(2012) 08 P&H CK 0327

High Court Of Punjab And Haryana At Chandigarh

Case No: VAT Appeal No. 46 of 2012 (O and M)

M/s. A.S. Associates — APPELLANT

Vs

The State of Haryana — RESPONDENT

Date of Decision: Aug. 21, 2012

Acts Referred:

- Haryana Value Added Tax Act, 2003 - Section 36, 39
- Limitation Act, 1963 - Section 5

Citation: (2012) 168 PLR 707

Hon'ble Judges: Gurmeet Singh Sandhawalia, J; Ajay Kumar Mittal, J

Bench: Division Bench

Advocate: Avneesh Jhingan, for the Appellant; Saurabh Mohunta, D.A.G., Haryana, for the State, for the Respondent

Final Decision: Allowed

Judgement

Ajay Kumar Mittal, J.

C.M. No. 8318-CII of 2012

1. There is a delay of 81 days in filing the appeal. After perusing the application and hearing learned counsel for the parties, the delay is condoned. The application stands disposed of.

VAT Appeal No. 46 of 2012

This appeal has been preferred by the appellant u/s 36 of the Haryana Value Added Tax Act, 2003 (in short, "The Act") against the order dated 23.08.2011, Annexure A-4 passed by the Value Added Tax Tribunal, Haryana, Chandigarh (for brevity, "the Tribunal") in STA No. 994 of 2009-10, claiming following substantial question of law:-

i) Whether in the facts and circumstances of the case, the order of the tribunal which is based upon overruled authority and the authority distinguished by the Full Bench of Punjab and Haryana High Court, is sustainable in the eyes of law?

ii) Whether in the facts and circumstances of the case, Section 5 of the Limitation Act is applicable to the proceedings under the Haryana General Sales Tax Act, 1973?

iii) Whether in the facts and circumstances of the case, the appellant should be made to suffer by not condoning the delay which has occurred due to the fault of the counsel?

iv) Whether in the facts and circumstances of the case, the merits of the case could be discussed for the purpose of condonation of delay?

v) Whether in the facts and circumstances of the case, the term ''sufficient cause'' is to be liberally construed?

vi) Whether in the facts and circumstances of the case, in absence of any rebuttal or there being any material contrary to the affidavit filed, could be contents of the same be ignored or rejected?

2. The facts, in brief, as narrated in the appeal may be noticed. The appellant-assessee is a proprietorship concern and was running a trading business at Bhiwani. It filed its returns and deposited the tax in accordance with law. For the assessment year 2001-02, the assessment was framed ex-parte and a demand of Rs. 4,03,768/- was created vide order dated 4.9.2007, Annexure A-1. The appellant handed over the papers to his counsel for filing appeal but later on it came to know that no appeal had been filed and as a result delay of about two years had occurred. Thereafter, on 26.11.2009, the petitioner filed an appeal alongwith application for condonation of delay supported by an affidavit. The first appellate authority i.e. Joint Excise and Taxation Commissioner (Appeals) vide order dated 19.1.2010, Annexure A-3, refused to condone the delay and dismissed the appeal by relying upon decision of the Hon''ble Supreme Court in The Commissioner of Sales Tax, U.P., Lucknow Vs. Parson Tools and Plants, Kanpur, and decision of this Court in Gamsha Pipe Ltd. Vs. The State of Haryana, . It was held that section 5 of the Limitation Act, 1963 (in short, "the Limitation Act") was not applicable to the proceedings under the Haryana General Sales Tax Act, 1973 (in short, "the 1973 Act"). Still not satisfied, the appellant filed second appeal before the Tribunal. Vide order dated 23.8.2011, Annexure A-4, the Tribunal upheld the order passed by the first appellate authority and dismissed the appeal. Hence the present appeal before this Court.

3. The issue that arises for determination in this appeal is whether the tribunal had the power to condone the delay u/s 5 of the Limitation Act. Learned counsel for the appellant relied upon a Full Bench Judgment of this Court in Bharat Rubber and Allied Industries Vs. The State of Punjab and Others, and a Division Bench Judgment of this Court in Shivam Riceland Vs. State of Haryana, to contend that provisions of Section 5 of the Limitation Act were applicable even in respect of proceedings under the 1973 Act.

4. Learned counsel for the State, on the other hand, supported the order passed by the Tribunal.

5. After hearing learned counsel for the parties and perusing the record, we are of the view that the tribunal was in error in holding that the provisions of Section 5 of the Limitation Act were not applicable to the proceedings under the 1973" Act. The full Bench of this Court in Bharat Rubber and Allied Industries'' case (supra) while considering the issue with regard to applicability of Section 5 of the Limitation Act had concluded as under: -

19. Now the second question referred to the Full Bench arises for consideration. In the earlier part of the judgment, it has already been found that Section 5 Limitation Act would apply to the proceedings under the Sales Tax Act, Since section 5 of the Limitation Act would be applicable to the proceedings under the Sales Tax Act, therefore, the authorities under the Sales Tax Act would be entitled to extend the period of limitation by the number of days spent in obtaining the certified copy of the order against which appeal, revision or reference is made or sought, as the case may be. This view of ours find support from the Division Bench decision of this court in the Piare Lal Khushbakhat Rai Vs. The State of Punjab, and we approve of the same. However, the decision of this Court in the Gamsha Pipe Ltd. Vs. The State of Haryana, does not lay down correct law and is over ruled in view of the specific decision of the Supreme Court in the The Commissioner of Sales Tax, U.P. Vs. Madan Lal Das and Sons, Bareilly,

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6. Further, the Division Bench of this Court in Shivani Riceland''s case (supra) following the judgment of the Full Bench in Bharat Rubber and Allied Industries'' case (supra), in para 4 had recorded as under:-

4. Before concluding, we may notice the contention of the learned Assistant Advocate-General appearing on behalf of the respondents. His argument is that in view of the provisions of Section 39 of the Act, the Sales Tax Tribunal has no power to condone the delay. In support of this contention the learned State counsel placed reliance on a judgment of the Supreme Court in Commissioner of Sales Tax v. Parson Tools and Plants, (1975) 35 S.T.C. 413. We are unable to accept this contention. The Full Bench of this Court in Bharat Rubber and Allied Industries Vs. The State of Punjab and Others, , had after noticing this judgment of the Supreme Court held that Section 5 of the Limitation Act was applicable to the proceedings under the Sales Tax Act.

In view of the above, the issue raised in this appeal is decided in favour of the appellant by holding that provisions of Section 5 of the Limitation Act would be applicable to the proceedings under the 1973 Act. Accordingly, the appeal is allowed and the impugned orders dated 19.1.2010 and 23.8.2011, Annexures A-3 and A-4 respectively are set aside. The matter is remanded to the Joint Excise and Taxation Commissioner (Appeals),

Rohtak for deciding the application for condonation of delay on merits in accordance with law.