IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

VATAP No.142 of 2014
Date of decision:19.05.2015

M/s Mahindra & Mahindra Ltd.

....Appellant

Versus

State of Haryana

......Respondent

CORAM: HON'BLE MR.JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.Avneesh Jhingan, Advocate, for the appellant.

Ms.Mamta Singla Talwar, AAG, Haryana, for the respondent.

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S.J.Vazifdar, Acting Chief Justice (Oral):

1. This is an appeal against the order of the Haryana Value Added Tax Appellate Tribunal, Haryana (for short, the 'Tribunal') dated 31.10.2013 (Annexure A-6), dismissing the appeal filed against the order of the revisional authority, dismissing the preliminary issue raised before the Deputy Excise & Taxation Commissioner-cum-Revisional Authority, Karnal, that the revisional jurisdiction was invoked beyond the period of limitation, as prescribed under Section 34 of the Haryana Value Added Tax Act, 2003 (for short, the 'Act').

2. Several questions of law have been raised contending that they are substantial questions of law relating to the ambit of Section 34. It is not necessary to set out these questions as we find that the main issue that arises for consideration has not been dealt with by the Tribunal, at all. We are, therefore, inclined to remand the matter to the Tribunal, for a fresh decision, especially on the issue, which we will shortly indicate.

3. Section 34 of the Act reads as under:

> "34. *(1)* The Commissioner may, on his own motion, call for the record of any case pending before, or disposed of by, any taxing authority for the purposes of satisfying himself as to the legality or to the propriety of any proceeding or of any order made therein which is prejudicial to the interests of the State and may, after giving the persons concerned a reasonable opportunity of being heard, pass such order in relation thereto as he may think fit:
>
> Provided that no order passed by a taxing authority shall be revised on an issue which on appeal or in any other proceeding from such order is pending before, or has been settled by, an appellate authority or the High Court or the Supreme Court, as the case may be:
>
> Provided further that no order shall be revised after the expiry of a period of three years from the date of the supply of the copy of such order to the assessee except where the order is revised as a result of retrospective change in law or on the basis of a decision of the Tribunal in a similar case or on the basis of law declared by the High Court or the Supreme Court.
>
> *(2)* The State Government may, by notification in the Official Gazette, confer on any officer not below the rank of Deputy Excise and Taxation Commissioner, the power of the Commissioner under subsection (1) to be exercised subject to such exceptions, conditions and restrictions as may be specified in the notification and where an officer on whom such powers have been conferred passes an order under this section, such order shall be deemed to have been passed by the Commissioner under sub-section (1)."

4. We are concerned essentially with the second proviso to Section 34. The revisional jurisdiction was exercised on the following basis:

The Assessing Authority finalized the assessment for the relevant assessment year, namely, 2004-05, on 05.02.2008. Another matter was being dealt with by the Tribunal, namely, STA No.407 of 2009-10, in the appellant's case. It was held that the appellant's claim for concession with respect of the goods sold to the Haryana Vidyut Parsaran Nigam Ltd.(HVPNL) and Uttar Haryana Bijli Vitran Nigam Ltd.(UHBVNL), was illegal. That case was decided by an order of the Tribunal dated 11.12.2009. The Tribunal held that the Nigams are not Government departments and therefore, the appellant was not entitled to concessional rate of duty. It is based on this decision that the revisional jurisdiction was sought to be invoked in the present case, by issuing an order dated 27.11.2012.

5. The main question is as to whether the present case which involves the sale of the same goods to the Police Department, the Forest Department and other Departments and to the State Transport Corporation, is similar to the case dealt with by the order of the Tribunal dated 11.12.2009 (released on 21.12.2009). Had the present case involved the sale of goods to the said Nigams, it may have been a different matter, altogether. It was necessary for the Tribunal, however, to first decide the issue as to whether this case is similar to the other case for it is only in the event of that finding being in the affirmative that the revisional jurisdiction could have been invoked under the second proviso to Section 34. This issue, admittedly, has not been raised much less dealt with in the impugned order. We would have considered deciding this issue ourselves but for the fact that it was suggested that there may be certain other aspects regarding the constitution of these bodies that may also require consideration.

6. We would, therefore, leave it, in the first instance, for the authorities under the Act, to decide the issue.

7. The appeal is disposed of by the following order:

> The impugned order dated 31.10.2013 (Annexure A-6) is set aside. The matter is remanded to the Tribunal for fresh decision, in accordance with law, including on the above issue. It would be open to the Tribunal to decide the said issue or to further remand the matter to the revisional authority.

(S.J.Vazifdar)
Acting Chief Justice

19.05.2015
sailesh

(G.S.Sandhawalia)
Judge