IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

VATAP No. 198 of 2019
Date of decision: January 15, 2020

M/s Indian Oil Corporation Ltd.
.. Appellant

v.

State of Haryana and others
.. Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sandeep Goyal, Advocate for the appellant.

...

AVNEESH JHINGAN, J.

The appeal under Section 36 of the Haryana Value Added Tax Act, 2003 (for brevity, 'the 2003 Act') is filed against order dated 5.32.2019 passed by Haryana Tax Tribunal, Chandigarh (for short, 'the Tribunal') dismissing the review application as time-barred. In the appeal, following substantial questions of law have been claimed:

"(i) Whether on the facts and in the circumstances of case, the Ld. Tribunal is justified in dismissing the Review Petition as time barred by holding the no sufficient ground has been given in the Application for condonation of delay?

(ii) Whether on the facts and in the circumstances of the case, the assessment framed in the present case is barred by limitation in the light of given judgments?"

The facts necessary for adjudication of the appeal are that the assessment year involved is 2001-02. Notice in the form of ST-25 for framing the assessment was issued on 29.5.2006. There was an issue with regard to branch transfers made by the appellant-company. The assessment was finalised on 12.1.2011, an additional demand of ₹33,61,36,136/- was created. Aggrieved of the assessment order, the appellant preferred the appeal. The Joint Excise & Taxation Commissioner (A), Rohtak (hereinafter referred to as 'the 1st Appellate Authority') dismissed the appeal on 23.10.2012. Further appeal was filed before the Tribunal. The issue of branch transfers was also subject-matter in the appeal for the assessment year 2003-04. For the said assessment year, vide order dated 14.2.2017, the matter was remanded back by the Tribunal to the Assessing Authority to take a decision afresh in view of the observations made by Central Sales Tax Appellate Authority in case of the appellant itself. The appeal for the assessment year 2001-02 along with appeals for other assessment years of the appellant were disposed of on 27.2.2017 in terms of order dated 14.2.2017. The appeals were disposed of in the presence of counsel for the appellant.

The appellant posed no challenge to order dated 27.2.2017 disposing of the appeals in terms of the order dated 14.2.2017 for the assessment year 2003-04. However, after receipt of notice dated 1.8.2018 issued by the Assessing Authority to decide the remand proceedings, the appellant filed review application on 7.2.2019 accompanied by an application for condonation of delay of 505 days. The Tribunal rejected the application for condonation of delay and dismissed the review application as time-barred, hence the present appeal.

Learned counsel for the appellant argued that the Tribunal erred in not condoning the delay. It is contended that there was sufficient cause for not filing the review application within the prescribed period of limitation. The submission made is that the appeals were disposed of vide a common order and the issue that inspite of there being no limitation prescribed under the Haryana General Sales Tax Act, 1973 (for short, 'the 1973 Act'), the assessment should have been completed within reasonable time i.e. within five years though raised in the grounds of appeal was not pressed at the time of final disposal.

It would be pertinent to note here that the 1973 Act was repealed w.e.f. 31.3.2003 and the 2003 Act was enforced from 1.4.2003. The review application was filed under Section 35 of the 2003 Act and the limitation for filing the review application is 180 days.

The appellant has not disputed rather admitted that the issue of assessment being framed beyond reasonable time was not pressed at the time of disposal of appeal. The relevant pleadings in paragraph 6 of the review application are reproduced below:

> "6. Here it is pertinent to mention that the appeal in question was disposed of vide common order dated 27.2.2017 alongwith other appeals wherein tax and penalty were challenged for other Assessment Years. It is submitted that inadvertently, the issue of limitation in the present appeal could not be brought to the notice of this Hon'ble Court and therefore, the appeal against the order of 1st appellate authority was disposed of in the same terms."

There is no explanation forth coming for not filing the review application within the limitation or for condonation of delay of 505 days. The only ground taken is that it was only after receipt of notice in the remand proceedings that it was realised that the issue of not finalising the assessment within the reasonable time was not pressed in the appeal. The explanation put forth is not sufficient for condoning the delay, rather it establishes negligence on the part of the appellant. The reasons mentioned in the application for condonation of delay are reproduced below:

> "3. That the delay in the present case has occurred for the reason that the appeal for the year in consideration was decided along with bunch of appeals by this Hon'ble court in which similar issue was involved alongwith the issue of limitation. Thereafter, in remand proceedings, the Ld. Excise an Taxation Officer had issued Notices for framing fresh assessment in view of the order of this Hon'ble Court for different assessment years. The fact of limitation came to the notice of the officials of the assessee while scrutinizing the files of each year and it was realised that the issue of limitation was not decided by this Hon'ble Court."

At this stage, it may be noted that before the 1st Appellate Authority also, the appeal was disposed of being similar to appeal for the assessment year 2003-04. The said aspect is not being disputed at this stage. The only contention is that there was an additional issue which was not urged at the time of disposal of the appeal.

There is limitation prescribed for six months for filing the review application. Even thereafter, for more than 500 days, the review application was not filed. The issuance of notice in the remand proceedings by the Assessing Authority itself cannot be a ground for condoning the delay. The issue that the assessment was not finalised within the reasonable time is not a pure question of law but would depend upon the factual aspect of each case.

The delay is not to be condoned mechanically. There is also no quibble on the proposition that a liberal approach should be adopted to condone the delay, however the approach will be different in case of inordinate delay. The Supreme Court in **Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation and another, 2010(2) R.C.R. (Civil) 284** held as under:

> "8. 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. 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."

[Emphasis supplied]

The phrase 'sufficient cause' will not be construed to cover in its ambit negligence of the party. The Supreme Court in **Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai, 2012(3) R.C.R. (Civil) 73** held as under:

"18. What needs to be emphasised is that even though a liberal and justice oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the Courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost. What colour the expression 'sufficient cause' would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the Court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would

> be a legitimate exercise of discretion not to condone the delay. In cases involving the State and its agencies/instrumentalities, the Court can take note of the fact that sufficient time is taken in the decision making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and / or its agencies / instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest."

In the present case, apart from six months prescribed limitation, there is delay of 505 days, the explanation put forth is not worth acceptance.

In view of the above, question No. (i) claimed by the appellant is answered against it.

Question No. (ii) claimed does not arise out of the order of the Tribunal as the same raises issue on merits whereas the review application was dismissed by the Tribunal on the ground of limitation alone.

The appeal is dismissed.

(AVNEESH JHINGAN)
JUDGE

(AJAY TEWARI)
JUDGE

January 15, 2020
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No