IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

VATAP-334-2018 (O&M)

Date of Decision: 30.1.2019

Excise & Taxation Commissioner, Haryana

....Appellant.

Versus

M/s Stalwart Alloys India Pvt. Ltd. and another

...Respondents.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE HARNARESH SINGH GILL.

PRESENT: Ms. Mamta Singla Talwar, DAG, Haryana, for the appellant.

Mr. Sandeep Goyal, Advocate,
for the caveator-respondent No.1.

AJAY KUMAR MITTAL, J.

1. This order shall dispose of bunch of four appeals bearing VATAP Nos.333 to 336 of 2018 as according to learned counsel for the parties, the facts and issues involved therein are identical. For brevity, the facts are being extracted from VATAP-334-2018.

2. VATAP-334-2018 has been filed by the revenue under Section 36 of the Haryana Value Added Tax Act, 2003 (in short "the Act") against the orders dated 12.5.2017 (Annexure A-3) passed by the Haryana Tax Tribunal (hereinafter referred to as "the Tribunal") in STA No. 990 of 2014-15, for the assessment year 2011-12, claiming the following substantial questions of law:-

i) Whether the Ld. Haryana Tax Tribunal was justified in allowing the appeal by holding that respondent No.1 was entitled for input tax credit when the selling dealer failed to deposit the tax in the Govt. Treasury?

ii) Whether the provisions of Rule 20(4) of Haryana Value Added Tax Rules 2003 are not applicable in the event when the selling dealer failed to deposit the tax in the Govt. Treasury?

iii) Whether in view of provisions of Rule 20(4) of Haryana Value Added Tax Rules, 2003 respondent No.1 could avail the benefit of input tax credit within three years from the date of deposit of tax by the selling dealer?

iv) Any other question of law that this Hon'ble Court deem fit for adjudication in this case?

3. Put shortly, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee-respondent No.1 is a manufacturer of Lead having TIN No.06072317004. It applied for provisional refunds for the assessment year 2011-12 and the same were allowed under Rule 41(6) of the Haryana Value Added Tax Rules, 2003. However, refund for the 1st quarter was partly allowed and partly withheld for verification of purchases made by the assessee. The case of the assessee was selected for scrutiny for the assessment year 2011-12. The Assessing Authority vide order dated 28.5.2013 (Annexure A-1) had allowed refund of ₹ 24,37,111/- to the assessee in addition to the refunds already allowed provisionally. The Revisional Authority took the case of the assessee for the assessment year in question and found that the assessee purchased goods

from M/s Kiran Industrial Corporation, Panipat who had made purchases from the dealers as mentioned in para 5 of the appeal during 2nd and 3rd quarters. The Revisional Authority vide order dated 30.9.2014 (Annexure A-2) set aside the order, Annexure A-1, passed by the Assessing Authority by observing that the Assessing Authority had illegally allowed refund qua the said purchases made by the assessee as these transactions had never suffered any tax or paid tax into Haryana Government Treasury at any stage. Feeling aggrieved by the order, Annexure A-2, the assessee filed an appeal before the Tribunal. The Tribunal vide order dated 30.9.2014 (Annexure A-3) allowed the appeal and set aside the order, Annexure A-2, passed by the Revisional Authority. Hence, the present appeals by the revenue. Since, the appeals filed by the revenue were barred by limitation, the applications have been filed under Section 5 of the Limitation Act, 1963 (in short "the 1963 Act") for condonation of delay in filing the appeals.

4. We have heard the learned counsel for the appellant.

5. The primary question that arises for consideration in this appeal is whether there was sufficient cause for condonation of delay of 503 days in filing the appeal.

6. Examining the legal position relating to condonation of delay under Section 5 of the 1963 Act, it may be observed that the Supreme Court in **Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation and another, (2010) 5 SCC 459** laying down the broad principles for adjudicating the issue of condonation of delay, in paras 14 and 15 observed as under:-

> "14. We have considered the respective submissions. The law of limitation is founded on public policy. The

legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time.

15. The expression "sufficient cause" employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate-**Collector (L.A.) v. Katiji N. Balakrishnan v. M. Krishnamurthy and Vedabai v. Shantaram Baburao Patil.**"

7. It was further noticed by the Apex Court in **R.B. Ramlingam v. R.B. Bhavaneshwari 2009(1) RCR (Civil) 892** as under:-

".....It is not necessary at this stage to discuss each and every judgment cited before us for the simple reason that Section 5 of the Limitation Act, 1963 does not lay down any standard or objective test. The test of "sufficient cause" is purely an individualistic test. It is not an objective test. Therefore, no two cases can be treated alike. The statute of limitation has left the concept of "sufficient cause" delightfully undefined, thereby leaving to the Court a well-intentioned discretion to decide the individual cases whether circumstances exist establishing sufficient cause. There are no categories of sufficient cause. The categories of sufficient cause are never exhausted. Each case spells out a unique experience to be dealt with by the Court as such." It was also recorded that:-

> "For the aforestated reasons, we hold that in each and every case the Court has to examine whether delay in filing the special leave petition stands properly explained. This is the basic test which needs to be applied. The true guide is whether the petitioner has acted with reasonable diligence in the prosecution of his appeal/petition...."

8. 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.

9. The 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/appellant 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.

10. According to the learned State counsel, after the receipt of the impugned order on 22.5.2017, the case was examined in the Head Office at various levels and ultimately on 25.5.2018, the Legal Affairs Committee meeting decided to file the appeal. The decision of the Committee was received on 25.6.2018. After discussion with the officers of Head Office, the grounds of appeal were prepared and the same were sent for vetting at different levels in the Department. On 1.8.2018, the Legal Remembrancer,

Haryana issued instructions for filing the appeal and the said appeal was filed on 28.11.2018 in this Court. Therefore, the appeal could not be filed in time. It was urged that the delay, if any, has occurred in the aforesaid circumstances in filing the appeal before this Court. Learned State counsel further argued that the delay was unintentional and due to the circumstances beyond the control of the appellant.

11. We do not find any ground to condone the colossal delay of 503 days in filing the appeal. 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. However, the appeal was required to be filed within the stipulated period of limitation of 60 days. But the appellant filed the present appeal on 28.11.2018, after a delay of 503 days. The plea of the appellant as mentioned above would not satisfy the test of sufficient cause. The explanation of the appellant is bereft of justification for the delay caused in filing the appeal keeping in view the totality of facts and circumstances of the present case.

12. Even otherwise, there is no merit in the appeals. The Tribunal while allowing the appeal of the dealer had noticed that in reassessment of M/s Kiran Industrial Corporation, Panipat, the sales made by it to the assessee had been assessed vide order dated 27.8.2015 where also the ITC claim of the assessee could not be reversed and disallowed. Since the assessee made purchases from M/s Kiran Industrial Corporation, Panipat which was a genuine dealer and sales made by M/s Kiran Industrial

Corporation in favour of the assessee had also been reflected in the returns of M/s Kiran Industrial Corporation and had been assessed, no question of disallowing or reversing the ITC claim of the assessee arise. The relevant findings recorded by the Tribunal read thus:-

> "8. In addition to the aforesaid, in reassessment of KIC, Panipat, sales made by KIC to the assessee-appellant have been assessed vide order dated 27.8.2015. In view thereof also, ITC claim of the assessee-appellant could not be reversed and disallowed. Judgment in the case of M/s Amit Papers (supra) has no applicability to the facts of the present case because the assessee-appellant has not made any purchases from the five bogus traders in question. On the other hand, the assessee-appellant made purchases from KIC, Panipat which is a genuine dealer and sales made by KIC in favour of the assessee-appellant have also been reflected in the returns of KIC and have even been assessed. So the question of disallowing or reversing ITC claim of the assessee-appellant does not arise.
>
> 9. The impugned revisional order is perverse and absurd for another reason also. By the said order, the Revisional Authority directed the assessing authority to disallow ITC claim of the assessee-appellant and also to pass well speaking order discussing each and every point. It is beyond comprehension as to what would happen to the aforesaid direction if the Assessing Authority while

discussing each and every point comes to a different conclusion, i.e. that the ITC claim of the assessee-appellant should be allowed."

13. No illegality or perversity could be pointed out by the learned State counsel in the aforesaid findings recorded by the Tribunal which may warrant interference by this Court. Accordingly, the applications for condonation of delay in filing the appeals are dismissed. Consequently, the appeals are dismissed on the ground of delay as well as on merits also.

(AJAY KUMAR MITTAL)
JUDGE

January 30, 2019 **(HARNARESH SINGH GILL)**
gbs **JUDGE**

Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No