THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(107) CM-15160-CII-2023 in/and VATAP-15-2023 (O&M)

Excise & Taxation Commissioner ......Appellant(s)

Versus

M/s Samriti Products Pvt. Ltd. & another ......Respondent(s)

(2) CM-15195-CII-2023 in/and VATAP-16-2023 (O&M)

Excise & Taxation Commissioner ......Appellant(s)

Versus

M/s Hindustan Petroleum Corporation Ltd. & another ......Respondent(s)

Decided on : 08.01.2024

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE LAPITA BANERJI

Present: Mr.Sharan Sethi, Addl.A.G. Haryana for the appellant.

Mr.Sandeep Goyal, Mr.Rishab Singla,
Mr.Nitish Bansal, Advocates, for the respondent in VATAP-16-2023.

G.S. Sandhawalia, J. (Oral)

1. Challenge in the present two appeals are to the orders passed by the Haryana Value Added Tax Tribunal dated 27.08.2019 and 01.08.2019 which are barred by 670-692 days which, in our considered opinion, cannot be brushed aside on the grounds given in the applications for condonation of delay.

2. The averments made in CM-15195-CII-2023 in VATAP-16-2023 is that the order dated 01.08.2019 was received in the office of the Excise & Taxation Commissioner on 13.09.2019 and the appeal had to be filed by 13.11.2019. Apparently a decision was taken to file the appeal beyond the period of limitation by the Excise & Taxation Commissioner on 06.12.2019. The sanction was sought from the Legal Remembrancer which was given on 01.01.2020 which was alleged not to be traceable in the office of the Excise & Taxation Commissioner and a fresh request was made on 20.04.2021 during the Covid-19 Pandemic period. The averments are that due to closure of the office, the work had piled up and therefore, the appeal could not be filed. A fall-back has been made on the order of the Apex Court in *Suo Moto Writ Petition (Civil) No.3 of 2020*.

3. It is pertinent to notice that the application is dated 08.06.2023 along with the affidavit of the Excise & Taxation Officer. The appeal however has been filed only on 22.08.2023 and there is no explanation for the period of delay of 2 months thereafter also. Even if we accept that the Court was closed during the summer break but it opened in the month of July and still there is a delay of over one month and 20 days. The order passed by the Apex Court had given the benefit of limitation which expired on 28.02.2022 and no explanation has been given as to how any sufficient cause has been made out from 28.02.2022 till the filing of the appeal on 22.08.2023 which is for a period of 1 ½ years. Thus, it is apparently classic example of a certificate case filed by the State to cover the lapses of their own officials as has been noticed by the Apex Court in **State of U.P. Vs. Sabha Narain (2022) 9 SCC 266**.

4. The Apex Court has time and again reiterated that the Government cannot be considered on a different footing for considering the issue of limitation. Reliance can be placed upon the judgment of the Apex Court passed in **Office of the Chief Post Master General and others vs. Living Media India Ltd. and another, (2012) 3 SCC 563** wherein, the following principles have been laid down:-

> "12) It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government. 13) In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for

the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay."

4. Similarly, in CM-15160-CII-2023 in VATAP-15-2023, the order passed by the Haryana Tax Tribunal dated 27.08.2019 was received in the office of the appellant on 19.09.2019 and the appeal was to be filed by 16.11.2019. There is no mention whether any opinion was given by the Legal Remembrancer and there is only a vague averment made that the draft appeal was put up for vetting and due to the Covid-19 Pandemic, the appeal could not be filed. The application is again supported by the affidavit dated 08.06.2023 whereas the appeal was filed on 22.08.2023 and therefore suffers from the same infirmity of lack of explanation given, as noticed in VATAP-16-2023.

5. Accordingly, keeping in view the above, in the absence of any sufficient cause having been made out, we do not wish to entertain the appeals which are patently barred by limitation and applications i.e. CM-15195-CII-2023 in VATAP-16-2023 & CM-15160-CII-2023 in VATAP-15-2023 are hereby dismissed. Accordingly, the consequential effect is that the appeals are also not to be taken into consideration on merits and the same are also dismissed. All pending application(s), if any, also stands disposed of.

(G.S. SANDHAWALIA)
JUDGE

January 8th, 2024 **(LAPITA BANERJI)**
Sailesh **JUDGE**

Whether speaking/reasoned :	Yes	
Whether Reportable :		No