

Court No. - 1

Case :- WRIT TAX No. - 1147 of 2022

Petitioner :- M/S Sanyo Koreatex Pvt. Ltd.

Respondent :- Deputy Commissioner, Trade Tax And Another

Counsel for Petitioner :- Mahima Jaiswal, Sri Shambhu Chopra
(Sr. Advocate)

Counsel for Respondent :- C.S.C.

Hon'ble Shekhar B. Saraf, J.

1. This is a writ petition under Article 226 of the Constitution of India, wherein the petitioner is aggrieved by the order dated April 6, 2022 passed by the Commercial Tax Tribunal refusing to entertain the rectification application of the petitioner on the ground that the same was time barred.

2. Counsel appearing on behalf of the petitioner submits that the original order was passed by the Commercial Tax Tribunal (hereinafter referred to as the "Tribunal") on March 18, 2017, however the petitioner was not made aware of the said order. He submits that the petitioner came to know about the said order only on September 14, 2021 when its bank account was attached. He further submits that there was a typographical error in the order passed by the Tribunal on March 18, 2017 wherein the figure should have been Rs.34,04,333/- but by mistake, the order contained the figure Rs.30,04,333/-. He submits that this typographical error is without any fault of the petitioner and it should not be penalised for the same. He submits that there is no expressed or implicit bar of application of Section 5 of the Limitation Act, 1963 (hereinafter referred to as the "Limitation Act") to Section 31 of the Uttar Pradesh Value Added Tax Act, 2008 (hereinafter referred to as the "VAT Act"), as there is no provision for extension of the time period of three years provided in Clause (1) of Section 31 of the VAT Act. He submits that in statutory provision of taxation statutes when there is no provision for extension of time period for showing sufficient cause, Section 5 of the Limitation Act would apply. The application of Section 5 of the Limitation Act would not be barred in such a case wherein no time period is given for extension.

3. I have heard Sri Shambhu Chopra, learned Senior Advocate assisted by Ms. Mahima Jaiswal, learned counsel for the petitioner and Sri Arvind Mishra, learned Standing Counsel for the State.

4. It is to be noted that the Supreme Court in Misc. Application No.21 of 2022 filed in Suo Motu Writ Petition (C) No.3 of 2020 (**In Re: Cognizance for Extension of Limitation**) allowed the limitation to be extended till February 28, 2022. The petitioner, in the present case, has filed the application on March 11, 2022, that is, only 11 days after the end of the above period. Furthermore, petitioner's case is that it was not made aware of the order dated March 18, 2017 and it came to know about the said order only on September 14, 2021 when its bank account was attached.

5. Without going into hyper technicality with regard to period of limitation, this Court keeping in mind the Supreme Court judgment for extension of period of limitation and the fact that Section 5 of the Limitation Act would apply to Section 31 of the VAT Act is of the view that the delay in filing the rectification application should be condoned. In light of the same, the order dated April 6, 2022 passed by the Tribunal is quashed and set aside with a direction upon the Tribunal to hear the rectification application of the petitioner on merit and decide the same within four months from date.

6. With the above direction, the writ petition is allowed.

Order Date :- 23.2.2024

Kuldeep

(Shekhar B. Saraf,J.)