office of the Commissioner of Commercial Taxes,
Akbari Bhavan,
mahatma Gandhi Road,
Panaji, Goa – 403 001 & Another ...... Respondents.

Mr. Chirag Ramniklal Shah, Advocate for the Applicant.

Mr. V. Sardessai, Additional Government Advocate for the Respondent Nos.1 and 2.

Coram : N.M. Jamdar &
Nutan D. Sardessai, JJ.

Date : 1 October 2018.

<u>ORAL ORDER:</u>

By this Revision Application the Applicant has challenged the order passed by the Administrative Tribunal of Goa dismissing the Value Added Tax Appeal No.6 of 2015. The Applicant had filed an appeal to the Administrative Tribunal challenging the order passed by the Assistant Commissioner of Commercial Taxes.

2. The Applicant is registered under the Goa Value Added Tax Act,2005 and a Registration Certificate has been issued under the Act. The Applicant was assessed by the Asst. Commercial Tax Officer and certain amounts were held to be payable. The Applicant was directed to pay the same. The Applicant filed an appeal before the Commissioner of Commercial Taxes alongwith an application of condonation of delay of 493 days. The application was rejected by the Commissioner and thereafter the Applicant filed an appeal to the Tribunal. The Tribunal by the impugned order has dismissed the Appeal. Under the provisions of the Act of 2005 a Revision lies to the Division Bench of this Court.

3. The Section 35 deals with the Appeal to the Appellate Authority and Section 36 deals with the appeal to the Tribunal. The present case is covered by the Section 35 of the Act. Relevant part is thus:

> *"**35. Appeals.-** 1. Any person objecting to an order affecting him passed under the provisions of this Act by an authority may appeal to Appellate Authority as may be prescribed within sixty days from the date of receipt of order by him.*
> *2. Where the Appellate Authority is satisfied that the*

> *person has reasonable cause for not preferring an appeal within the time specified in sub-section (1), he may accept an appeal, provided it is made within one year, from the date of receipt of order by him.*
> *3....*
> *4....*
> *5....*
> *6....*
> *7...."*

The Section 35 (1) thus states that the appeal has to be filed within a period of 60 days and Section (2) states that if the Appellate Authority satisfies that there is a reasonable cause for not filing the appeal within a period of 60 days, he may accept an appeal but if it is made within a period of one year. Therefore Section 35 (1) and (2) prescribed a specific period of limitation. Initially it is 60 days with the power of the Appellate Authority for a period of one year thereafter.

4. In various enactments containing similar causes, it has been an consistent interpretation that such schemes provide for special limitation and application of Section 5 of the Limitation Act is excluded. Section 35(1) and (2) do not admit application of Section 5 of the Limitation Act, by the nature of its scheme. This Revision had came up on various occasions and we had put the learned Counsel for the Applicant to demonstrate before us as to how

provision of Section 5 of the Limitation Act applies to Section 35 of the Act of 2005. We had even given an opportunity to file the compilation of decisions, which the petitioner has not availed of.

5. In the present case admittedly the appeal was filed 493 days beyond the expiry of one year and 60 days. In this circumstances, the dismissal of the appeal of the Applicant by the Tribunal confirming the order of the Commission, cannot be said to be without jurisdiction or perverse so as to warrant any interference in the Revisional jurisdiction.

6. The Revision application is dismissed.

Nutan D. Sardessai, J. ***N.M. Jamdar, J.***