IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

GSTR No. 9 of 2011

Date of Decision: 30.3.2016

M/s Mahavir Techno Ltd., Kurukshetra

....Petitioner.

Versus

State of Haryana

...Respondent.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE RAJ RAHUL GARG.

PRESENT: Mr. Rishab Singla, Advocate for the petitioner.

Ms. Mamta Singla Talwar, DAG, Haryana with
Mr. Saurabh Mago, AAG, Haryana.

AJAY KUMAR MITTAL, J.

1. This order shall dispose of GSTR Nos. 9 to 18 of 2011 as according to the learned counsel for the parties, all the references are interconnected and common questions of law and facts are involved therein. For brevity, the relevant facts are being extracted from GSTR No. 9 of 2011.

2. In GSTR No. 9 of 2011, the Haryana Tax Tribunal, Chandigarh (hereinafter referred to as “the Tribunal”) vide order dated 8.8.2011 has referred for opinion of this Court following questions of law under Section 42 of the Haryana General Sales Tax Act, 1973 (in short

"the Act") and under Section 9(2) of the Central Sales Tax Act, 1956 (for brevity "the Central Act") read with Section 42 of the Act arising out of its order dated 23.8.2010 passed in STA Nos. 315-324 of 2008-09 relating to the assessment years 1998-99 to 2002-03:-

i. Whether on the facts and in the circumstances of the case the assessment orders for the years 1998-99 to 2002-03 passed on 29.6.2008 are barred by limitation in view of the provisions of Rule 28A(10)(ii) of the HGST Rules which require the assessments to be completed by 31st December in respect of the assessment year immediately preceding thereto?

ii. Whether on the facts and in the circumstances of the case, the assessment orders for the years 1998-99 to 2002-03 passed on 29.6.2008 had been delayed inordinately, so have become barred by limitation?

iii. Whether after introduction of the Haryana Value Added Tax Act, 2003 with effect from 1.4.2003, as amended vide Haryana Act No.3 of 2010 dated 2.4.2010 with retrospective effect, and repeal of the HGST Act, the corresponding provisions of Section 15(3) of the HVAT Act for completing assessment would govern the assessment proceedings in respect of the cases pending under the HGST Act as well or the provisions of section 28(4) of the HGST Act would continue to apply in such cases?

3. A few facts necessary for adjudication of the references as narrated therein may be noticed. The petitioner is a dealer registered under the Act as well as the Central Act. It had been granted exemption under Rule 28A of the Haryana General Sales Tax Rules, 1975 (in short "1975 Rules") read with Section 13B of the Act for a period of nine years from 11.12.1995 to 10.12.2004 with an overall exemption limit of ₹ 1,07,09,738/-. The Assessing Authority vide order dated 29.2.2008 framed the assessment for the year 1998-99 raising a demand of ₹ 60,94,133/- under the Central Act. The proceedings were initiated on 12.6.2001 by issuing a statutory notice for 1.8.2001. Similar orders were passed for the years 1999-2000, 2000-01, 2001-02 and 2002-03. Feeling aggrieved by the assessment orders, the petitioner filed appeals before the Joint Excise and Taxation Commissioner (Appeals) [for brevity "DETC(A)"] who vide order dated 16.6.2008 remanded the case back for re-hearing the petitioner. Still dissatisfied by the order dated 16.6.2008, the petitioner filed appeals before the Tribunal for setting aside the assessment orders. The Tribunal vide order 23.8.2010 rejected the plea of the petitioner based upon Rule 28A(1)(ii) of the 1975 Rules relying upon its judgment in the case of M/s Rajni Agro Oil Mills v. State of Haryana in STA Nos. 218-219 of 2009-10 decided on 17.5.2010. Further, the plea of the assessee regarding inordinate delay in finalization of the assessment proceedings was rejected by the Tribunal by observing that the delay had occurred due to repeated requests made by the assessee from time to time. The Tribunal rejected the plea of the petitioner regarding proviso to Section 15(3) of Haryana Value Added Tax Act, 2003 (in short "the HVAT Act") read with Section 61(2) thereof,

holding that in view of the judgment of this Court in **Khazan Chand Nathi Ram v. State of Haryana (2004) 136 STC 261 (P&H)**, the provisions of the Act would continue to govern the proceedings as the amendment in the year 2010 had no bearing on the appeals. Hence, the present references.

4. We have heard learned counsel for the parties.

5. Learned counsel for the petitioner submitted that after the introduction of the HVAT Act, the assessments were required to be completed by 31.3.2006. Section 61(1) of the HVAT Act was substituted by Act No.3 of 2010 on 2.4.2010 w.e.f. 1.4.2003 whereas the appeals were decided by the Tribunal on 23.8.2010. It was further submitted that for the assessment years 2000-01 and 2002-03, the assessment was barred by limitation as per proviso to Section 15(3) read with Section 61 (2) of the HVAT Act according to which the assessment had to be framed within three years from the close of the year to which the assessment related. The Tribunal has decided the issue by relying upon the order in **Khazan Chand Nathi Ram's case (supra)** whereas the case of the petitioner is totally different. It was urged that in these circumstances, the order of the Tribunal was unsustainable. Learned counsel has relied upon the judgments in **Ballarpur Industries Limited v. State of Punjab and others (2010) 35 PHT 5 (P&H); The State of Punjab and others v. M/s The Patiala Cooperative Sugar Mills Limited, Rakhra, District Patiala, VATAP No. 110 of 2013** decided on 26.2.2014 and the judgment of the Tribunal taking divergent view in **Pawan Kumar Vijay Kumar, New Mandi, Narnaul v. State of Haryana (2013) 45 PHT 566 (HTT)(FB)** in support of his contentions. A prayer was made that the

matter requires to be remitted to the Tribunal to decide afresh in view of the aforesaid circumstances.

6. On the other hand, learned State counsel besides supporting the order of the Tribunal submitted that Section 61(2) of the HVAT Act only defines the authorities constituted thereunder as competent to hear and decide the pending application, appeal, revision or other proceedings. It was urged that Section 61(2) of the HVAT Act does not give any retrospective effect to the HVAT Act either expressly or by necessary implication. Learned counsel has relied upon the judgment in **Khazan Chand Nathi Ram's case (supra).**

7. The issue raised herein involves examination of factual matrix viz-a-viz various amendments incorporated in the HVAT retrospectively w.e.f. 1.4.2003. A perusal of the order of the Tribunal shows that no cogent reasons have been recorded by it relating to the applicability or otherwise of the various amendments brought in HVAT effective from 1.4.2003 and its effect on the facts of the present case. Moreover, the Tribunal while dealing with the identical issue in **Pawan Kumar Vijay Kumar, New Mandi, Narnaul's case (supra)** subsequently has expressed divergent opinion by holding that the assessment framed in respect of the assessment year prior to 1.4.2003 had to be completed by 31.3.2006 after coming into force of the HVAT Act. Accordingly, it is considered appropriate that in order to effectively adjudicate the references that the matters are sent back to the Tribunal to decide afresh in accordance with law.

9. In view of the above, the references are remanded to the Tribunal to re-adjudicate the issues afresh by providing opportunity of hearing to the parties and by passing a speaking order after recording

cogent reasons in accordance with law. Needless to say that nothing observed hereinbefore shall be taken to be expression of opinion on the merits of the controversy.

10. References stand disposed of accordingly.

(AJAY KUMAR MITTAL)
JUDGE

March 30, 2016 **(RAJ RAHUL GARG)**
gbs **JUDGE**