

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

**VATAP No. 31 of 2018 (O&M)
Date of decision: 05.04.2018**

**M/s A to Z Buildcon India Private Limited, NRP Bass Road, Dharuhera,
Rewari through its authorised signatory, Sh. Shah Azeem**

.....Appellant

Vs.

The State of Haryana and others

.....Respondents

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

Present: Mr. Vikas Chatrath, Advocate for the appellant-assessee.

Ajay Kumar Mittal,J.

1. The appellant-assessee has filed the instant appeal under Section 36 of the Haryana Value Added Tax Act, 2003 (in short, "the Haryana VAT Act") against the order dated 25.10.2017, Annexure P.7, passed by the Haryana Tax Tribunal Chandigarh, (in short, "the Tribunal"), for the assessment year 2007-08, claiming following substantial questions of law:-

- (i) "Whether impugned orders are contrary to factual and legal position?
- (ii) Whether appellant can be made liable, especially when payment stands paid?

(iii) Whether delay is liable to be condoned and case is liable to heard on merits?

(iv) Whether action of the respondents is contrary to the principles of natural justice?

(v) Whether appellant is being made to suffer on account of non-consideration of factual and legal position in the right perspective?

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant-assessee is a private limited company. Assessment was framed in this case vide order dated 31.3.2011, Annexure P.1 raising additional demand of ₹ 99,764/- under the Haryana VAT Act for the assessment year 2007-08. The same was conveyed to the appellant on 3.6.2011. Aggrieved by the order, the appellant filed an appeal before respondent No.3 on the plea that the order dated 31.3.2011 was not in consonance with the factual and legal aspects and as such the same was liable to be set aside. The appeal was filed alongwith an application for condonation of delay of 216 days which occurred as part time Accountant engaged by the company did not bring the order to the notice of the appellant. It was stated that the contract had been awarded by Idea Cellular Limited, M/s Silverline Holding Pvt. Limited and SNG Developers to the appellant's firm wherein contractors were supposed to carry out obligation as envisaged under contract. The issuance companies while making payment had deducted tax at source and deposited the same with concerned authority. Thus, tax stood deducted by the contractors. Alongwith the appeal, the appellant had attached certificate of deduction of TDS that the same stood deducted by contractor. According to the appellant, the amount which had been raised by the authorities were on account of non appreciation of factual and legal aspects. Vide order dated 2.8.2013,

Annexure P.5, the appeal filed by the appellant was dismissed on the ground of limitation without touching the merits of the case that the payments stood already paid. Still not satisfied, the appellant filed second appeal before respondent No.2 reiterating its stand taken before the first appellant authority that liability of tax was wrong and TDS stood deposited by the contractor. Vide order dated 25.10.2017, Annexure P.7, the second appeal filed by the appellant before the Tribunal was also dismissed on the ground of delay that no sufficient cause had been shown by the appellant for filing the appeal with a delay of 216 days without touching the merits of the case. Hence the instant appeal by the appellant.

3. We have heard learned counsel for the appellant-assessee.

4. The Tribunal decided the appeals for the assessment years 2006-07 and 2007-08 by one consolidated order dated 25.10.2017. There was delay of 624 days in filing the appeal for the assessment year 2006-07 whereas appeal for the assessment year 2007-08 was belatedly filed after 216 days of the expiry of the period of limitation. It has been categorically recorded by the Tribunal that the plea taken by the assessee for condonation of long delay of 624 days and 216 days for the assessment years 2006-07 and 2007-08 in filing the first appeal was completely unacceptable even on the touchstone of liberal approach in such matters. Order dated 31.3.2010 for the assessment year 2006-07 was received by the part time accountant of the assessee on 21.4.2010. Limitation for filing first appeal against the said order was 60 days which expired on 20.6.2010. Till then, the said accountant was still in the service of the assessee and remained so till atleast one year thereafter i.e. upto June 2011 when the order dated 31.3.2011 passed by the assessing authority for the assessment year 2007-08 was received by him on 3.6.2011. Thus, the plea of

the assessee was not accepted. It was thus rightly concluded that there was no ground much less sufficient ground for condoning the long and inordinate delay of 624 days and 216 days in filing the first appeals. The relevant findings recorded by the Tribunal read thus:-

“We have carefully considered the matter. The plea taken by the assessee for condonation of long delays of 624 days and 216 days in filing the first appeals is completely unacceptable even on the touchstone of liberal approach in such matters. Order dated 31.3.2010 for assessment year 2006-07 was received by Yogender Kaushik, part time accountant of the assessee, on 21.4.2010. Limitation for filing first appeal against the said order was 60 days and expired on 20th June 2010. Till then the aforesaid Accountant was still in the service of the assessee and remained so till atleast one year thereafter i.e. upto June 2011 when order dated 31.3.2011 of the Assessing authority for assessment year 2007-08 was received by him on 3.6.2011. Consequently the plea of the assessee that first appeals could not be filed in time because the said accountant left the job of the assessee is completely untenable.

In addition to the aforesaid, the assessee has not even pleaded as to when the aforesaid accountant left the job of the assessee. Vide order dated 23.8.2017, the Tribunal directed the assessee to file affidavit regarding the date when the aforesaid accountant left the job of the assessee with documentary evidence e.g. attendance register, salary record, if any. The case was adjourned to 20.9.2017. On 20.9.2017, on request of counsel for the appellant, case was adjourned for today and last opportunity was granted for filing requisite affidavit with documents. However, even till today, no such affidavit has been filed. The assessee is thus evading to even tell as to when its aforesaid accountant left its job. Even assuming that the said accountant left the job of the assessee in June 2011 soon after receiving assessment order dated 31.3.2011 on 3.6.2011, the assessee

should not have taken another 9 months in filing the first appeals on 5.3.2012. Conversely if the said accountant continued in job of the assessee even after 3.6.2011, even then the first appeals should have been filed within limitation period. In any event, first appeal for assessment year 2006-07 should have been filed within limitation period because the said accountant continued in service of the assessee atleast for more than one year after receiving assessment order of that year.

Thus, examined from any angle, we find that there was no ground much less sufficient ground for condoning the long and inordinate delay for 624 days and 216 days in filing the first appeals. Consequently applications of assessee for condoning the said delays have been rightly dismissed by the first appellate authority and resultantly the first appeals have been rightly dismissed as time barred. There is no error, infirmity or illegality in impugned orders of the first appellate authority so as to call for our interference therewith.”

5. Learned counsel for the appellant has not been able to point out any illegality or perversity in the findings recorded by the Tribunal. The judgments relied upon by the learned counsel for the appellant in *Ummer Vs. Pottengal Subida & others* in (Civil Appeal No. 2599-2600 of 2018) decided on 08.03.2018, *K. Subbarayudu and others Vs. Special Deputy Collector* 2017(4) R.C.R. (Civil) 428, *V.K. Balasubramanian Vs. C. Sumathi* 2017(4) Scale 525, *Ravi Vs. The Manager, Reliance General Insurance Co. Ltd. and another* 2017(2) LLJ 102, *Punjab State & Ors. Vs. Usha Rani Etc.* 2017(2) Scale 17 are based on individual fact situation involved therein. However, the situation in the present case being different, the appellant cannot derive any benefit from the said decisions. Thus, no substantial question of law arises and the appeal stands dismissed. Since the main appeal has been dismissed on

merits, the application for condonation of delay in filing the appeal is also dismissed.

April 05, 2018	(Ajay Kumar Mittal)
‘gs’	Judge
Whether speaking/reasoned	Yes
Whether reportable	Yes