IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

120 **VATAP-138-2017**
Date of Decision: 26.02.2018

M/S M.K. ENTERPRISES, FARIDABAD ....Appellant.

Versus

STATE OF HARYANA AND ORS . ...Respondents.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

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

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ANUPINDER SINGH GREWAL, J.

This VAT appeal is directed against the order of the Haryana VAT Tribunal dated 09.05.2017 (Annexure A-4), whereby the appeal preferred against the order of the First Appellate Court, has been dismissed on account of delay and laches.

2. The appellant is stated to be a proprietorship concern, engaged in the trading of iron & steel and is registered with the Department of Sales Tax under the Haryana Value Added Tax Act, 2003 (hereinafter referred to as the 'Act of 2003'). The benefit of input tax credit as claimed by the assessee/appellant was disallowed on the ground that the selling VAT dealers, from whom the assessee had allegedly purchased the goods, had not deposited the tax in the Government Treasury as provided under Rule 20 (4) of the Haryana VAT Rules, 2003 and the purchases were non-verifiable from the returns filed by the VAT dealers who had sold the goods. The first appeal preferred by the appellant against the order of the assessing authority was dismissed by

The Appellate Authority by the order dated 29.07.2009. The appeal preferred by the appellant thereagainst before the Haryana VAT Tribunal was dismissed on 09.05.2017, which has been impugned in the instant appeal.

3. Learned counsel for the appellant submitted that the delay in preferring the appeal before the Tribunal had occurred as the copy of the order passed by the First Appellate Authority had not been received by the appellant and therefore, it deserved to be condoned and the appeal should have been decided on merits.

4. We have heard learned counsel for the appellant.

5. The first appeal preferred by the appellant had been dismissed on 29.07.2009. The copy of the order dated 29.07.2009 had been furnished to Mr. J.D. Batheja, Advocate on 11.08.2009. Mr. J.D. Batheja, Advocate had received the copy of the order on behalf of Mr.S.K. Sarwal, Advocate who had been representing the appellant in the first appeal.

6. It is also borne out from the order of the Tribunal that Mr. J.D. Batheja, Advocate had made a statement before the Tribunal that he had received the copy of the order on 11.08.2009 on behalf of Mr. S.K. Sarwal, Advocate and had immediately handed over the same to Mr. S.K. Sarwal, Advocate. There is nothing to the contrary on record to suggest that the copy of the order was not received by the appellant or its counsel. No

material had been produced from Mr. S.K. Sarwal, Advocate to indicate that copy of the order was not received by him from Mr. J.D. Bhateja, Advocate. The first appeal had been preferred after a period of four and a half years from the passing of the order impugned therein. The Tribunal has arrived at a finding of fact that there is no explanation for condonation of delay, in the absence of which, the long and inordinate delay of four and a half years cannot be condoned.

7. Therefore, we do not find that the instant appeal raises any question of law, much less, a substantial question of law warranting consideration in the instant appeal under Section 36 of the Act of 2003.

8. In the result, the appeal stands dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(ANUPINDER SINGH GREWAL)
JUDGE

26.02.2018
SwarnjitS

Whether speaking/reasoned : YES/NO

Whether reportable : YES/NO