

Court No. - 1

Case :- SALES/TRADE TAX REVISION No. - 302 of 2022

Revisionist :- M/S Royal Sanitations

Opposite Party :- Commissioner Of Commercial Tax

Counsel for Revisionist :- Suyash Agarwal

Counsel for Opposite Party :- C.S.C.

Hon'ble Shekhar B. Saraf,J.

1. Heard Sri Suyash Agarwal, learned counsel for the revisionist and Sri Bipin Kumar Pandey, learned Additional Chief Standing Counsel for the State.

2. This revision petition has been filed against an order dated July 21, 2022 passed by the Commercial Tax Tribunal (hereinafter referred to as "the Tribunal) wherein delay of 1365 days in filing the appeal has been condoned.

3. The question of law, that arises, is as follows:

"A. Whether the Tribunal was legally justified in condoning the delay of 1365 days in filing the appeal of revenue before the Tribunal contrary to the decision of Supreme court in the matter of Chief Post Master General & Ors Vs. Living Media India Ltd. and Anr and State of M.P. Vs. Bhure Lal?"

4. Sri Suyash Agarwal, learned counsel appearing on behalf of the revisionist has relied upon a coordinate Bench judgment of this Court in **M/s Anil Enterprises v. Commissioner of Commercial Tax, U.P. Lucknow** (Sales/Trade Tax Revision No.124 of 2020,

decided on July 20, 2022) to buttress his argument that such inordinate delay cannot be condoned on wholly vague and generic grounds. The coordinate Bench upon examining the facts in that particular case had held that delay of 530 days should not have been allowed by the Tribunal. The coordinate Bench has relied on Supreme Court's judgment in **Postmaster General & Ors. v. Living Media India Limited and Another** reported in (2012) 3 SCC 563 to support its judgment.

5. Per contra, Sri B.K. Pandey, learned Additional Chief Standing Counsel appearing on behalf of the State submits that in the present case, the Tribunal, while specifically dealing with the reasons provided for the inordinate delay and all the judgments of the Supreme Court, has come to a finding that in the present case, reasons provided for the said delay were justified. He relied upon a judgment of the Supreme Court in **N. Balakrishnan v. M. Krishnamurthy** reported in (1998) 7 SCC 123. The relevant paragraph of the said judgment reads as under:

"9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional

jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court."

6. I have perused the judgments reproduced in the impugned order and find that the impugned order has taken into account the facts of the particular case and examined the sufficiency of cause in relation to the delay. The relevant paragraphs of the impugned orders are delineated below:

"12. In the present case, there is a delay of only 1365 days. The reasons of delay are that there was shortage of employees, employees were busy in B.L.O. duties, no senior assistant, who looks after the proceedings of filing appeal was appointed in the office and there was spread of COVID-19.

13. So far as the ground of spread of COVID-19 is concerned, in this regard, it is notable that Hon'ble Apex Court considering spread of COVID-19 in the country, has directed to exclude the period of limitation for filing the appeals from 15.03.2020 to 22.02.2022. hence, the period of delay from 15.03.2020 to 17.01.2022 cannot be treated to be delayed period for filing this appeal. The reason of the employees having been busy in B.L.O. duties is concerned it is a fact of judicial notice that for B.L.O duties, State employees are deputed on various election duties, they go for training at several rounds, lists are prepared of the employees for election duties and other ancillary works are done by the employees of the State, hence, the ground of delay taken-up by the revenue appears to have a close connection with the Parliamentary Elections of 2019 and U.P. State Elections, 2022.

14. Learned counsel for the respondent assessee referring the Rule 39 of the U.P. VAT Rules, has argued that as per this rule, the account books and documents maintained by a dealer or other person shall be for a period of eight years after expiration of the assessment year to which such books, accounts and documents: It is notable that in this Rule it has also been provided that where any proceedings are pending against a dealer, he shall maintain books, accounts beyond period of

eight years till such proceedings are finalized. In this case, it is undisputed that account books of the assessee have been rejected by the assessing authority and assessee had filed first appeal and the learned first appellate authority has remanded the matter to to the assessing authority for passing assessment order afresh, hence, the assessment proceedings for the relevant year is yet not been finalized and matter is still in dispute. Hence, as per provisions given in Rule 39, the assessee has to maintain account books and other relevant documents for the relevant year till the proceedings finalized. Hence, on this point, the objection of the assessee is not tenable in the eyes of law."

7. The Tribunal has also distinguished the judgment of the Supreme Court rendered in **Chief Post Master General and Others' case (supra)** and relied upon the judgment of the Supreme Court in **Collector, Land Acquisition, Anantnag and Another v. Mst. Katiji and Others** reported in **(1987) 2 SCC 107** to support its decision.

8. In light of the above, I am of the view that the delay is explained by the authorities and the appeal is required to be heard by the Tribunal, as so much time has already elapsed. I am also of the view that the hearing of the appeal should be expedited. Accordingly, the Tribunal is directed to hear and decide the appeal within four months from date.

9. With the aforesaid observations, the revision petition is disposed of.

Order Date :- 25.1.2024
Kuldeep

(Shekhar B. Saraf,J.)