IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

VATAP 27/2019 (O&M)
Date of decision:25.11.2019.

Excise and Taxation Commissioner,Haryana
.............Appellant.

v.

M/s Sudhir Genset Ltd. Gurugram And another
..............Respondents

Coram: Hon'ble Mr.Justice Jaswant Singh
Hon'ble Mr.Justice Girish Agnihotri

Present:- Ms. Mamta Singla Talwar,DAG Haryana for appellant.

Jaswant Singh,J.

This common order shall dispose of *2 appeals, as detailed in the foot note below, as the facts involved therein are similar and the grounds seeking condonation of delay in filing the appeal before Haryana Tax Tribunal,Chandigarh in both the appeals beyond limitation period of 180 days as prescribed under Section 33 (6) of the HVAT Act are identical. For brevity,facts are being taken from VATAP No.27/2019.

This appeal has been filed by the Revenue under Section 36(1) of the Haryana VAT Act, 2003 against the order dated 19.7.2017 (A-4) passed by Haryana Tax Tribunal (hereinafter referred to as the Tribunal) claiming the following substantial questions of law:-

a) Whether the order dated 19.7.2017 (A-4) passed by Haryana Tax Tribunal is legally sustainable which was passed merely on the ground of delay and without going into the merits of the case?

b) Whether the Haryana Tax Tribunal was justified in ignoring the law settled by various Courts including the Hon'ble Apex Court in number of judicial decisions rendered in favour of Revenue on the issue of delay condonation?

c) Whether the judgments passed by Hon'ble Apex Court as well as by this Court on the issue of delay condonation are not binding on the Haryana Tax Tribunal?

The facts necessary for adjudication of the present appeal as narrated therein are that assessment of the respondent for the year 2004-2005 was framed by Assessing Authority, Gurgaon vide order dated 31.03.2018 considering the activities of the respondent dealer as a work contractor and not a contract of sale. However, the revisional authority, Gurgaon in revision under Section 34 of the HVAT Act opened the assessment and created additional demand of Rs.3,17,108/- including interest for the year 2004-05 vide order dated 29.03.2011.

Aggrieved from order dated 29.03.2011 respondent filed appeal before the Haryana Tax Tribunal. The learned Tribunal vide order dated 22.03.2013 remanded the case to the revisional authority with direction to examine each contract and to determine their true and correct nature and pass orders in accordance with law on such determination. Pursuant thereto revisional authority, Gurgaon decided the case vide order dated 30.10.2013 restoring the orders of assessing authority holding that the dealer was a work contractor and the transactions were not contract for sale. Appellant/Revenue filed appeal before Haryana Tax Tribunal challenging the order of revisional authority. The appeal was filed after a delay of 560 days and it was barred by limitation of time of 180 days (for the State) to file appeal as prescribed under sub Section 6 of Section 33 of the HVAT Act 2003. An application was filed before the Tribunal seeking condonation of said delay. However, the Tribunal vide impugned order dated 19.07.2017 (A-4) dismissed the appeal being hit by limitation. Hence the present appeal.

The solitary question that arises for consideration in these appeals is whether there was sufficient cause for condonation of delay in filing the appeals which was belated.

After having heard learned counsel for the appellant, we do not find any merit in the appeal.

Examining the facts in the present case, no ground for condonation of colossal delay of 560 days has been made out. The question regarding whether there is sufficient cause or not depends upon each case and primarily is a question of fact to be considered taking into totality of events which had taken place in a particular case. In the present case after appreciating the matter it cannot be said that there was sufficient cause for condonation of delay. The reason advanced for condonation of delay is that the matter relating to filing of appeal was under active consideration of the State Government and the office of Excise and Taxation Commissioner, Haryana; the file kept shuttling between the offices of Excise and Taxation Commissioner, Haryana and Principal Secretary to the State Government because of the serious nature of the case and financial implications thereof. The learned Tribunal while dismissing the appeal has rightly observed that a very vague and general plea has been taken by the appellant-State that matter was under active consideration of the State Government and office of Excise & Taxation Commissioner; and the file kept shuttling between them because of serious nature of the case and financial implications thereof. Such a vague and general plea usually taken by the State almost in every case was not accepted as the State took two years to file the appeal and that long period of two years was explained by the general plea of discussion and shuttling of file between the two offices. While doing so the Tribunal had also referred to Section 33 (6) of the HVAT Act which provide long limitation period of 180 days for the State to file an appeal. The Tribunal has also rightly observed that if the matter was of such a serious nature having huge financial implications for the State as alleged by it then the case should have been given the urgency and importance it deserved and the decision to file appeal should have been taken expeditiously even prior to the expiry of limitation period of 180 days which is otherwise also sufficiently a long period.

This Court in **VAT Appeal No. 47 of 2012 (M/s Hansaflon Plasto Chem. Ltd v. State of Haryana and others)** decided on 5.7.2012 following the decision of the Hon'ble Supreme Court in **Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation and another, (2010) 5 SCC 459** and **R.B. Ramlingam v. R.B. Bhavaneshwari 2009(1) RCR (Civil) 892** had analyzed the broad principles for condonation of delay under Section 5 of the Limitation Act, 1963 as under:-

> "6. From the above, it emerges that the law of limitation has been enacted which is based on public policy so as to prescribe time limit for availing legal remedy for redressal of the injury caused. The purpose behind enacting law of limitation is not to destroy the rights of the parties but to see that the uncertainty should not prevail for unlimited period. Under Section 5 of the 1963 Act, the courts are empowered to condone the delay where a party approaching the court belatedly shows sufficient cause for not availing the remedy within the prescribed period. The meaning to be assigned to the expression "sufficient cause" occurring in Section 5 of the 1963 Act should be such so as to do
> substantial justice between the parties. The existence of sufficient cause depends upon facts of each case and no hard and fast rule can be applied in deciding such cases.
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> 7. The Hon'ble Apex Court in **Oriental Aroma Chemical Industries Ltd. and R.B. Ramlingam's cases (supra)** noticed that the courts should adopt liberal approach where delay is of short period whereas the proof required should be strict where the delay is inordinate. Further, it was also observed that judgments dealing with the condonation of delay may not lay down any standard or objective test but is purely an individualistic test. The court is required to examine while adjudicating the matter relating to condonation of delay on exercising judicial discretion on individual facts involved therein. There does not exist any exhaustive list

> constituting sufficient cause. The applicant/petitioner is required to establish that inspite of acting with due care and caution, the delay had occurred due to circumstances beyond his control and was inevitable.”

As if dismissal of appeal by the learned Haryana Tax Tribunal on the ground of limitation was not enough, even the present appeal before this Court has been filed with a delay of 388 days and the reason given again is ascribed to completing the procedural formalities from one office to another.

In view of above findings, we do not find any ground to interfere in order passed by Tribunal. Accordingly, both the appeals are dismissed.

(Jaswant Singh)
Judge

25.11.2019. **(Girish Agnihotri)**
joshi **Judge**

Whether Speaking/reasoned	**Yes/No**
Whether Reportable	**Yes/No**

***1. VATAP No.27 of 2019 Excise & Taxation Commissioner Haryana Vs. M/s Sudhir Genset Ltd. Gurugram & Anr.**

2. VATAP No50 of 2019 Excise & Taxation Commissioner Haryana Vs. M/s Sudhir Engg. Company Gurgaon & Anr