SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Saga Instruments Vs. C.T.O., College Street Charge and

Saga Instruments Vs. C.T.O., College Street Charge and

SooperKanoon Citation : sooperkanoon.com/57011

Court : Sales Tax Tribunal STT West Bengal

Decided On : Feb-15-2001

Reported in : (2002)128STC110Tribunal

Judge : P Sen, D Bhattacharyya

Appellant : Saga Instruments

Respondent : C.T.O., College Street Charge and

Judgement :

1. The application for condonation of delay which was filed after obtaining leave from this Tribunal is taken up for hearing.

2. Mr. L.K. Chatterjee, learned advocate appearing for the petitioner, while moving this application, has submitted before us that his client was prevented by sufficient reasons in presenting the application under Section 8 of the West Bengal Taxation Tribunal Act, 1987 in time. There is no dispute that the order sought to be challenged in the said application was made on October 15, 1996 while the application under Section 8 of the said Act was filed before this Tribunal on November 29, 2000, i.e., after a gap of four years. Therefore, the petitioner is required to explain the delay of these four years. Now Mr. Chatterjee, learned advocate appearing for the petitioner, submits that his agent advised him not to move against the order impugned, i.e., the order dated October 15, 1996, rather the said agent advised his client to appear before the concerned Commercial Tax Officer in regular assessment proceedings and produce books of accounts. The

case commenced when the assessment was reopened and said order of reopening was made on October 15, 1996. Therefore, the fact remains that the order of reopening was not challenged during these four years. Rather it was challenged before this Tribunal when the application under Section 8 of the said Act was filed on November 29, 2000. Mr.

Chatterjee submits that by the letter dated February 4, 1997 the agent of the petitioner's client advised him not to challenge the order of reopening but said advice appears to have been given when the order of reopening has become final inasmuch as the relief for reopening has become time-barred in the meantime. The said order of reopening should have been challenged within 45 days, but the advice for not challenging the said order of reopening was given long after the period of limitation was over. Mr. Chatterjee has drawn our attention to two decisions of the Calcutta High Court reported in AIR 1983 Cal. 124 (Oil and Natural Gas Commission v. Tridib Nath Sanyal) and AIR 1981 SC 1400 (Rafiq v. Munshilal). But in both the cases it was the lawyer for whose fault the petitioner had to suffer and in that circumstances the Supreme Court as well as the High Court was of the view that the client should not suffer for the inaction, deliberate omission or misdemeanour of his counsel. But here is a case where the fault, if there be any, was not committed by any lawyer. It was his Chartered Accountant who advised him not to move the Tribunal as we find from annexure 'B', i.e., the letter dated February 4, 1997. Therefore, the petitioner cannot take recourse of the decisions referred to above as in that case a lawyer was involved, but in the present case a Chartered Accountant is involved. It is not the case of the petitioner that this Chartered Accountant was appointed by executing a regular Vakalatnama by which a lawyer is appointed. Therefore, the Chartered Accountant cannot represent a client as a lawyer is entitled to and a Chartered Accountant cannot claim the benefit which is given to a lawyer as per the Advocates Act.

3. Thus we find that the advice claimed to have been given by the Chartered Accountant was given after the time-limit and Mr. Halder who claims himself to be a Chartered Accountant was never an advocate and so the decisions referred to by Mr. Chatterjee cannot have any application to the present facts and circumstances of the case. We also find that the said Chartered Accountant

advised the petitioner to approach the Taxation Tribunal after regular assessment proceedings and produce books of accounts there. But on the contrary we find that his petitioner approached the High Court and moved a writ application before honourable Justice K.J. Sengupta challenging the jurisdiction of this Tribunal and Mr. Chatterjee who moved the said application submitted before the High Court while moving the said writ application that the Taxation Tribunal formed under the Act of 1987 is not competent to decide the matter. The said writ application was dismissed by the High Court and the High Court gave liberty to the petitioner to approach the appropriate Tribunal for relief. Therefore, at one point of time the petitioner's case is that he acted upon the advice of Mr.

Halder not to challenge the initial order of reopening before the Taxation Tribunal and in another place this petitioner moved the High Court where the jurisdiction of the Taxation Tribunal was challenged.

Therefore, it cannot be said that he relied fully upon the advice of Mr. Halder, i.e., the Chartered Accountant. In a number of decisions of the Supreme Court, one of such decision reported in AIR 1972 SC 1973 (Punjabi University v. Acharya Swami Ganesh), the Supreme Court observed that inordinate delay and latches disentitled a party to relief under Article 226 of the Constitution. A five-Judge Bench of the Supreme Court observed in a case reported in AIR 1961 SC 1506 (A.V.Venkateswaran, Collector of Customs, Bombay v. Ramchand Sobhraj Wadhwani) that if a petitioner has disabled himself from availing himself of the statutory remedy by his own fault in not doing so within the prescribed time, he cannot certainly be permitted to urge that as a ground for the court dealing with his petition under Article 226 to exercise its discretion in his favour.

4. Here the position is identical because it was the petitioner himself who allowed his remedy to become barred by limitation and he sat idly over-the matter for years together. In a case which came up before this Tribunal, this Tribunal observed which was reported in (2000) 36 STA 182 [Shree Gopikishan Steel Works (P) Ltd. v. D.C.C.T., Chowringhee Circle] that the applicant ought to have challenged within the period of limitation before the appropriate forum such notice or the eventual order of the respondent No. 1 or the notice in form VI of the respondent

No. 2 issued pursuant to such order. The applicant has deliberately, inspite of knowledge about the notices and the orders, allowed the time to run out and has done so at its own peril. The remedy, if any, available under the law has become time barred.

(para-8).

5. Thus here is a case where the impugned order of reopening was passed on October 15, 1996 and which was duly communicated to the applicant on October 19, 1996. Therefore, it is not a case that the petitioner was not aware of the order. We further find from the letter dated February 4, 1997 that the Chartered Accountant advised the petitioner to attend the regular assessment proceedings without challenging the initial order of reopening. Therefore, this petitioner had full knowledge of the initial order and he sat idle over the matter and allowed his right to become barred by limitation. The impugned notice gave him a cause of action to challenge it, but he chose to let the matter proceed. When the application under Section 8 of the Act was filed before the court, he applied for leave and thereafter this application for condonation of delay was filed. Therefore, the petitioner had enough opportunity to challenge the order within time and thereby the petitioner violated Section 8(2) of the West Bengal Taxation Tribunal Act, 1987. The said section incorporates a statutory period during which a prudent person should challenge the validity of an action or order by which he has become aggrieved. The remedy under Section 8 of the said Act is in the nature of a remedy as contemplated under Article 226 of the Constitution. It is well-settled that such an application should not be presented with unreasonable delay. Here is a case where the application was presented after four years from the date of the order sought to be challenged. In the circumstances we find that the petitioner has miserably failed to explain the delay and his relief, if there be any, has become barred by limitation in the meantime. We do not find any ground to condone such delay and, therefore, this application for condonation of delay is rejected.

6. The petition under Section 8 of the West Bengal Taxation Tribunal Act, 1987 also stands rejected as being time barred. We make no order for costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com