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

VAT Appeal No.304/2018 (O&M)
Date of decision:20.08.2019

Excise and Taxation Commissioner,Haryana

..............Appellant

v.

M/s Indian Oil Corporation Limited and another

..............Respondents

Coram: Hon'ble Mr.Justice Jaswant Singh
Hon'ble Mr.Justice Lalit Batra

Present:- Ms.Mamta Singla Talwar,Deputy Advocate General, Haryana for the appellant.

Jaswant Singh,J.

Revenue is in appeal against the orders dated 12.3.2013 (A-3) passed by Haryana Tax Tribunal whereby the appeal filed by respondent-Company was allowed; as also against the order dated 4.8.2017 (A-4) whereby the review application filed by appellant-Revenue was dismissed as time barred.

Facts in brief are that respondent-Company is a dealer registered under the Haryana General Sales Tax Act,1973 (for short HGST Act), Haryana Value Added Tax Act,2003 (for short HVAT Act) and Central Sales Tax Act,1956 (for short CST Act) with the Excise and Taxation Department,Haryana at Panipat.

The Excise and Taxation Officer-cum-Assessing Authority,Panipat, framed assessment of respondent-Company for the year 1997-98 under Section 9(2) of CST Act read with Section 28 (2) of HGST Act vide order dated 29.8.2003 (A-1) whereby an additional demand of Rs.5,16,400/- under HGST Act and Rs.13,63,21,402/- under CST Act was made on account of disallowance of claim of branch/stock transfer made by respondent-Company to its branches outside the State of Haryana and held those Inter-State movement as Inter-State Sale.

The Deputy Excise and Taxation Commissioner-cum-Revisional Authority revised the assessment order A-1 vide order dated 6.10.2004 (A-2) whereby stock transfer of Aviation Turbine Fuel to various locations of Armed Forces outside the State of Haryana was taxed by treating the same as Inter State Sale creating additional demand of Rs.3,19,76,545/- under the CST Act.

Aggrieved against the order dated 6.10.2004 (A-2) respondent-Company filed appeal before the Haryana Tax Tribunal under Section 9(2) of the CST Act read with Section 33 of the HVAT Act. The said appeal was allowed by Tribunal vide order dated 12.3.2013(A-3) and quashed the revisional order dated 6.10.2004 (A-2) on the ground that the order of Assessing Authority had become conclusive and could have been revised only on the ground of fraud, misrepresentation and collusion etc., and also on discovery of certain facts of the jurisdictional error and not otherwise. Reliance was placed on the law laid down by Hon'ble the Supreme Court in **Ashok Leyland Limited v State of Tamil Nadu; 134 STC 473 (SC).**

Aggrieved against the order dated 12.3.2013(A-3), appellant-Revenue filed Review Application after a delay of 1114 days. The said Review Application was dismissed by the Tribunal vide order dated 4.8.2017 (A-4) as time barred. Hence the present appeal. Since there is delay of 342 days in filing the present appeal, separate application has been filed seeking condonation of said delay.

It is averred that the following substantial questions of law arise for adjudication in this appeal:-

(1)Whether the Ld.Haryana Tax Tribunal was justified in dismissing the review application on ground of limitation despite of the fact that delay in fling review application was neither deliberate nor intentional?

(2)Whether the Ld.Tribunal was justified in ignoring well settled principle of law that justice should not be lost in technicalities like grounds of limitation or because of barrier of procedure which may cause irreparable loss to the State Exchequer which is public money?

(3)Whether the Ld.Tribunal has erred in not adjudicating and not deciding the merits of the case although the same merited consideration?

(4)Whether the Ld.Tribunal was justified in applying the ratio of the judgment of the Apex Court delivered in case of Ashok Leyland Ltd.(supra) which is clearly distinguishable on facts from the present case?

(5)Whether the impugned order of Tribunal is sustainable under the law?

(6)Any other question of law which this Hon'ble Court deem fit to adjudicate in this case?

Heard learned counsel for the appellant and perused the paper book carefully.

It is not disputed that there was no fraud, misrepresentation, collusion or jurisdictional error etc., so as to warrant interference by the Revisional Authority and consequent revision of the assessment order.

As regards dismissal of the Review Application having been filed after a delay of 1114 days, we find that the learned Tribunal, in paras 4 and 5 of the impugned order (A-4) has already given detailed reasons for not accepting the vague and general grounds given for the inordinate delay. No fault can be found with the same.

Further, even the present appeal has been filed after a delay of 342 days and again the reason given is the time spent at various levels in obtaining permission to file the present appeal. This casual approach on the part of the appellant is not acceptable, especially when high stakes involving public exchequer are involved.

In view of the above, the present appeal is dismissed being devoid of any merits as well as on the ground of delay

(Jaswant Singh)
Judge

20.08.2019. **(Lalit Batra)**
joshi **Judge**

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