

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.12678 of 2012

Date of Decision: 29.10.2014

Heritage Auto Private Limited Petitioner

versus

Union of India and others Respondents

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Jagmohan Bansal, Advocate, for the petitioner.

Mr. D.D.Sharma, Advocate, for respondent no.1.

Mr. Sukhdev Sharma, Advocate, for respondent nos.
2 and 3.

RAJIVE BHALLA, J.(ORAL)

By this order, we shall decide Civil Writ Petition Nos.12678, 14115, 16438 and 17346 of 2012 as they involve adjudication of similar questions. Facts are, however, being taken from Civil Writ Petition No.12678 of 2012.

The petitioner prays that proviso to Section 85 (3) of the Finance Act, 1994 (hereinafter referred to as the "Act"), may be declared ultra vires or may be read down. The petitioner also prays for setting aside order dated 10.11.2010, imposing penalty and order dated 1.3.2012 passed in appeal, whereby the petitioner's appeal was dismissed for having been filed beyond the condonable period of limitation.

Counsel for the petitioner submits that the proviso to

Section 85(3) of the Act, is ultra vires of the right to seek adjudication by filing an appeal. The proviso provides that the appellate authority shall not condone delay beyond three months, thereby placing an illegal impediment on the right to file an appeal. The proviso may either be held to be ultra vires of the right to file an appeal or may be read down, in cases where orders are inherently without jurisdiction. Counsel for the petitioner further contends that the petitioner having deposited service tax before issuance of the show cause notice, the order imposing penalty is without jurisdiction and, therefore, the impugned order may, accordingly, be set aside or delay in filing the appeal may be condoned.

Counsel for the respondents submits that the right to file an appeal emanates from a statute. The legislature has, in its wisdom, confined the power to condone delay to a period of three months beyond the period prescribed for filing an appeal and, therefore, power under Article 226 of the Constitution cannot be exercised to condone delay. Counsel for the respondents relies upon a Full Bench judgment in LPA No.377 of 2012, (State of Haryana versus Hindustan Machine Tools Limited and others), decided on 30.9.2014, in support of the latter argument.

We have heard counsel for the parties and appraised the paper-book as well as the impugned orders.

Admittedly, the petitioner filed an appeal beyond the condonable period of three months, provided by the proviso to Section 85(3) of the Act. The appellate authority, therefore, dismissed the appeal. The right to file an appeal is conferred by a statute and

must, therefore, be availed along with all its impediments. Section 85 (3) of the Act allows an assessee to file an appeal within 90 days. The proviso to Section 85(3) of the Act empowers the appellate authority to condone delay but not beyond three months. We are unable to discern any legal flaw in the proviso to Section 85 (3) of the Act, that would enable us to hold that the proviso impedes the rights of the petitioner to file an appeal or is in any manner in excess of legislature power or should be read down.

As regards the petitioner's plea that delay may be condoned by exercising power under Article 226 of the Constitution or the assessment order may be quashed suffice is to record that a Full Bench of this Court has held in LPA No.377 of 2012, (State of Haryana versus Hindustan Machine Tools Limited and others), decided on 30.9.2014, that delay in filing an appeal cannot be condoned by resort to power under Article 226 of the Constitution. Bound as we are by the opinion of the Full Bench, the writ petitions are dismissed.

(RAJIVE BHALLA)
JUDGE

(AMIT RAWAL)
JUDGE

29.10.2014
VK