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

*Neutral Citation No. 2024:PHHC:002031-DB*

**(222)** **VATAP-344 to 347-2019 (O&M)**
**Decided on : 09.01.2024**

Excise and Taxation Commissioner, Haryana

……Appellant

Versus

M/s Uttar Pradesh Rajkiya Nirman Nigam Ltd., Faridabad and another

……Respondents

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

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

*****

**G.S. Sandhawalia, J. (Oral)**

The present judgment shall dispose of four appeals filed under Section 36(1) of the Haryana Value Added Tax Act, 2003 (for short ' the Act') i.e. VATAP Nos.344 to 347 of 2019, which are barred by 362 days in filing the appeals against the order dated 19.07.2018 passed by the Haryana Tax Tribunal (for short 'the Tribunal').

2. In the application for condonation of delay, it has been averred that the order was received on 10.08.2018 and the limitation was till 10.11.2018. The decision was taken on 21.11.2018 by the Legal Affairs Committee to file the appeal after the limitation had expired and the necessary permission was given by the Legal Remembrancer, Haryana dated 20.12.2018 which was received in the office of Excise & Taxation Commissioner, Haryana on 24.12.2018. The draft appeal was apparently prepared on 14.01.2019. It has further been averred that thereafter the officers of the department were busy with the commitments and activities concerning the implementation of the Goods and Service Tax Act due to closing of financial year for pending assessment work ending on 31.03.2019. Thereafter, there was announcement of the Lok Sabha Election and the officer was deputed in the election duty till 12.05.2019

and after the election the officer was deputed as Liaison Officer with the Observer, were the reasons given by the officer who is a Excise and Taxation Officer-cum-Assessing Authority, Faridabad. The application is supported by affidavit of the said officer. The said officer was thereafter deputed in UPSC Examination as a Transit Officer. The affidavit was got attested only on 24.09.2019 and the appeals came to be filed on 05.10.2019.

3. It is, thus, apparent that after preparation of the draft appeal from January, 2019, it took almost 10 months for the department to wake up from its slumber. A perusal of the order which is sought to be challenged would go on to show that the Tribunal had relied upon an earlier order dated 19.04.2017 passed in STA No.123 of 2014-15 to partly allow the appeal in favour of the assessee.

4. It is pertinent to notice that the lead case also suffered from the same infirmity when **VATAP No.227 of 2018 'Excise & Taxation Commissioner, Haryana Vs. M/s Uttar Pradesh Rajkiya Nirman Nigam Ltd. and another'** was dismissed on 27.03.2019 on the ground of limitation by the Coordinate Bench, which was also barred by 445 days in filing the appeal. The Coordinate Bench had also relied upon the judgment of the Apex Court passed in **Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation and another, (2010) 5 SCC 459, R.B. Ramlingam Vs. R.B. Bhavaneshwari, 2009 (1) RCR (Civil) 892,** apart from large number of judgments which had been relied upon by the counsel for the State including the judgment passed in **State of Nagaland Vs. Lipok AO and others, AIR 2005 SC 2191**. Accordingly, it was held that the plea of the appellant-State would

not satisfy the test of sufficient cause, keeping in view the totality of facts and circumstances.

5. The said order was further upheld by the Apex Court in **SLP(C) No.24150 of 2019** while leaving the question of law open vide order dated 09.01.2023, which reads as under:-

> "We are of the opinion that in the peculiar facts and circumstances of this case, interference is not called for. However, the question of law decided by the High Court is kept open. The Special Leave Petition is dismissed subject to the above observations. Pending applications, if any, shall stand disposed of."

6. Counsel for the State has also referred to a recent judgment of the Apex Court passed in **Sheo Raj Singh (Deceased) Through L.Rs & others Vs. Union of India and another, 2023 Live Law(SC) 865** wherein again the above said case law has been discussed in detail and it has been held that justice-oriented approach by the Court could be provided to the State, which has to be kept in mind.

7. We have considered the said judgment. A perusal of the same would go on to show that it is a case where the High Court had condoned the delay on account of the fact that there was negligent conduct of the counsel for the State who had also been removed from the panel of the lawyers, as he had never applied for the certified copy of the order of the Reference Court. In such circumstances, the High Court had condoned the delay after imposing heavy costs which view had not been interfered with by the Apex Court while holding that the State could be given more leverage.

8. The facts herein as discussed above in the application for condonation of delay are totally different. The State officials had proceeded with leisure while doing all other work except attending to the filing of the present appeals. A Three Judges Bench of the Apex Court in **State of Uttar Pradesh & others Vs. Sabha Narain & others, (2022) 9 SCC 266** has opined upon such kind of cases which are called as ‘certificate cases’ and imposed heavy costs for wastage of judicial time.

9. We refrain ourselves from imposing the costs while noting that the lead case itself was already dismissed on the same ground but the State apparently learnt no lesson while filing the present set of appeals thereafter. Rather the first appeal was dismissed on 27.03.2019 by the Coordinate Bench and inspite of that the present set of appeals was only filed on 05.10.2019. It is, thus, apparent that the concerned officer has paid scant regard to the fact that the lead case has also been dismissed, but despite that took no steps to file the appeals expeditiously thereafter.

10. In such circumstances, no ground has been made out to condone the delay in the peculiar facts and circumstances as the reasons given in the applications are not acceptable and the cogent reasons are missing to condone the lax approach of the authorities. Resultantly, we do not find sufficient cause to condone the inordinate delay. Accordingly, the applications for condonation of delay as well as main appeals are dismissed.

**(G.S. SANDHAWALIA)**
**JUDGE**

**09.01.2024** **(LAPITA BANERJI)**
*Naveen* **JUDGE**

| | | |
|---|---|---|
| Whether speaking/reasoned : | Yes | |
| Whether Reportable : | | No |