IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-4300-2018

Date of decision: 30.11.2018

Assistant Commissioner, Central Excise Division

..... Petitioner

Versus

M/s Nova Industries (P) Ltd. and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN**

PRESENT: Mr. Saurabh Goel, Advocate for the petitioner.

Mr. Jagmohan Bansal, Advocate for respondents No. 1 to 7.

**RAMENDRA JAIN, J. (ORAL)**

Through this petition under Section 482 Cr.P.C., the petitioner has laid challenge to order dated 09.02.2017 (Annexure P-1) of the lower Revisional Court, whereby the application of the petitioner for condonation of delay in filing revision (Annexure P-5) against the judgment dated 06.03.2014 (Annexure P-3), was dismissed.

In nutshell, petitioner field a complaint against respondents, which after holding trial was dismissed vide judgement Annexure P-3 discharging all the accused-respondents.

Being dis-satisfied, the petitioner approached the lower Revisional Court by filing revision (Annexure P-5) along with an application for condonation of delay of 110 days, on the ground that there was a confusion as to where the revision had to be filed. The local empanelled Advocate, had advised them to file revision before this Court. Therefore, the same was sent to their empanelled Advocate of this Court. However, he returned the file with advice to file revision before the lower Revisional Court. In this process, delay of 110 days had occurred.

After hearing both the side, the lower Revisional Court, rejected the above plea of the petitioner for condonation of delay and dismissed his application in this regard, vide impugned order dated 09.02.2017 (Annexure P-1).

Learned counsel for the petitioner *inter alia* contends that initially, their empanelled Advocate before the lower Court had advised them to file revision before this Court, but their Advocate before this Court had returned the file with the advice to file revision before the Sessions Court, as it was having concurrent powers akin to this Court. The lower Revisional Court, has failed to appreciate that due to difference of opinion of empanelled Advocates, as to before which of the forum revision has to be filed, delay of 110 days occurred.

On the other hand, learned counsel for respondents No. 1 to 7, strongly refuting the above submissions of learned counsel for the petitioner contends that the plea taken by the petitioner is totally misconceived. Rather, the petitioner has tried his level best to mis-guide this Court as well as the lower Revisional Court, by pleading wrong facts and thus, is liable for criminal action. There is no opinion on the file before this Court or before the lower revisional Court as to which of the Advocate had advised the petitioner to file revision before this Court. It is a self-created excuse of the petitioner to hide his mistake of non-filing of revision within the period of limitation. As on date, there is no loss to the State Exchequer, inasmuch as, demand of the petitioner has been dropped by the Customs Excise and Service Tax Appellate Tribunal, (for short -'the Tribunal') vide order dated 30.03.2015. From this angle too, the instant petition is liable to be dismissed.

Having given anxious consideration to the rival submissions, this Court finds the instant petition completely devoid of any merit for the reasons to follow:

The demand raised by the petitioner has already been dropped/cancelled by the Tribunal vide order dated 30.07.2015. Therefore, the petitioner ought not to have filed the instant petition. Despite knowledge of above said fact, filing of instant petition by the petitioner, his *mala fide* action with some ulterior motive and extraneous consideration, best known to him, amounts to grave harassment to the innocent tax payers.

Filing of this petition, amounts to gross abuse of the process of law, inasmuch as, after cancellation of demand raised by him from the respondent, this petition was not maintainable.

There is no legal advice of any of the advocates on the record advising the petitioner to file revision before this Court against impugned order Annexure P-3, discharging the respondents, while dismissing the complaint. The story put forth by the petitioner seems to be completely false and concocted one just to hide his negligence of not filing revision within the period of limitation. The empanelled advocate of the petitioner on 15.07.2014, itself directed the petitioner to file revision before the concerned Sessions Court, but he filed the same on 04.09.2014 and that too after procuring letter dated 11.08.2014 (Annexure P-4) which is a repetition by the same Advocate, who has given his opinion on 15.07.2014, just to make out a case to justify the delay in filing revision beyond the period of limitation. All above acts of the petitioner being not *bona fide* are liable to be condemned. He is warned to be careful in future with advice not to harass genuine tax payers, taking advantage of his official position.

This Court is flooded with such type of frivolous litigations. Much water has already flown. Now, it is the need of hour that the official machinery should sensitise itself and may think thousand times before adopting any legal course against any citizen of this country, which un-necessarily made him to suffer for huge expenses towards legal fee and other miscellaneous expenses.

In view of the discussion made above, this petition is dismissed with exemplary costs of ₹ 2,00,000/- (Rupees Two Lakhs) to be recovered from the erring officer from his own pocket.

A copy of this order be sent to the Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi and Chairman, Central Board of Direct Taxes and Customs, North Block, New Delhi, for recovery of the said costs from the erring officer and deposit the same with the Treasury under the relevant head. Compliance thereof, be sent to the Registry of this Court within two months from today positively, failing which Registry shall place the papers before this Court.

**November 30, 2018** **( RAMENDRA JAIN )**
*rishu* **JUDGE**

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| **Whether speaking/reasoned** | **Yes/No** |
| **Whether Reportable** | **Yes/No** |