

(2012) 08 P&H CK 0223

High Court Of Punjab And Haryana At Chandigarh**Case No:** VATAP No. 57 of 2012 and C.M. No. 9161-CII of 2012

S.R. Traders

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision: Aug. 1, 2012

Acts Referred:

- Haryana Value Added Tax Act, 2003 - Section 36
- Limitation Act, 1963 - Section 5

Citation: (2013) 58 VST 437

Hon'ble Judges: G.S. Sandhawalia, J; Ajay Kumar Mittal, J

Bench: Division Bench**Advocate:** Saurabh Mohunta, Deputy Advocate-General, Haryana, for the Respondent**Final Decision:** Allowed

Judgement

G.S. Sandhawalia, J.

C.M. No. 9161-CII of 2012

1. Allowed as prayed for.

VATAP No. 57 of 2012

The present appeal under sub-section (2) of section 36 of the Haryana Value Added Tax Act, 2003 (hereinafter to be referred to as, "the Act") has been preferred against the order dated November 21, 2011 passed by the Haryana Tax Tribunal whereby the second appeal (STA No. 709 of 2010-11) was dismissed as barred by limitation being late by about three months. The appellant has claimed that the following substantial questions of law arise in this appeal:

(1) Was the Tribunal, on the facts and in the circumstances of the case, legally justified in refusing to condone the delay, and dismissing the substantive appeal as barred by limitation?

(2) Whether on the facts and the circumstances of the case, appellant could be made to suffer on account of fault of his counsel when the copy received by the counsel on behalf of the appellant had been delivered to the appellant with delay?

2. The facts, in brief, are that the appellant is the sole proprietary concern in the business of purchase and sale of ADV tyres, tubes, axles, and other related items being a registered dealer under both the Haryana General Sales Tax Act, 1973 and the Central Sales Tax Act, 1956. The assessing authority, vide order dated January 11, 2010, had finalized the assessment order determining additional tax liability to the tune of Rs. 1,15,181. The appellant filed an appeal before the Joint Excise and Taxation Commissioner (Appeals), Ambala (in short, JETC (A)) which was dismissed vide order dated August 9, 2010. Thereafter, the appellant filed second appeal on January 13, 2011 along with an application for condonation of delay before the Haryana Tax Tribunal, Chandigarh (hereinafter to be referred to as, "the Tribunal") u/s 5 of the Limitation Act, 1963. The Tribunal, vide the impugned order dated November 21, 2011, had dismissed the appeal on the ground that the same was time-barred being belated by about three months and by holding that the appellant's conduct was negligent in procuring the copy of the order in time. Resultantly, the present appeal has been filed.

3. The question that arises for consideration in the appeal is whether the Tribunal was legally justified in not condoning the delay.

4. We have perused the record and find that the order of the Tribunal cannot be sustained in the eyes of law, The Tribunal has taken a very technical approach in dismissing the appeal on the ground of limitation. Admittedly, the order of the JETC (A) was passed on August 9, 2010 and in the application dated January 12, 2011 for the condonation of delay before the Tribunal, the appellant had pleaded that his counsel had taken the authenticated copy and delivered to the appellant on December 30, 2010 after repeated requests. The said application was submitted along with an affidavit with the plea that the appellant may not be put to adverse position for non-delivery of the authenticated copy received by his counsel earlier and the mistake of the counsel should not adversely affect the interests of the appellant as he had nothing to gain by filing the appeal at a belated stage.

5. Section 5 of the Limitation Act, 1963 provides that if the appellant is able to show sufficient cause for the delay and justifies the same, the court shall condone the delay. It has been time and again held by the honourable apex court that there should be a liberal approach in the condonation of delay where the delay is of short duration. The honourable apex court in [Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others](#), held that the litigant ordinarily does not stand in lodging the appeal late and the courts have to do substantial justice and technical considerations are not to be taken into account. There has to be a culpable negligence or mala fides and if a litigant does not gain by resorting to delay, the case should not be thrown out at the threshold and the cause of justice would be

defeated. Similar observations flowed from the honourable apex court in [G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore](#). Recently, the honourable apex court, in [Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation and Another](#), held that the term "sufficient cause" is an elastic provision and liberal approach in condoning the delay of short duration has been approved.

6. Adverting to the facts of the present case and keeping in view the fact that the order of the JETC (A) was passed on August 9, 2010 and that the counsel for the appellant got its certified copy on August 20, 2010 but the appellant could only obtain it on December 30, 2010 and filed the appeal on January 13, 2011 which was late by 85 days, sufficient cause existed in condoning the delay. Accordingly, we are of the opinion that the Tribunal was not right in declining the application for condonation of delay and the order is legally unsustainable. Consequently, the questions of law as claimed are answered in favour of the appellant and against the State. Resultantly, the present appeal is allowed. The order dated November 21, 2011 passed by the Tribunal is set aside and the case is remanded to the Tribunal to decide the appeal on merits in accordance with law.