IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

VATAP-103-2018 (O&M)

Date of Decision: 25.3.2019

M/s Delton Cables Ltd., Faridabad

....Appellant.

Versus

The State of Haryana and others

...Respondents.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.

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

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AJAY KUMAR MITTAL, J.

1. This appeal has been filed by the dealer under Section 36 of the Haryana Value Added Tax Act, 2003 (in short "the Act") against the orders dated 4.2.2011 (Annexure A-1), dated 27.1.2014 (Annexure A-5) and dated 26.9.2007 (Annexure A-8) passed by the Haryana Value Added Tax Tribunal (hereinafter referred to as "the Tribunal") in STA No. 406 of 2014-15, for the assessment year 2007-08, claiming the following substantial questions of law:-

i) Whether there was infact a delay in filing appeal before the first appellate authority when the appellant filed application for rectification but the same was not entertained and appeal had to be filed without any copy of 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 appellate authorities should not have taken cognizance of the fact that the additional demand was on account of denial of input tax benefit on account of not production of forms which could be entertained at any stage as per settled law?

2. A few facts necessary for the disposal of the present appeal as narrated therein may be noticed. The appellant is engaged in the manufacturing and trading of wires and cables mainly sold to the Department of Telecommunications, Government undertakings. The Assessing Authority vide order dated 4.2.2011 (Annexure A-1) framed the assessment for the year 2007-08 and created an additional demand of ₹ 27,11,689/- under the Central Sales Tax Act, 1956 (in short "the 1956 Act") on account of absence of declaration in Form C-4 under the Act and also on account of Form C under the 1956 Act. Against the order, Annexure A-1, the appellant filed an appeal under the 1956 Act before the Joint Excise and Taxation Commissioner (Appeals), Faridabad (hereinafter referred to as "the Ist Appellate Authority"). The Ist Appellate Authority vide order dated 28.11.2011 held that the dealer should be given one more opportunity to produce the balance 'C' Forms and remanded the case back to the Assessing Authority with a direction to entertain the Forms 'C' produced by the assessee and accept the same if found in order after verification. In pursuance thereto, the Assessing Authority vide remand order dated

29.2.2012 (Annexure A-2) entertained more C-Forms and reduced the demand to ₹ 20,03,729/- under the 1956 Act. The said order was further rectified by the Assessing Authority vide order dated 1.4.2015 (Annexure A-3) by entertaining more C-Forms and thus, reducing the demand from ₹ 20,03,729/- to ₹ 16,40,239/-. Under the Act, the input tax was disallowed for want of declaration in Form C-4. The appellant after getting these certificates, filed the applications dated 21.1.2013, 14.10.2013 and 16.12.2013 (Annexure A-4 Colly) for rectification of assessment order under the Act, but the same were never adjudicated upon. Against the assessment order dated 4.2.2011 (Annexure A-1), under the Act, communicated to the appellant on 11.4.2011, the appellant filed appeal on 27.12.2013 along with an application for condonation of 931 days' delay in filing the said appeal before the Ist Appellate Authority. The reason for delay in filing the appeal was that the appellant had moved applications (Annexure A-4 Colly) to the Assessing Authority for rectification of the order dated 4.2.2011 regarding allowing of less Input Tax Credit (ITC). The Ist Appellate Authority vide order dated 27.1.2014 (Annexure A-5) rejected the application for condonation of delay in filing the appeal and consequently, the appeal was also dismissed as not maintainable being barred by time. Still dissatisfied, the appellant filed an appeal before the Tribunal on 10.6.2014 (Annexure A-6). During the pendency of the appeal, the recovery proceedings were initiated against the appellant. Thereafter, the appellant filed CWP-11643-2015 challenging the recovery proceedings and this Court vide order dated 28.5.2015 (Annexure A-7) stayed the recovery proceedings during the pendency of the appeal. The Tribunal vide order dated 26.9.2017 (Annexure A-8) rejected the appeal of the appellant.

Hence, the present appeal.

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

4. Admittedly, the appellant filed the first appeal against the assessment order dated 4.2.2011 (Annexure A-1) under the 1956 Act on 11.5.2011, well within limitation. However, the first appeal under the Act was not filed. No explanation was furnished by the appellant as to why the first appeal under the Act against the same assessment order was not filed when the first appeal under the 1956 Act was filed. The first application for rectification dated 21.1.2013 was sent by the appellant to the Assessing Authority by speed post on 23.1.2013. However, by then the limitation for filing the first appeal had expired long ago. The appellant had moved the said rectification application followed by the applications dated 14.10.2013 and 16.12.2013 only to cover up the delay in filing the first appeal and to create a ground for condonation of delay in filing the appeal. As per Section 19 of the Act, the rectification of an order can be done if there is clerical or arithmetical mistake apparent from the record of the case. By moving the rectification applications, the appellant sought benefit of ITC claim for higher amount than that allowed by the Assessing Authority under the Act. Further, the rectification could be done by the Assessing Authority within two years from the date of supply of copy of the order. The copy of the assessment order dated 4.2.2011 was supplied to the appellant on 11.4.2011 and, therefore, the rectification order could be passed upto 11.4.2013 only. However, the appellant filed the first appeal on 27.12.2013 for which no explanation was furnished by it. Since no explanation muchless satisfactory explanation was furnished, the Tribunal has rightly

dismissed the appeal.

5. Learned counsel for the appellant has failed to pin point any illegality or perversity in the findings recorded by the Tribunal which may warrant interference by this Court. No substantial question of law as claimed by the appellant arises in this appeal. Accordingly, finding no merit in the appeal, the same is hereby dismissed.

6. CM-12801-CII-2018 has been filed under Section 5 of the Limitation Act, 1963 for condonation of 31 days' delay in filing the appeal. Since the appeal has been dismissed on merits, no further orders are required to be passed on the application for condonation of delay in filing the appeal and the same is disposed of as such.

(AJAY KUMAR MITTAL)
JUDGE

March 25, 2019 **(MANJARI NEHRU KAUL)**
gbs **JUDGE**

Whether Speaking/Reasoned **Yes**

Whether Reportable **Yes**