Issue 3
February 2015

NOMINAL INDEX

STATUTES, CIRCULARS AND NOTIFICATIONS

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SUBJECT INDEX

Issue 3
February 2015

SUPREME COURT OF INDIA

Civil Appeal No 10265 of 2014

BALAJI STEEL RE-ROLLING MILLS

Vs.

COMMISSIONER OF CENTRAL EXCISE & CUSTOMS

ANIL R. DAVE, KURIAN JOSEPH AND R.K. AGRAWAL, JJ.

14th November, 2014

HF ▶ Appellant

APPEAL – TRIBUNAL- DISMISSAL IN DEFAULT – ANNUAL PRODUCTION CAPACITY AND DUTY LIABILITY FIXED BY COMMISSIONER – ORDER APPEALED AGAINST – NON APPEARANCE BY APPELLANT AND COUNSEL ON DATE OF HEARING – APPEAL DISMISSED BY TRIBUNAL FOR WANT OF PROSECUTION – APPEAL DISMISSED BY HIGH COURT FOR LACK OF QUESTION OF LAW INVOLVED – APPEAL BEFORE SUPREME COURT – HELD THAT TRIBUNAL HAS NO POWER TO DISMISS APPEAL FOR WANT OF PROSECUTION U/S 35C OF CENTRAL EXCISE ACT EVEN IF APPELLANT OR COUNSEL DO NOT APPEAR – TRIBUNAL OUGHT TO HAVE PASSED ORDER ON MERITS – APPEAL ALLOWED – COST TO BE PAID BY THE RESPONDENT *SEC.35C CENTRAL EXCISE ACT 1944, RULE 20 OF CENTRAL EXCISE RULES; SIMILAR SECTIONS – SECTION 62 & 63 OF PVAT ACT AND SEC. 33 OF HVAT ACT.*

The order passed by Commissioner of Central Excise & Customs fixing the annual capacity of production and duty liability was appealed against before the Tribunal. Due to failure to appear before the Tribunal on the date of hearing by the Counsel and the Appellant, the case was dismissed in default. An appeal was filed before the High Court which was also dismissed on the grounds that no substantial question of law arose for consideration. An appeal by special leave is filed before the Supreme Court whereby it was submitted that the appeal could not have been dismissed for want of prosecution as Section 35C of the Central Excise Act, 1944 enjoins upon the Tribunal to pass orders confirming, modifying or annulling the decision etc. but not dismissing it for want of prosecution even if the appellant failed to appear. Allowing the appeal and imposing a cost of Rs. 25,000/- payable by the respondent, it is held that Tribunal could not have dismissed the appeal and ought to have decided it on merits. Matter is remanded.

For Petitioner(s) Mr. Shashibhushan P. Adgaonkar, Adv.

For Respondent(s) Mr. K. Radhakrishnan, Sr. Adv.
Ms. Sunita Rani Singh, Adv.

For Mr. B. Krishna Prasad, AOR

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R.K. Agrawal, J.

1. Leave granted.

2. The sole question of law which arises for consideration in the present appeal is as to whether the Customs, Excise and Service Tax Appellate Tribunal (in short 'the Tribunal') has the power to dismiss the appeal for want of prosecution or not.

3. The appellant is a partnership firm engaged in the manufacture and sale of Hot Re-rolled products. The Commissioner of Central Excise and Customs, Aurangabad, vide order dated 20.07.1999, re-fixed the annual capacity of production and duty liability of the appellant. Being aggrieved, the appellant moved the Tribunal. The Tribunal, vide order dated 18.01.2002, remanded the matter back to the Commissioner of Central Excise and Customs with a direction to determine the capacity of production in accordance with law after hearing the appellant. The Commissioner of Central Excise and Customs, Aurangabad, once again affirmed the order dated 20.07.1999. The appellant filed an appeal before the Tribunal against the order dated 14.05.2004 passed by the Commissioner of the Central Excise & Customs, Aurangabad which was placed for hearing on 22.08.2012. On the very said date, the appellant as also his counsel were not present. The Tribunal, therefore, dismissed the appeal for want of prosecution. The restoration application was also dismissed. The appellant preferred an appeal before the High Court of Bombay, Bench at Aurangabad being Central Excise Appeal No. 14 of 2013. The High Court, by order dated 18.01.2014, dismissed the appeal on the ground that no substantial question of law arises for consideration.

4. Against the said order, the appellant has preferred this appeal by way of special leave.

5. Heard Mr. Shashibhushan P. Adgaonkar, learned counsel for the appellant and Shri K. Radhakrishnan, learned senior counsel for the respondent.

6. Learned counsel for the appellant submitted that even if the appellant was not present before the Tribunal when the appeal was taken up for hearing, it could not have been dismissed for want of prosecution as Section 35C of the Central Excise Act, 1944 (in short 'the Act') enjoins upon the Tribunal to pass orders thereon as it thinks fit, that is, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the authority which passed such decision or order with such directions as it may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary. Thus, there is no power vested in the Tribunal to dismiss the appeal for want of prosecution even if the appellant therein has not appeared when the appeal was taken up for hearing.

7. He further submitted that Rule 20 of the Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982 (in short 'the Rules') cannot be resorted to as the Section itself does not give power to the Tribunal to dismiss the appeal for want of prosecution.

8. Learned senior counsel for the respondent, however, submitted that under Rule 20 of the Rules, the Tribunal has been given the power to dismiss the appeal for want of prosecution if the appellant does not appear, and therefore, the order passed by the Tribunal as also by the High Court calls for no interference.

9. Section 35C(1) of the Act which deals with the powers of the Tribunal reads as under:-

"35C. Orders of Appellate Tribunal.-(1) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the authority which passed such decision or order with such directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary."

10. Rule 20 of the Rules which gives a power to the Tribunal to dismiss the appeal for default in case the appellant does not appear when the appeal is called on for hearing reads as under:-

"RULE 20. Action on appeal for appellant's default. - Where on the day fixed for the hearing of the appeal or on any other day to which such hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Tribunal may, in its discretion, either dismiss the appeal for default or hear and decide it on merits:

Provided that where an appeal has been dismissed for default and the appellant appears afterwards and satisfies the Tribunal that there was sufficient cause for his non-appearance when the appeal was called on for hearing, the Tribunal shall make an order setting aside the dismissal and restore the appeal."

11. From a perusal of the aforesaid provisions, we find that the Act enjoins upon the Tribunal to pass order on the appeal confirming, modifying or annulling the decision or order appealed against or may remand the matter. It does not give any power to the Tribunal to dismiss the appeal for default or for want of prosecution in case the appellant is not present when the appeal is taken up for hearing.

12. A similar question came up for consideration before this Court in *The Commissioner of Income-Tax, Madras vs. S. Chenniappa Mudaliar, Madurai* 1969 (1) SCC 591 wherein this Court considered the provisions of Section 33 of the Income-tax Act, 1922 and Rule 24 of the Appellate Tribunal Rules, 1946 which gave power to the Tribunal to dismiss the appeal for want of prosecution. For ready reference, Section 33(4) of the Income Tax Act, 1922 and Rule 24 of the Appellate Tribunal Rules, 1946 are reproduced below:-

Section 33(4) of the Income Tax Act, 1922

"33(4). The Appellate Tribunal may, after giving both parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, and shall communicate any such orders to the assessee and to the Commissioner."

Rule 24 of the Appellate Tribunal Rules, 1946

"24. Where on the day fixed for hearing or any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Tribunal may dismiss the appeal for default or may hear it ex parte."

Considering the aforesaid provisions, this Court held as under:-

"7. The scheme of the provisions of the Act relating to the Appellate Tribunal apparently is that it has to dispose of an appeal by making such orders as it thinks fit on the merits. It follows from the language of Section 33(4) and in particular the use of the word "thereon" that the Tribunal has to go into the correctness or otherwise of the points decided by the departmental authorities in the light of the submissions made by the appellant. This can only be done by giving a decision on the merits on questions of fact and law and not by merely disposing of the appeal on the ground that the party concerned has failed to appear. As observed in Hukumchand Mills Ltd. v. CIT, the word "thereon" in Section 33(4) restricts the jurisdiction of the Tribunal to

the subject-matter of the appeal and the words "pass such orders as the Tribunal thinks fit" include all the powers (except possibly the power of enhancement) which are conferred upon the Appellate Assistant Commissioner by Section 31 of the Act. The provisions contained in Section 66 about making a reference on questions of law to the High Court will be rendered nugatory if any such power is attributed to the Appellate Tribunal by which it can dismiss an appeal, which has otherwise been properly filed, for default without making any order thereon in accordance with Section 33(4). The position becomes quite simple when it is remembered that the assessee or the CIT, if aggrieved by the orders of the Appellate Tribunal, can have resort only to the provisions of Section 66. So far as the questions of fact are concerned the decision of the Tribunal is final and reference can be sought to the High Court only on questions of law. The High Court exercises purely advisory jurisdiction and has no appellate or revisional powers. The advisory jurisdiction can be exercised on a proper reference being made and that cannot be done unless the Tribunal itself has passed proper order under Section 33(4). It follows from all this that the Appellate Tribunal is bound to give a proper decision on questions of fact as well as law which can only be done if the appeal is disposed of on the merits and not dismissed owing to the absence of the appellant. It was laid down as far back as the year 1953 by S.R. Das, J. (as he then was) in CIT, v. Mtt. Ar. S. Ar. Arunachalam Chettiar that the jurisdiction of the Tribunal and of the High Court is conditional on there being an order by the Appellate Tribunal which may be said to be one under Section 33(4) and a question of law arising out of such an order. The Special Bench, in the present case, while examining this aspect quite appositely referred to the observations of Venkatarama Aiyar, J. in CIT v. Scindia Steam Navigation Co. Ltd. indicating the necessity of the disposal of the appeal on the merits by the Appellate Tribunal. This is how the learned judge had put the matter in the form of interrogation:

> *"How can it be said that the Tribunal should seek for advice on a question which it was not called upon to consider and in respect of which it had no opportunity of deciding whether the decision of the Court should be sought."*

Thus looking at the substantive provisions of the Act there is no escape from the conclusion that under Section 33(4) the Appellate Tribunal has to dispose of the appeal on the merits and cannot short-circuit the same by dismissing it for default of appearance."

13. Applying the principles laid down in the aforesaid case to the facts of the present case, as the two provisions are similar, we are of the considered opinion that the Tribunal could not have dismissed the appeal filed by the appellant for want of prosecution and it ought to have decided the appeal on merits even if the appellant or its counsel was not present when the appeal was taken up for hearing. The High Court also erred in law in upholding the order of the Tribunal.

14. We, therefore, set aside the order dated 18.01.2014 passed by the High Court of Judicature of Bombay, Bench at Aurangabad and also the order dated 22.08.2012 passed by the Tribunal and direct the Tribunal to decide the appeal on merits.

15. Accordingly, the appeal is allowed with a cost of Rs. 25,000/- to be payable by the Respondent.

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PUNJAB & HARYANA HIGH COURT

VATREF NO 2 of 2010

H.M.T. LTD
Vs.
STATE OF HARYANA

RAJIVE BHALLA AND B.S. WALIA, JJ.

27th November, 2014

HF ▶ Revenue

INTEREST – LEVY OF – SALE TAX – PAYMENT OF TAX AT LOWER RATE – SCOPE OF SEC. 25 OF HGST ACT 1973 – WHETHER INTEREST LEVIABLE ON DIFFERENCE DUE DESPITE BONAFIDE ERROR? – INTERSTATE SALE OF GOODS BY PUBLIC SECTOR UNDERTAKING – TAX PAID @ 2 % AS PER NOTIFICATION DT. 1991 – TAX INCREASED TO 4% AS PER NOTIFICATION DT. 2001 – ASSESSEE CONTINUING PAYING TAX @ 2% EVEN BEYOND 2001 – INTEREST LEVIED U/S 25(5) HGST ACT 1973 FOR FAILURE TO PAY THE REQUISITE TAX – REFERENCE FILED PLEADING THAT TAX AT LOWER RATE I.E. 2% PAID UNDER BONAFIDE ERROR – HELD SEC. 25(5) OF THE ACT LEADS TO AUTOMATIC LEVYING OF INTEREST AS A CONSEQUENCE OF DEFAULT – BEING PUBLIC SECTOR UNDERTAKING OR BONAFIDE ERROR NO GROUNDS FOR RELIEF - GROSS NEGLIGENCE OBSERVED - LEVY OF INTEREST UPHELD - *SEC. 9(2)CST ACT 1956 R/W; SEC. 25(5) OF HGST ACT, 1973 / SEC. 14(6) OF HVAT ACT, 2008*

HMT Limited, a public sector undertaking was required to pay tax on sale of Tractors @4% as per notification dt 2001 but admittedly deposited tax @ 2% as per notification dt. 1991 for the assessment year 2001-02 to 2005-06 which lead to raising of demand of tax as well as levy of interest u/s 9(2) of CST Act, 1956 r/w Sec. 25(5) of HGST Act, 1973. An appeal was filed before Tribunal which was dismissed. A reference has been filed questioning the levy of interest pleading that since the appellant is a public sector undertaking and committed a bonafide error in depositing the requisite rate of tax without mensrea, levy of interest should be set aside. Answering the question against the assessee by holding that whether an assessee is a public sector undertaking or not defaults in payment of tax without a bonafide explanation levy of interest is indispensable. There is no exception u/s 25(5) of the Act regarding not levying of tax in case of assessee being a public sector undertaking or committing a bonafide error. Therefore, levy of interest is upheld.

Present: Mr. Sachin Bhardwaj, Advocate for the appellant.

Ms. Mamta Singal, A.A.G., Haryana.

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Raiive Bhalla, J.(Oral)

1. By way of this order. we shall dispose of Vat Reference Nos. 2. 3. 4. 5 and 6 of 2010 titled as M/s H.M.T. Ltd., Pinjore Vs. State of Haryana together as they require an answer to the same question of law referred by the Haryana Sales Tax Tribunal (hereinafter referred to as 'the Tribunal'). The question placed for reference reads as follows:-

"Whether on the facts and in the circumstance of the case H.M.T. Ltd.. a public sector undertaking, is liable to pay interest under Section 9(2) of the Central Sales Tax Act, 1956 read with Section 25(5) of the Haryana General Sales Tax Act, 1973/Section 14(6) of the Haryana Value Added Tax Act, 2003 for its failure to pay tax on inter-State sale of tractors at 4 % against declarations in form C after publication of notification No. S.O. 122/C.A. 74/1956/S.8/ 2001 in the official Gazette on 21.8.2001 by which notification No. S.O. 15/C.A.74/56/S.8/91 dated 31.1.1991 specifying lower rate of tax at 2% was rescinded, because it kept on charging tax from the purchasing dealers at 2% and paid the same along with its returns"?

2. Counsel for the appellant submits that short fall in Tax @ 2% has been deposited. The assessee which is a public sector undertaking was of the bona fide belief that it was required to pay tax at 2%. The returns for the period 2000-01, 2005-06 were duly accepted without any objection or demand. The bona fide error by the assessee in depositing tax @ of 2% without mens-rea should not invite interest which even otherwise partakes the nature of a penalty. Counsel for the appellant submits that as the assessee was of the bona fide opinion that it was obliged to pay tax @ of 2%, the question of law may be answered in favour of the assessee. In support of his arguments, counsel for the petitioner relies upon a judgment in J.K. Synthetics Ltd. Vs. Commercial Taxes Officer, (1994) 4 SCC 276.

3. Per contra, counsel for the revenue submits that Notification dated 1.2.1991 stood rescinded on 21.8.2001. The assessee was required to pay tax @ 4% for the years 2001-02 to 200506 but deposited tax @ of 2%. The fact that the Assessing Officer may have ignored this violation, did not absolve the assessee of its obligation to pay tax @ 4%. As Section 25(5) of the Act prescribes an automatic payment of interest on delayed payment of tax, the question has to be answered in favour of the revenue. As regards, the judgment in M/s J.K. Synthetics (supra), it is submitted that the opinion recorded by the Hon'ble Supreme Court was based upon the peculiar facts of the case and even otherwise relates to penalty.

4. We have heard counsel for the parties, perused the question of law as well as the entire paper book. The short question that requires an answer is the scope and ambit of Section 25(5) of the 1973 Act and whether a public sector undertaking which does not deposit tax at the requisite rate can escape levy of interest by alleging a bona fide error?

5. Admittedly despite its obligation to deposit tax @ of 4%, the assessee deposited tax @ 2% for assessment years 2001-02 to 2005-06. Consequently, the Excise and Taxation Officer-cum- Assessing Authority, Panchkula, vide order dated 28.09.2005 demanded additional tax for these years @ 2% with interest, by invoking Section 9(2) of the Central Sales Tax Act, 1956 read with Section 25(5) of the 1973 Act etc. An appeal filed by the assessee was dismissed. The Tribunal vide order dated 28.02.2009, answered the question of levy of interest, the only question raised before the Tribunal, against the assessee. The assessee thereafter sought a reference on the question which has been placed before us.

6. As is apparent from the facts, the assessee was required to pay tax @ 4% on sale of tractors outside the State of Haryana but admittedly deposited tax @ 2% for assessment years 2001-02 to 200506. The admitted default of the assessee led to the raising of a demand for the tax as well as levy of interest under Section 9(2) of the Central Sales Tax Act, 1956 read with Section 25(5) of the Haryana General Sales Tax Act. Section 9(2) of the Central Sales Tax Act, 1956 empowers a State Govt. to collect tax, penalty and interest on behalf of the Central Government. Section 25(5) of the Haryana General Sales Tax Act provides that in case of default in payment of tax, the assessee shall be liable to pay interest. Section 9(2) of the Central Sales Tax Act, 1956 and Section 25(5) of the Haryana General Sales Tax Act, respectively read as under :-

"9(2) Subject to the other provisions of this Act and the rules made thereunder, the

authorities for the time being empowered to assess, re-assess, collect and enforce payment of any tax under general sales tax law of the appropriate State shall, on behalf of the Government of India, assess re-assess, collect and enforce payment of tax, including any interest or penalty, payable by a dealer under this Act as if the tax or interest or penalty payable by such a dealer under this Act is a tax or interest or penalty payable under the general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, refunds, rebates, penalties, charging or payment of interest, compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly."

XX XX XX XX XX XX XX

"25(5) If any dealer fails to pay tax, as required by sub-section (2A) or by sub-section (3), he shall be liable to pay in addition to the tax payable, simple interest on the amount of tax remaining unpaid at one per cent per month from the date commencing with the date following the last date for the payment of tax, for a period of one month and at one and half percenum per month thereafter during the period he continues to make default in the payment:

Provided that where the amount of tax not paid as required under sub-section (2A) or sub-section (3) does not exceed five hundred rupees, the interest payable thereon shall not exceed the amount of tax not so paid:

Provided further that for the purposes of calculation of interest, a period of fifteen days or more shall be deemed to be one month and the amount of fifty rupees or more about less than one hundred rupees shall be deemed to be one hundred rupees and a period of less than fifteen days and an amount of less than fifty rupees shall be ignored."

7. A perusal of Section 25(5) of the Act reveals that where an assessee defaults in payment of the requisite tax, payment of interest is a necessary consequence of such a default. Section 25(5) of the Act does not admit to any exception much less on a plea that the assessee is a public sector undertaking or that it committed a bona fide error. Even otherwise the assessee does not deny the default. We cannot but reject the plea based upon a bona fide error as there is no ambiguity in the notification. The failure to deposit tax was the result of gross negligence that cannot be condoned.

8. Consequently, we answer the question of law against the assessee by holding that where an assessee, whether a public sector undertaking or otherwise, defaults in payment of tax without a bona fide explanation or there is no dispute pending as to the levy of tax, a necessary consequence of such default shall in levy of interest under Section 25(5) of the Act. The question of law having been answered, the references are disposed of accordingly.

PUNJAB & HARYANA HIGH COURT

VATAP NO. 131 OF 2012

MODERN DAIRIES LTD.
Vs.
STATE OF HARYANA AND ANOTHER

AJAY KUMAR MITTAL AND JASPAL SINGH, JJ

10th July, 2014

HF ▶ Assessee

TURNOVER – SALES RETURN – DEDUCTIONS – RETURN FILED FOR YEAR 2005-06 CLAIMING DEDUCTIONS ON ACCOUNT OF SALES RETURNS – REJECTION OF SALES RETURNS ON THE GROUND OF IT BELONGING TO PRECEDING YEAR – WHETHER SALES RETURN ALLOWED TO BE DEDUCTED ONLY IN YEAR TO WHICH IT RELATES AND NOT IN PERIOD DURING WHICH IT HAS BEEN RETURNED – HELD, AS PER RULE 22(4), CLAIM OF RETURN OF GOODS TO BE MADE IN THE RETURN FOR THE QUARTER IN WHICH GOODS WERE RETURNED AND SHALL BE ADMISSIBLE IN THAT QUARTER ONLY – MATTER REMANDED TO ASSESSING AUTHORITY TO RE-DECIDE IN VIEW OF RULE 22(4) OF THE HVAT RULES 2003 – *RULE 22(4) HVAT RULES 2003.*

The appellant, engaged in the business of sale and purchase of milk and milk products, filed its return for the year 2005-06. As per the assessment framed the sales returns were rejected as the same belonged to the year proceeding to the year in question. The order raising a demand by the Assessment Authority was upheld by the Tribunal disallowing the claim of the returned goods. Aggrieved by the order, an appeal is filed before the Hon'ble High Court whereby it is held it is held that the claim of return of goods is to be made in the return for the quarter in which goods are returned and is admissible in that quarter only. The assessee is not entitled to claim the benefit of return of goods in any other quarter except the one in which goods have been returned. The matter is remanded to Assessing officer to re-decide in view of Rule 22(4) of HVAT Rules, 2003.

Present: Mr. Sandeep Goyal, Advocate for the appellant
Mr. Tanisha Peshawaria, DAG, Haryana

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Ajay Kumar Mittal,J.

1. This appeal has been preferred by the assessee-appellant under Section 9(2) of the Central Sales Tax Act, 1956 (in short, "the CST Act") read with Section 36(1) of the Haryana Value Added Tax Act, 2003 (in short, "the HVAT Act") against the order dated 16.3.2010,

Annexure A.5 passed by the Haryana Tax Tribunal at Chandigarh (in short, "the Tribunal) in STA No.393 of 2009-10. On 15.1.2014, the appeal was admitted to consider the following substantial questions of law:-

> *i) Whether in the facts and circumstances of the case, the Hon'ble Tribunal was justified in holding that the sales return are allowed to be deducted only in the year to which it relates and not in the period during which it has been returned back ignoring Rule 22(4) read with Section 9(2) of the CST Act, 1956?*
>
> *ii)Whether the Tribunal was justified in upholding tax at the maximum rate ignoring the fact that for the entire turnover, the 'C' forms have already been furnished?"*

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant assessee is a dealer duly registered under the HVAT Act. It is engaged in the business of sale and purchase of milk and milk products. The company is also engaged in the sale of milk to M/s Mother Dairy Foods Processing Limited, Delhi who supplies the raw milk to the appellant and after pasteurizing and other processing, the same is supplied to it. The appellant filed its return for the year 2005-06 at gross turnover of Rs. 87,41,26,563/-. It had paid sales tax amounting to Rs. 66,07,318/- and Central sales tax amounting to Rs. 2,06,86,913/-. Return was taken up for scrutiny. While framing the assessment, the Deputy Excise and Taxation Commissioner cum Assessing authority, Karnal rejected sales return amounting to Rs. 31,18,996/- as the same belonged to the year preceding to the year in question. The Assessing authority framed assessment vide order dated 30.1.2009, Annexure A.1 raising a demand of Rs. 3,01,197/- under HVAT Act and Rs. 14,75,154/- including interest amounting to Rs. 5,85,868/- under the CST Act. Subsequently, the assessing authority rectified the order on submission of 'C' forms wherein the demand was reduced to Rs. 11,60,344/- (including interest amounting to Rs. 5,85,868/-). Feeling aggrieved, the assessee filed appeal before the Joint Excise and Taxation Commissioner (Appeals) [JETC (A)]. Vide order dated 1.7.2009, Annexure A.3, the JETC (A) rejected the appeal and upheld the demand. Still not satisfied, the assessee filed appeal before the Tribunal. Vide order dated 16.3.2010, Annexure A.5, the Tribunal partly accepted the appeal to the extent that a show cause notice be given to the assessee after which the issue should be decided and on the issue of conversion charges, disallowance of ITC on poly packs used in job work, levy of interest and the rate of tax applicable on the sale of vehicles, the case was remanded back to the assessing authority. However, the order of JETC(A) disallowing the claim of the returned goods was upheld. Thereafter, the assessee appeared before the assessing authority in remand proceedings. The assessing authority dropped the additions on the ground on which the Tribunal had remanded and calculated an excess of Rs. 1,92,928/-. Aggrieved by the disallowance of claim of the returned goods, the assessee filed reference and review applications under sections 35 and 36 read with section 9(2) of the CST Act before the Tribunal. The review application was dismissed by the Tribunal vide order dated 5.7.2011 by observing the same as not maintainable. Hence the present appeal by the assessee.

3. Learned counsel for the appellant submitted that under Rule 22 (4) of the Haryana Value Added Tax Rules, 2003 (in short, "the Rules"), no claim of return of goods sold to any person shall be admissible if the same is not made in the return for the quarter in which the goods have been returned. It was urged that the assessing authority as well as the JETC(A) and the Tribunal had erred in declining the claim of the assessee in the current year.

4. On the other hand, learned counsel for the respondent supported the orders passed by the Tribunal.

5. It would be expedient to reproduce Rule 22(4) of the Rules, which reads thus:-

> "22. Return of goods.

(1) to (3).....

(4) No claim of return of goods sold to any person shall be admissible if the claim is not made in the return for the quarter in which the goods have been returned."

6. A plain reading of Rule 22(4) of the Rules shows that a dealer is entitled to make claim of return of goods sold to any person in the return for the quarter in which the goods had been returned and the same shall be admissible in that quarter only. To put it differently, the assessee is not entitled to claim the benefit of return of goods sold to any person in any other quarter except the quarter in which the goods have been returned. In our opinion, no other meaning can be assigned to the said rule.

7. In view of the above, since the authorities have failed to consider the issue with regard to Rule 22(4) of the rules relating to question No.(i), it would be appropriate that the matter is remanded to the Assessing Officer to examine the same and re-decide it in accordance with law. It was submitted by the learned counsel for the parties that in view of the answer to question No.(i), question No.(ii) is rendered academic.

8. Disposed of accordingly.

PUNJAB & HARYANA HIGH COURT

VATAP NO. 27 OF 2013

SUPER METAL, FARIDABAD
Vs.
STATE OF HARYANA AND OTHER

AJAY KUMAR MITTAL AND JASPAL SINGH, JJ

12th May, 2014

HF ▶ Appellant

CONDONATION OF DELAY – APPEAL – SICKNESS OF APPELLANT – DISALLOWANCE OF ITC – ORDER UPHELD BY FIRST APPELLATE AUTHORITY – DELAY OF 159 DAYS IN FILING APPEAL BEFORE TRIBUNAL – APPLICATION FOR CONDONATION OF DELAY REJECTED – HELD BY HIGH COURT THAT MENTAL SICKNESS OF REPRESENTATIVE OF APPELLANT SUFFICIENT CAUSE FOR DELAYED FILING – DELAY CONDONDED IT BEING UNINTENTIONAL AND BEYOND CONTROL OF APPELLANT – MATTER REMITTED TO TRIBUNAL TO ADJUDICATE ON MERITS – *SEC. 5 OF LIMITATION ACT, 1963.*

The appellant, engaged in the trading of Iron and Steel, filed its returns. Assessment was framed for the year 2006-07 disallowing the input tax on account of purchases made as the selling dealer did not discharge their tax obligation. The order was upheld by the First Appellate Authority. An appeal was filed before Tribunal along with an application for condonation of delay of 159 days which was rejected. However, on appeal before High Court it was pleaded that the representative of the appellant had received the copy of the order. But due to his suffering from mental depression he was out of the office most of the time and thus could not file the appeal. After some time the copy was handed over to the counsel by the appellant himself causing a delay of 159 days. The explanation tendered is found plausible leading to conclusion that there was sufficient cause for delay in filing the appeal. Therefore, the delay is condoned and matter remitted to Tribunal to adjudicate on merits.

Present: Mr. Rajiv Agnihotri, Advocate for the appellant.

Ms. Tanisha Peshawaria, DAG, Haryana.

AJAY KUMAR MITTAL, J.

1. This appeal has been filed by the assessee under Section 36 of the Haryana Value Added Tax Act, 2003 (in short "the Act") against the orders dated 29.3.2010 (Annexure A-1) passed by the Assessing Officer, dated 4.10.2010 (Annexure A-2) passed by the Joint Excise

and Taxation Commissioner (Appeals), dated 22.2.2012 (Annexure A-4) passed by the Haryana Tax Tribunal, Chandigarh (hereinafter referred to as "the Tribunal") in STA No. 61 of 2011-12 and dated 12.12.2012 (Annexure A-7) passed by the Tribunal in STM No. 1 of 2012-13, for the assessment year 2006-07, claiming the following substantial questions of law:-

> *i) Whether the delay in filing appeal before the first appellate authority late by 5 months is so fatal to be dismissed as barred by limitation and particularly when apparently Mr. Amit Garg, who received the copy of the order was suffering from mental depression and was undergoing treatment and could not deliver the copy of the order for further appeal?*
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> *ii) Whether the Tribunal should not have taken cognizance of decision of Hon'ble Punjab & Haryana High Court in case of Gheru Lal Bal Chand cited in CWP No. 6573 of 2007 dated 23.9.2011 keeping in view the merits of the case that the additional demand is only on account of input tax disallowing on the basis the seller did not discharge tax obligation?*

2. Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The appellant-M/s Super Metals, Faridabad was engaged in the trading of Iron and Steel etc. It had been filing its returns and discharging tax obligations. The assessment for the year 2006-07 was framed by the assessing authority vide order dated 29.3.2010 (Annexure A-1) making additional demand of ' 1,02,605/-. However, the benefit of input tax amounting to ' 2,00,086/- on account of purchases made from M/s Ayush Metals and M/s Swastik Trading Company was disallowed as the selling dealer did not discharge their tax obligations. Feeling aggrieved, the appellant filed an appeal before respondent No.4-Joint Excise and Taxation Commissioner (Appeals) who vide order dated 4.10.2010 (Annexure A-2) confirmed the order passed by the assessing authority. Still dissatisfied, the appellant filed an appeal dated 21.3.2011 (Annexure A-3) before the Tribunal. As the appeal was barred by limitation, an application under Section 5 of the Limitation Act was also filed for condonation of 159 days' delay. The Tribunal vide order dated 22.2.2012 (Annexure A-4) rejected the application for condonation of delay and dismissed the appeal. Thereafter, the assessee filed an application (Annexure A-5) for restoration of the appeal. The assessee filed written submissions (Annexure A-6). The Tribunal vide order dated 12.12.2012 (Annexure A- 7) dismissed the application for restoration of the appeal. Hence, the present appeal.

3. We have heard learned counsel for the parties.

4. The primary question that arises for consideration in this appeal is whether the delay of 159 days in filing the appeal before the Tribunal was liable to be condoned in the facts and circumstances of the present case.

5. Examining the legal position relating to condonation of delay under Section 5 of the Limitation Act, 1963 (in short, the "1963 Act") it may be observed that the Hon'ble Supreme Court in Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation and another, (2010) 5 SCC 459 laying down the broad principles for adjudicating the issue of condonation of delay, in paras 14 & 15 observed as under:-

"14. We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed

with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time.

> *15. The expression "sufficient cause" employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate-Collector (L.A.) v. Katiji N. Balakrishnan v. M. Krishnamurthy and Vedabai v. Shantaram Baburao Patil."*

6. It was further noticed by the Hon'ble Apex Court in **R.B. Ramlingam v. R.B. Bhavaneshwari 2009(1) RCR (Civil) 892** as under:-

> *"... It is not necessary at this stage to discuss each and every judgment cited before us for the simple reason that Section 5 of the Limitation Act, 1963 does not lay down any standard or objective test. The test of "sufficient cause" is purely an individualistic test. It is not an objective test. Therefore, no two cases can be treated alike. The statute of limitation has left the concept of "sufficient cause" delightfully undefined, thereby leaving to the Court a well-intentioned discretion to decide the individual cases whether circumstances exist establishing sufficient cause. There are no categories of sufficient cause. The categories of sufficient cause are never exhausted. Each case spells out a unique experience to be dealt with by the Court as such."*

It was also recorded that:-

> *"For the aforestated reasons, we hold that in each and every case the Court has to examine whether delay in filing the special leave petition stands properly explained. This is the basic test which needs to be applied. The true guide is whether the petitioner has acted with reasonable diligence in the prosecution of his appeal/petition...."*

7. From the above, it emerges that the law of limitation has been enacted which is based on public policy so as to prescribe time limit for availing legal remedy for redressal of the injury caused. The purpose behind enacting law of limitation is not to destroy the rights of the parties but to see that the uncertainty should not prevail for unlimited period. Under Section 5 of the 1963 Act, the courts are empowered to condone the delay where a party approaching the court belatedly shows sufficient cause for not availing the remedy within the prescribed period. The meaning to be assigned to the expression "sufficient cause" occurring in Section 5 of the 1963 Act should be such so as to do substantial justice between the parties. The existence of sufficient cause depends upon facts of each case and no hard and fast rule can be applied in deciding such cases.

8. The Hon'ble Apex Court in Oriental Aroma Chemical Industries Ltd. and R.B. Ramlingam's cases (supra) noticed that the courts should adopt liberal approach where delay is of short period whereas the proof required should be strict where the delay is inordinate. Further, it was also observed that judgments dealing with the condonation of delay may not lay down any standard or objective test but is purely an individualistic test. The court is required to examine while adjudicating the matter relating to condonation of delay on exercising judicial discretion on individual facts involved therein. There does not exist any exhaustive list constituting sufficient cause. The applicant/petitioner is required to establish that inspite of acting with due care and caution, the delay had occurred due to circumstances beyond his control and was inevitable.

9. The question regarding whether there is sufficient cause or not, depends upon each case and is to be decided taking totality of events which had taken place in a particular case. Learned counsel for the appellant submitted that the order dated 4.10.2010 passed by the Joint Excise and Taxation Commissioner (Appeals) was received by their counsel on 15.10.2010 and handed over to their representative Mr. Amit Garg on 1.12.2010 who was suffering from depression and was undergoing treatment and most of the time was out of office. Therefore, they could not file the appeal. Thereafter, the said order was handed over to the counsel for the appellant on 20.5.2011 and the appeal was filed late by 159 days. In such circumstances, delay in filing the appeal before the Tribunal was unintentional and due to the circumstances beyond the control of the appellant.

10. The explanation furnished by the appellant appears to be plausible and, therefore, leads to the conclusion that there was sufficient cause for delay in filing the appeal. Once that was so, the delay in filing the appeal before the Tribunal deserves to be condoned and appeal heard on merits by the Tribunal.

11. This Court in M/s. Aptech Engineers, Gurgaon v. State of Haryana and others, 2014 (2) PLR 102 while examining the legal position had condoned the delay and remitted the matter to the Tribunal to adjudicate the dispute on merits in accordance with law.

12. In view of the above, it is held that the Tribunal had erred in refusing to condone the delay in filing the appeal. The substantial questions of law are answered accordingly. As a sequel, the appeal is allowed and the orders dated 22.02.2012 (Annexure A-4) and dated 12.12.2012 (Annexure A-7) passed by the Tribunal is set aside. The matter is remitted to the Tribunal to adjudicate the dispute on merits in accordance with law.

PART-III
GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE AND TAXATION
(EXCISE AND TAXATION-II BRANCH)

PUNJAB VAT ACT
AMENDMENT - SCHEDULE B - ENTRIES 172-173 INSERTED

NOTIFICATION

The 20th January, 2015

No. S.O.3/P.A.8/2005/S.8/2015.- Whereas the State Government is satisfied that circumstances exist, which render it necessary to take immediate action in public interest;

Now, therefore, in excise of powers conferred by sub-section (3) of section 8 of the Punjab Value Added Tax Act, 2005 (Punjab Act No. 8 of 2005), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to make the following amendment in Schedule B appended to the said Act, with immediate effect by dispensing with the condition of previous notice, namely:-

AMENDMENT

In Schedule B, after Serial Number 171, the following serial numbers shall be inserted, namely:-

"172. Earth moving equipments like Wheel Excavators, Track Excavators, Backhoe Loaders, Telescopic handlers, road rollers wheel loading shovel, skid steer and vibratory compactors.

173. Tower Cranes, Mobile Cranes, Crawler Cranes, Backhoe Loaders, Pick and carry cranes and Truck Mounted."

D.P. REDDY
Financial Commissioner Taxation and
Secretary to Govermment of Punjab,
Department of Excise and Taxation

PART-III
GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE AND TAXATION
(EXCISE AND TAXATION-II BRANCH)

PUNJAB VAT ACT
SEC. 8(3) – EXEMPTION TO SUGAR MILLS – PURCHASE TAX FOR THE YEAR 2014-15

NOTIFICATION

The 16th January, 2015

No. S.O.2/P.A.8/2005/S.8/2015. - Whereas the State Government is satisfied that circumstances exist which render it necessary to take immediate action in public interest;

Now, therefore, in excise of powers conferred by sub-section (3) of section 8 of the Punjab Value Added Tax Act, 2005 (Punjab Act No. 8 of 2005), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to exempt the Sugar Mills situated in the State of Punjab, from the purchase tax paid or payable during the financial year 2014-015.

D.P. REDDY
Financial Commissioner Taxation and
Secretary to Govermment of Punjab,
Department of Excise and Taxation

INSTRUCTION
REGARDING EXEMPTION TO WORKS CONTRACTOR FROM PAYMENT OF ADVANCE TAX

OFFICE OF EXCISE AND TAXATION COMMISSIONER, PUNJAB, PATIALA

To

1. Smt Neelam Chaudhary,
   Addl. Excise and Taxation Commissioner (X),
2. Smt. Sarojini Gautam Sharda, PCS
   DETC Jalandhar Division, Jalandhar,
3. Smt. Amrit Kaur Gill, PCS
   DETC Ludhiana Division, Ludhiana

Memo No. VAT-1/1042-44
Dated, the 31, December, 2014

Subject:- Instructions regarding exemption from the payment of Tax in Advance according to provisions of Section 6(7) of Punjab VAT Act, 2005.

Memorandum

1. It has come to our notice that some work contractors are applying for the exemption from the payment of tax in advance on the ground that they are liable for reduction of TDS on the Works Contracts including the value of material under section 27 of the Punjab VAT Act, 2005.
2. Proviso to subsection 7(a) of section 6 of Punjab VAT Act, 2005, added vide notification dated 15 November, 2013 is reproduced hereunder:

   "*Provided that the State Government may be notification exempt any taxable person or class of taxable persons from payment of tax in advance or reduce the rate of payment of tax in advance subject to such conditions, as may be notified:*

   Provided further that if on an application made by a taxable person, the Commissioner or an officer authorized by him, after verifying all aspects of the case, arrives at a decision that such taxable person should be exempted from payment of tax in advance or that the rate of payment of tax in advance should be reduced for such taxable person, he may do so and impose such terms and conditions on such taxable person as he may deem fit."
3. In light of above, you are advised to allow exemption from the payment of tax in advance to the works contractors where they have already paid TDS on the Works Contracts including the value of material under section 27 of the Punjab VAT Act, 2005.

Excise & Taxation Commissioner,
Punjab
Dated: 31/12/2014

Endst. No. 1045-69

A copy is forwarded to All the Assistant Excise & Taxation Commissioners, incharges of the Districts in the State for information.