IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

222 **VATAP-5-2019**
Date of Decision: 30.07.2024

M/s National Steel Tube **.... Appellant**

Versus

State of Haryana and others **.... Respondents**

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH

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

Ms. Mamta Singla Talwar, DAG, Haryana.

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SANJEEV PRAKASH SHARMA, J (ORAL)

1. This is an appeal under Section 36 of the Haryana Value Added Tax Act, 2003 against the order dated 01.05.2018 (Annexure A-12) passed by the Haryana Tax Tribunal in STA No.26, whereby, the second appeal preferred by the appellant has been rejected upholding the order passed by the First Appellate Authority.

2. Learned counsel for the appellant submits that the appeals were wrongfully rejected on the ground of delay and latches and the appellant had never come to know about the order of withdrawal of eligibility certificate. He has taken pains to take this Court to the various dates to submit that the decision taken by the Lower Level Screening Committee on 23.03.2006 was never conveyed to the appellant.

3. We have carefully gone through the record and considered the submissions advanced at par by learned counsel for the appellant.

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4. In the appeal preferred under Section 36 of the Haryana Value Added Tax Act, 2003, it actually assails the orders passed by the Director of Industries & Commerce, Chandigarh, which is the First Appellate Authority dismissing the appeal of the appellant as it was delayed by 03 years and 09 months the period prescribed under the Rules is only 30 days. The Haryana Tax Tribunal Chandigarh considered the appeal preferred by the appellant and has given the following directions:-

> "*We have carefully considered the matter. There is long and inordinate delay of three years nine months in filing the first appeal. Even assuming that possession of unit of the assessee was taken on 27.05.2005 by HFC, even them GM, DIC could sent the intimation regarding withdrawal of eligibility certificate of the assessee at the address of the assessee which was its last known address. Accordingly, GM, DIC sent the said communication to the assessee at the said address by registered post and so the same is deemed to have been served on the assessee within few days thereof.*
>
> *In addition to the aforesaid, Kamlesh Devi moved application dated 03.11.2009 on behalf of assessee to GM, DIC on 13.11.2009 for obtaining copy of order of LLSC regarding withdrawal of eligibility certificate of the assessee. In the said application, Kamlesh Devi has mentioned that she was informed by Excise and Taxation Department regarding huge outstanding recovery against the assessee due to withdrawal of eligibility certificate by LLSC. However, she intentionally did not mention in the said application as to when she learnt of the same from Excise and Taxation Department. This material fact which is highly relevant for deciding the prayer of the assessee for condonation of delay in filing the first appeal, has been intentionally concealed by the assessee not only in the said application but also in first appeal as well as in the present second appeal. For intentional concealment of this material fact*

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> *by the assessee, the question of condoning of long and inordinate delay in filing the first appeal does not arise. Arguments were advanced before us assuming that the assessee got the said information on or about 03.11.2009 only when application was moved to obtain copy of order of LLSC. However, this information is missing from the documents including first appeal and second appeal filed by the assessee".*

5. The Tribunal also found that the First Appellate Authority had granted several adjournments to the appellant to advance arguments but he failed to address inspite of more than four adjournments granted to him and consequently, the Higher Level Screening Committee "First Appellate Authority" was left with no option but to dismiss the appeal on merit as well as on grounds of delay.

6. Learned counsel for the appellant has advanced the arguments that it was not in the knowledge of the widow-Kamlesh Devi of the withdrawal of the eligibility certificate. In fact, we find that GM, DIC has sent a communication to the assessee by a registered post and a presumption in law would be in their favour that the same would be deemed to have been served upon the assessee.

7. Even thereafter, we find that when the recovery notice was issued and served upon the son-Vikash of the widow-Kamlesh Devi, who has been appearing before the Higher Level Screening Committee on 25.06.2008, no steps were taken to prefer an appeal against the withdrawal of the eligibility certificate and it was only after 16 months thereafter that the appeal was preferred. We also noticed that the Haryana Financial Corporation had auctioned the unit way back in 26.12.2005 for recovering its loan and therefore, the consequences were very well known to the

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appellant after the unit having been already auctioned.

8. We are satisfied that there is no purpose of continuing eligibility certificate after the industrial unit itself had been auctioned.

9. Keeping in view the above, we are satisfied that the order dated 01.05.2018 does not warrant any interference and accordingly, the same is dismissed.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SANJAY VASHISTH)
JUDGE

30.07.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

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