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

102 **CM-29049-50-CII-2018 in/and
VATAP-8365-2018 (O&M)
Date of Decision : 9.1.2020**

M/s Blue Night Hospitality ...... Appellant

Versus

State of Hayana and another ...... Respondents

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

Present : Mr. Rishab Singla, Advocate
for the applicant-appellant.

***

AJAY TEWARI, J. (Oral)

CM-29049-CII-2018

1. For the reasons recorded in the application, the same is allowed and delay of 17 days in re-filing the appeal is condoned.

CM-29050-CII-2018

2. For the reasons recorded in the application, the same is allowed and delay of 116 days in filing the appeal is condoned.

VATAP-8365-2018

3. This appeal has been filed Under Section 36 of the Haryana Value Added Tax Act, 2003 (for short 'the Act') against the order of the Tribunal in STA No. 509 of 2016-17 passed on 4.1.2018 (Annexure A-5).

4. Brief facts of the case are that on 6.1.2016 a survey was

conducted on the premises of the appellant who runs M/s. Blue Night Hospitality which is a permit room attached to the wine shop. At that time, the appellant was not present but his Manager got recorded his statement in which he stated that the 'Ahata' had been running since 1.4.2015; that about 80 persons can sit at one time; that the daily sale was Rs. 8,000/- approximately and the monthly sale was about Rs.2,50,000/-. Notice was issued to the appellant which was duly served but the appellant did not choose to appear. In these circumstances, best judgment assessment was framed on the basis of the statement of the Manager and the rates displayed on the menu card.

5. The appellant filed an appeal wherein he averred that though the service of the notice had been effected upon him yet he could not attend the hearing as he was away to the native village due to illness. Notably, no medical record was produced. The claim of the appellant before the appellate authority was that in fact he had taken over the 'Ahata' only with effect from 1.1.2016 and he had no knowledge who had been running the 'Ahata' for the three previous quarters of the year 2015-16. In support of his assertion, he placed on record a rent agreement. After going through the entire material, the Appellate authority held that in the first place, no good cause had been shown by the appellant for non-appearance before the Assessing Officer, even the ground of illness was not supported by any medical certificate; in the second place, the rent deed was apparently a created document because the date mentioned on it was after the date of survey; and thirdly, the conclusion drawn by the Assessing Officer about the daily sales being in the vicinity of Rs. 8000/- was reasonable in the facts and circumstance of the case. The Tribunal in

its order recorded the prayer of the appellant that one opportunity should be granted to him and noticed that initially it was in favour of giving this limited relief but then after hearing the parties, consciously held that no useful purpose would be solved by giving this opportunity primarily for the reasons which weighed was that the Appellate Authority had given ample opportunity to present its case in detail. Thereafter, Tribunal asked the appellant to produce whatever was to be present in remand proceeding. The main reliance of dealer was on rent agreement to fortify the stand that business was started from 1.1.2016 and not from 1.04.2015. The rent deed was considered, not found worth reliance and contradictory to statement of Manager. The following questions of law have been framed:-

> *"i Whether on the facts and in the circumstances of the case,the Tribunal was justified in dismissing the appeal of appellant without affording reasonable opportunity to the appellant to produce the documents before the Assessing Authority as the order in question has been passed on best judgment assessment basis ?*
>
> *ii Whether on the facts and in the circumstances of the case, the order of the Assessing Authority in violative of principles of natural justice as no reasonable opportunity has been afforded to the appellant for producing the documents in support of its claim ?*
>
> *iii. Whether on the facts and circumstances of the case, the statement of the employee of the appellant can be relied upon even if the signatures of the employee are being alleged to be taken under duress on blank paper ?*

6. We find that all question framed are pure questions of facts and in these circumstances of the case, we do not find adequate material

to interfere. Consequently, the appeal stands dismissed.

7. Since the main case has been dismissed, the pending application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(AVNEESH JHINGAN)
JUDGE

9.1.2020
anuradha

Whether speaking/reasoned - Yes/No
Whether reportable - Yes/No