

(2018) 06 CHH CK 0057

Chhattisgarh High Court

Case No: Writ Petition (T) No. 29 Of 2016

M/s Bharat Trading Company

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision: June 18, 2018

Acts Referred:

- Limitation Act, 1963 - Section 5
- Chhattisgarh Value Added Tax Act, 2005 - Section 49, 53
- Chhattisgarh Value Added Tax Rules, 2006 - Rule 57(4)

Hon'ble Judges: Sanjay K. Agrawal, J

Bench: Single Bench

Advocate: Smiti Sharma, Prasun Kumar Bhaduri

Final Decision: Allowed

Judgement

Sanjay K. Agrawal, J

1. The order of assessment was passed against the petitioner on 4-1-2011 assessing tax of ₹ 16,30,036/-. The petitioner preferred revision before the revisional authority on 4-1-2016 against that order. The revisional authority by its impugned order Annexure P-1 dismissed the revision on the ground that the revision application was not preferred in accordance with law within the time prescribed under Rule 57(4) of the Chhattisgarh Value Added Tax Rules, 2006 (for short, 'the Rules of 2006').

2. Learned counsel for the petitioner would submit that the petitioner came to know about the order dated 4-1-2011 only on 30-10-2015 when the recovery certificate was served to him vide Annexure P-5 and he immediately preferred revision on 4-1-2016, but that has not been considered and

even no opportunity to file application for condonation of delay was granted to the petitioner, as Section 5 of the Limitation Act would apply by virtue

of the provisions contained in Section 53 of the of Chhattisgarh Value Added Tax Act, 2005 (for short, 'the Act of 2005').

3. Learned State counsel would vehemently oppose and submit that no such ground has been taken in the memo of revision by the petitioner filed before the revisional authority.

4. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

5. It is not in dispute that against the assessment order dated 4-1-2011, revision was preferred before the revisional authority under Section 49 of the

Act of 2005 on 4-1-2016, as such, the revision application was undisputedly barred by the period of limitation prescribed in the Rules of 2006. The

learned revisional authority straightway by one line order dismissed the revision finding it beyond limitation. In all fairness, since the assessment order

levying huge tax was in question, the revisional authority ought to have afforded an opportunity to the petitioner to file an application for condonation of

delay in filing the revision under Section 53 of the Act of 2005, as admittedly, the petitioner also did not care to file application for condonation of delay

in filing the revision. In the considered opinion of this Court, an opportunity to file application for condonation of delay under Section 53 of the Act of

2005 deserves to be granted to the petitioner, in the interest of justice.

6. Accordingly, the orders impugned Annexures P-1 and P-2 are set aside and the matter is remitted to the Additional Commissioner, Commercial

Tax, Raipur enabling the petitioner to file an application for condonation of delay under Section 53 of the Act of 2005 within a period of two weeks

from today and that application will be considered and decided first strictly in accordance with law.

7. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).