IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Date of Decision:-24.01.2020

VATAP No.265 of 2018(O&M)

Excise & Taxation Commissioner, Haryana.

......Appellant.

Versus

M/s Indian Oil Corporation Limited, VPO Baholi, Panipat & Anr.

......Respondent.

2.

VATAP No.271 of 2018(O&M)

Excise & Taxation Commissioner, Haryana.

......Appellant.

Versus

M/s Indian Oil Corporation Limited, VPO Baholi, Panipat & Anr.

......Respondent.

3.

VATAP No.280 of 2018(O&M)

Excise & Taxation Commissioner, Haryana.

......Appellant.

Versus

M/s Indian Oil Corporation Limited, VPO Baholi, Panipat & Anr.

......Respondent.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE LALIT BATRA

Present:- Ms. Mamta Singla Talwar, Deputy Advocate General, Haryana for Appellant in all cases.

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JASWANT SINGH, J.

1. By this common order VATAP No. 265, 271 & 280 of 2018 involving same question are disposed of. The Appellant State of Haryana through instant Appeals under Section 36(1) of Haryana Value Added Tax Act, 2003 (for short 'VAT Act') is seeking quashing of orders passed by VAT Tribunal which has allowed Appeals of present Respondent on the sole grounds of limitation and thereafter dismissed review application of present Appellant. There is delay in filing all the Appeals before this Court and Appeals are accompanied with application seeking condonation of delay.

Question of limitation is involved in all the three appeals and for the sake of convenience facts are obtained from Appeal No. 265 of 2018. The Assessing Authority vide assessment order dated 31.12.2002 framed assessment for the year 1996-97 under Section 9(2) of Central Sales Tax Act, 1956 (for short 'CST Act') and Section 28(2) of Haryana General Sales Tax Act, 1973 (for short 'HGST Act'). The said assessment order was rectified by order dated 05.02.2003. The Respondent unsuccessfully assailed assessment order before 1st Appellate Authority and thereafter filed an appeal before Tribunal which vide order dated 10.04.2003 allowed appeal on the ground of limitation. Ld. Tribunal relying upon judgment of this Court in the case of **Shubh Timb Steels Ltd. Vs State of Punjab GSTR No. 1 of 2005 decided on 20.04.2010** and judgment of Hon'ble Supreme Court in the case of **State of Punjab Vs. Bhatinda District Coop. Milk P. Union Ltd. 2007 (217) E.L.T. 325 (S.C**) held that assessment was framed beyond a reasonable period of 5 years, thus it is barred by limitation.

The Appellant-State filed review application before Tribunal which came to be dismissed vide order dated 02.06.2017. The State has filed present appeal along with application seeking condonation of delay of

269 days. In Appeal No. 271 of 2018, there is delay of 285 days and in Appeal No. 280 of 2018, there is delay of 287 days.

Having heard Ld. Deputy Advocate General, Haryana and scrutinized record of the case, we find present appeals deserve to be dismissed on the ground of limitation as well merits. We have noticed that there is delay in every second appeal of the State. The reason of delay in every case is cyclostyle which shows attitude and seriousness of authorities to follow cause of the State. We are not convinced with the explanation furnished by State for the condonation of delay. Merely state is Appellant cannot be ground for condonation of delay. It is known that in Sate matters every file moves from one officer to another which cannot be ground at least convincing explanation for seeking condonation of delay except where delay is minor.

We further find that assessment was framed beyond the period of 5 years from the end of relevant assessment year. No reason or explanation much less convincing has been furnished for framing assessment after the expiry of 5 years from the end of assessment year. It is settled law that in the absence of prescribed period of limitation, Court cannot import any period of limitation, however it is also true and trite law that every action at least quasi judicial order should be passed within reasonable period of limitation and what is reasonable period would depend upon facts of each case. In the present case, assessment was framed beyond 5 years and no limitation period has been prescribed under the Act and Rules made there-under to frame assessment, thus Assessing Authority was duty bound to frame assessment within reasonable period which cannot be normally beyond 3 years and in any case 5 years. This Court in the case of

Shubh Timb (***Supra***) and Hon'ble Supreme Court in Bhatinda District Coop. Milk (**S*upra***) has declared 5 years period as maximum period to frame assessment or revision. The State Counsel has attempted to distinguish these judgments on the ground that scheme of State of Punjab is different. We are not inclined to countenance argument of Appellant and reject the same because ratio of all the judgments noticed in impugned order as well cited by counsel for the State is same i.e. assessment or any other order should be passed within reasonable period which would depend upon facts and circumstances of each case.

The present appeals are bereft of merits, thus deserve to be dismissed on the ground of limitation as well merits. Accordingly, all the appeals are **dismissed**.

(JASWANT SINGH)
JUDGE

(LALIT BATRA)
JUDGE

January 24th, 2020
Vinay

Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*