**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**VATAP No.134 of 2017
Date of Decision:-12.11.2018**

M/s Jai Bajrang Polypack (P) Ltd., Panipat

...Appellant

Versus

State of Haryana and others

...Respondents

**CORAM:- HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE MANOJ BAJAJ**

Present:- Mr. Rajiv Agnihotri, Advocate
for the appellant.

Mrs. Mamta Singla Talwar, Deputy Advocate General, Haryana.

RAJESH BINDAL J.

The assessee has filed the present appeal against the order dated 18.5.2017 (Annexure A-6) passed in STR No.04 of 2016-17 in STA No.854-855 of 2010-11, whereby the review application filed by the appellant was dismissed as time-barred.

Following substantial questions of law are sought to be raised :-

i) Whether there is infact a delay in filing review before the Tribunal late by one and a half years when the copy of the order was never communicated on the appellant or its counsel, or said to be communicated on the counsel who denied any receipt of such order.

ii) Whether even if there is any delay, the same is so fatal to be dismissed as barred by limitation and particularly when issue stood settled by the Hon'ble High Court during the said period itself?

iii) Whether the Tribunal should not have taken cognizance of decision of Hon'ble Punjab & Haryana High Court in case of A.R. Plastic (P) Ltd. in VATAP 134 of 2013 dated 14.5.2014 keeping in view the merits of the case when the product in question is not liable to tax it being exempted from payment of tax under the Haryana Value Added Tax Act, 2003?

iv) Whether the appellant is required to file two review petitions when one single order is passed by the Tribunal for the Haryana Value Added Tax Act, 2003 and the Central Sales Tax Act, 1956, there being only one legal issue under both the Act on the sale of exempted goods which were held by the lower authorities as taxable goods. If two appeals are required, the petitioner should not be given liberty to file another appeal.

Learned counsel for the appellant submitted that appeal filed by the appellant before the Tribunal was decided in the absence of counsel for the appellant, vide order dated 08.5.2013. Copy of the order was neither received by the appellant nor its counsel. It is further submitted that from May, 21, 2014 till December 12, 2016 the Tribunal was not functional as neither the Chairman nor the Members had been appointed by the State. Immediately after the Chairman and Members were appointed, the applicant, who is the appellant, filed application for supplying certified copy of the order on 14.12.2016 and after receipt thereof immediately review application was filed on 20.1.2017, hence, the same was not time barred. The appellant has even placed on record a certificate issued by the counsel for the appellant before the Tribunal stating that copy of the order was not received by them.

On merits, the issue raised by the appellant is squarely covered by a Division Bench judgment passed by this Court in **VATAP No.134 of 2013**, case titled 'M/s A.R. Plastic Pvt. Ltd. Gurgaon Road, Jhajjar vs. State of Haryana and others', decided on 14.5.2014. He further submitted that the Tribunal has not given any opportunity to the appellant to prove the fact that the copy of order was not received by the appellant or its counsel. Merely on presumption that the same having been sent through registered post, must have been delivered to the counsel, the review application was treated as time barred and dismissed. There was error apparent on the face of the order passed by the Tribunal, hence, review application should have been entertained.

On the other hand, learned State counsel submitted that once the order passed by the Tribunal was dispatched through registered post and it having not been received back unserved, the presumption is that the same was delivered to the addressee. By taking that date, the review application filed by the appellant was rightly dismissed by the Tribunal as time barred.

After hearing learned counsel for the parties, we are of the view that the Tribunal should have granted effective opportunity of hearing to the parties while considering the fact as to whether the copy of order passed by the Tribunal was actually delivered to the addressee or the counsel for the appellant appearing before the Tribunal. In case, it was not served, the appellant may have a case that the review application filed by him was within time.

For the reasons mentioned above, the impugned order dated 18.5.2017 is set aside. The matter is remitted to the Tribunal for re-consideration after affording opportunity of hearing to both the parties. The parties are directed to appear before the Tribunal on 17.12.2018.

The appeal is disposed of accordingly.

(RAJESH BINDAL)
JUDGE

November 12, 2018
Vijay Asija

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned Yes / No
Whether Reportable Yes / No