

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 12139 of 2006 (O&M)

Date of decision: 28.8.2018

Merino Panel Products Limited

.. Petitioner

VS

Deputy Excise & Taxation Commissioner (I)-cum
Revisional Authority, Jhajjar

.. Respondent

Coram: **Hon'ble Mr. Justice Rajesh Bindal**
 Hon'ble Mr. Justice Amit Rawal
 Hon'ble Mr. Justice Avneesh Jhingan

Present Mr. Sandeep Goyal and Mr. Avneet Singh, Advocates,
 for the petitioner.

Ms. Mamta Singla Talwar, Deputy Advocate General, Haryana.

Rajesh Bindal, J.

1. The petitioner has filed the present petition challenging the order dated 27.3.2006 passed by the Deputy Excise & Taxation Commissioner in exercise of power under Section 40 of the Haryana General Sales Tax Act, 1973 (for short, 'the 1973 Act').

2. Assessment of the petitioner for the assessment year 2002-03 was framed by the Assessing Authority vide order dated 21.6.2005. Notice for revision of the order was issued on 17.1.2006. It is important to note here that the 1973 Act was repealed with the enactment of Haryana Value Added Tax Act, 2003 (for short, 'the 2003 Act') with effect from 1.4.2003. This Court in Hindustan Construction Company Limited vs State of Haryana and others (2005) 141 STC 119, opined that no notice under Section 40 of the 1973 Act

could be issued after the repeal thereof as in Section 61 of the 2003 Act, only the pending proceedings have been saved with no power to initiate fresh proceedings for suo-moto revision of assessment order passed under the 1973 Act.

3. When the case came up for hearing before the Division Bench of this Court, the opinion expressed by the Division Bench of this Court in Hindustan Construction Company Limited's case (supra), was doubted and the matter was referred to be considered by a Larger Bench of this Court vide order dated 4.8.2006. This is how the writ petition has been listed before this Bench.

4. Learned counsel for the petitioner submitted that this Court while referring the matter to the Larger Bench had doubted the correctness of the earlier judgment of this Court in Hindustan Construction Company Limited's case (supra). The aforesaid judgment was challenged by the State before Hon'ble the Supreme Court and the same has been upheld vide judgment reported as State of Haryana and others vs Hindustan Construction Company Limited 2017 (9) SCC 463. In the aforesaid judgment, not only the provision of Section 61 of the 2003 Act as was existing at the time of enactment of the 2003 Act, but even the amendment carried out to the 2003 Act on 2.4.2010, with effect from 1.4.2003, was also considered. It was opined that the only saving was to the pending proceedings at the time of enactment of the 2003 Act with no power to initiate fresh proceedings. Hence, the revisional order passed by the authority deserves to be set aside.

5. On the other hand, learned counsel for the State while not disputing the fact that judgment of this Court in Hindustan Construction Company Limited's case (supra) has been upheld by Hon'ble the Supreme Court, submitted that the case of the petitioner would fall in Section 61(2)(d) of the 2003 Act, as the petitioner unit was availing tax concession granted to the industrial unit.

6. Heard learned counsel for the parties and perused the records.

7. Section 61 of the 2003 Act in the year 2003 and the amendments made therein, in the years 2006 and 2010 are quoted below:-

<i>Section 61 of 2003 Act (Before Amendment)</i>	<i>Section 61 of 2003 Act after amendment on 18.9.2006</i>	<i>Section 61 of 2003 Act after amendment on 2.4.2010</i>
61. Repeal and saving.- (1) The Haryana General Sales Tax Act, 1973 (20 of 1973), is hereby repealed :	61. Repeal and saving.- (1) The Haryana General Sales Tax Act, 1973 (20 of 1973), is hereby repealed : Provided that such repeal shall not- (a) affect the previous operation of the Act so repealed or anything duly done or suffered thereunder; or (b) affect any right, title, privilege, obligation or liability acquired, accrued or incurred under the said Act; or (c) affect any act done or any action taken (including any	61. Repeal and saving.- (1) The Haryana General Sales Tax Act, 1973 (20 of 1973), is hereby repealed : Provided that such repeal shall not- (a) affect the previous operation of the Act so repealed or anything duly done or suffered thereunder; or (b) affect any right, power, title, privilege, obligation or liability acquired, accrued or incurred under the said Act; or (c) affect any act done or any action taken (including any

	appointment, notification, notice, order, rule, form regulation, certificate) in the exercise of any power conferred by or under the said Act; and any such act done or any action taken in the exercise of the powers conferred by or under the said Act shall be deemed to have been done or taken in the exercise of the powers conferred by or under the said Act as if this Act were in force on the date on which such act was done or action taken; and all arrears of tax and other amount due at the commencement of this Act may be recovered as if the same had accrued under this Act.	appointment, notification, notice, order, rule, form regulation, certificate) in the exercise of any power conferred by or under the said Act; and any such act done or any action taken in the exercise of the powers conferred by or under the said Act shall be deemed to have been done or taken in the exercise of the powers conferred by or under the said Act as if this Act was in force on the date on which such act was done or action taken; and all arrears of tax and other amount due at the commencement of this Act may be recovered as if the same had accrued under this Act.
(2) Notwithstanding anything contained in sub-section (1),- (a) any application, appeal, revision or other proceedings made or preferred to any authority under the said Act, and pending at the commencement of this Act, shall, after such commencement, be transferred to and disposed of by the officer or authority	(2) Notwithstanding anything contained in sub-section (1)- (a) any application, appeal, revision or other proceedings made or preferred to any officer or authority under the said Act and pending at the commencement of this Act, shall, after such commencement, be transferred to and disposed of by the officer or authority	(2) Notwithstanding anything contained in sub-section (1)- (a) any application, appeal, revision or other proceedings made or preferred to any officer or authority under the said Act, and pending at the commencement of this Act, shall, after such commencement, be transferred to and disposed of by the officer or authority

who would have had jurisdiction to entertain such application, appeal, revision or other proceedings under this Act as if it had been in force on the date on which such application, appeal, revision or other proceedings were made or preferred; (b) any security in the form of cash deposit, bank guarantee, personal bond, surety bond or in any other form furnished on any day before the commencement of this Act for the payment of any tax or other dues under the said Act, shall remain in force and may be enforced after the commencement of this Act for the payment of any tax or other dues under this Act and for this purpose this Act shall be deemed to have come into force on the day such security was furnished; (c) declaration in form S.T. 38 in force under the said Act and the rules made thereunder shall remain in force after the appointed day and shall be used mutatis mutandis for the purpose for which it was being used before the appointed day	who would have had jurisdiction to entertain such application, appeal, revision or other proceedings under this Act as if the said Act had been in force on the date on which such application, appeal, revision or other proceedings were made or preferred. Notwithstanding anything to the contrary contained in any judgement, decree or order of any court of other authority, where no review, revision or corrective action could be initiated or finalized in respect of any assessment, order, proceedings under the said Act prior to or after 1st April, 2003, because of judgement or decree of any court or Tribunal and the said assessment or order passed under the said Act had attained finality, the limitation of five years as specified under section 40 of the said Act shall be deemed to be eight years; (b) any security in the form of cash deposit, bank guarantee, personal bond, surety bond or in any other form furnished on any day before the commencement of this Act for the payment of	who would have had jurisdiction to entertain such application, appeal, revision or other proceedings under this Act as if the said Act had been in force on the date on which such application, appeal, revision or other proceedings were made or preferred. Notwithstanding anything to the contrary contained in any judgment, decree or order of any court or other authority, where no review, revision or corrective action could be initiated or finalized in respect of any assessment, order, proceeding under the said Act prior to or after 1st April, 2003, because of judgment or decree of any court or Tribunal and the said assessment or order passed under the said Act had attained finality, the limitation of five years as specified u/s 40 of the said Act shall be deemed to be eight years; (b) any security in the form of cash deposit, bank guarantee, personal bond, surety bond or in any other form furnished on any day before the commencement of this Act for the payment of
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until the State Government directs, by notification, the discontinuance of its use after such date as may be specified in the notification; (d) the provisions of section 13B and section 25A of the said Act and the rules (hereinafter referred to as the 'existing rules'), framed thereunder relating to tax concessions to industrial units shall remain in force subject to the following exceptions, restrictions and conditions, namely:- (i) an industrial unit availing the benefit of exemption from payment of tax may, in the prescribed manner, change over to deferment of payment of tax for the remaining period and the remaining extent of benefit or for such period and such extent of benefit as may be prescribed but where an industrial unit does not choose to do so, exemption to it from payment of tax shall cease to take effect on and from the appointed day and further.- (I) it shall be liable to maintain production at a level so that its annual turnover	any tax or other dues under the said Act, shall remain in force and may be enforced after the commencement of this Act for the payment of any tax or other dues under this Act and for this purpose this Act shall be deemed to have come into force on the day such security was furnished; (c) declaration in form S.T. 38 in force under the said Act and the rules made thereunder shall remain in force after the appointed day and shall be used mutatis mutandis for the purpose for which it was being used before the appointed day until the State Government directs, by notification, the discontinuance of its use after such date as may be specified in the notification; (d) the provisions of section 13B and section 25A of the said Act and the rules (hereinafter referred to as the 'existing rules'), framed thereunder relating to tax concessions to industrial units shall remain in force subject to the following exceptions, restrictions and conditions, namely:-	any tax or other dues under the said Act, shall remain in force and may be enforced after the commencement of this Act for the payment of any tax or other dues under this Act and for this purpose this Act shall be deemed to have come into force on the day such security was furnished; (c) declaration in form S.T. 38 in force under the said Act and the rules made thereunder shall remain in force after the appointed day and shall be used mutatis mutandis for the purpose for which it was being used before the appointed day until the State Government directs, by notification, the discontinuance of its use after such date as may be specified in the notification; (d) the provisions of section 13B and section 25A of the said Act and the rules (hereinafter referred to as the 'existing rules'), framed thereunder relating to tax concessions to industrial units shall remain in force subject to the following exceptions, restrictions and conditions, namely:-
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does not fall short of the average annual turnover during the period of exemption; and (II) it shall not export out of State any goods produced by it, for a period of next five years or such shorter period for which it has availed of exemption from payment of tax and if it fails to do so, it shall be liable to pay to the State Government, in the prescribed manner the amount of tax in respect of which it has availed of exemption from payment after reducing therefrom the tax paid by it before such failure; (ii) an industrial unit availing the benefit of capital subsidy may, in the prescribed manner, change over to deferment of payment of tax for the remaining period and the remaining extent of benefit but where an industrial unit does not choose to do so, the benefit of capital subsidy to it shall cease to take effect on and from the appointed day; (iii) an industrial unit	(i) an industrial unit availing the benefit of exemption from payment of tax may, in the prescribed manner, change over to deferment of payment of tax for the remaining period and the remaining extent of benefit or for such period and such extent of benefit as may be prescribed but where an industrial unit does not choose to do so, exemption to it from payment of tax shall cease to take effect on and from the appointed day and further.- (I) it shall be liable to maintain production at a level so that its annual turnover does not fall short of the average annual turnover during the period of exemption; and (II) it shall not export out of State any goods produced by it, for a period of next five years or such shorter period for which it has availed of exemption from payment of tax and if it fails to do so, it shall be liable to pay to the State Government, in the prescribed manner the amount of tax in respect of which it has availed of	(i) an industrial unit availing the benefit of exemption from payment of tax may, in the prescribed manner, change over to deferment of payment of tax for the remaining period and the remaining extent of benefit or for such period and such extent of benefit as may be prescribed but where an industrial unit does not choose to do so, exemption to it from payment of tax shall cease to take effect on and from the appointed day and further.- (I) it shall be liable to maintain production at a level so that its annual turnover does not fall short of the average annual turnover during the period of exemption; and (II) it shall not export out of State any goods produced by it, for a period of next five years or such shorter period for which it has availed of exemption from payment of tax and if it fails to do so, it shall be liable to pay to the State Government, in the prescribed manner the amount of tax in respect of which it has availed of
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availing the benefit of deferment of payment of tax, whether by change over under the foregoing provisions or otherwise, may, in lieu of making payment of the deferred tax after five years, pay half of the amount of the deferred tax upfront along with the returns and on making payment in this manner, the tax due according to the returns shall be deemed to have been paid in full; and (iv) the tax deferred in every other case shall be converted into interest free loan in the manner prescribed. <i>Explanation.-</i> For the purpose of this clause, "tax" includes the tax under the Act of 1973 and the Central Act.	exemption from payment after reducing therefrom the tax paid by it before such failure; (ii) an industrial unit availing the benefit of capital subsidy may, in the prescribed manner, change over to deferment of payment of tax for the remaining period and the remaining extent of benefit but where an industrial unit does not choose to do so, the benefit of capital subsidy to it shall cease to take effect on and from the appointed day; (iii) an industrial unit availing the benefit of deferment of payment of tax, whether by change over under the foregoing provisions or otherwise, may, in lieu of making payment of the deferred tax after five years, pay half of the amount of the deferred tax upfront along with the returns and on making payment in this manner, the tax due according to the returns shall be deemed to have been paid in full; and (iv) the tax deferred in every other case shall be converted into interest free loan in the	exemption from payment after reducing therefrom the tax paid by it before such failure; (ii) an industrial unit availing the benefit of capital subsidy may, in the prescribed manner, change over to deferment of payment of tax for the remaining period and the remaining extent of benefit but where an industrial unit does not choose to do so, the benefit of capital subsidy to it shall cease to take effect on and from the appointed day; (iii) an industrial unit availing the benefit of deferment of payment of tax, whether by change over under the foregoing provisions or otherwise, may, in lieu of making payment of the deferred tax after five years, pay half of the amount of the deferred tax upfront along with the returns and on making payment in this manner, the tax due according to the returns shall be deemed to have been paid in full; and (iv) the tax deferred in every other case shall be converted into interest free loan in the
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	manner prescribed. <i>Explanation.-</i> For the purpose of this clause, “tax” includes the tax under the Act of 1973 and the Central Act; (inserted by Haryana Act No. 4 of 2004) (e) the tax chargeable under the Act of 1973 on the sale or purchase of duty entitlement pass book, effected on or before 31st March, 2003, shall be calculated at the rate of four per cent of the turnover of sale or purchase of such goods, as the case may be, and shall be paid voluntarily without payment of interest on or before 31st March, 2004, whereafter interest at the rate of 18 per cent per annum on the amount of tax due for the period of delay shall be charged: Provided that where a dealer has charged tax at a rate more than four per cent, the tax shall be calculated and payable at such rate; (f) the tax levied under section 6 read with section 17 of the Act of 1973 on the last purchase of paddy	manner prescribed. <i>Explanation.-</i> For the purpose of this clause, “tax” includes the tax under the Act of 1973 and the Central Act; (e) the tax chargeable under the Act of 1973 on the sale or purchase of duty entitlement pass book, effected on or before 31st March, 2003, shall be calculated at the rate of four per cent of the turnover of sale or purchase of such goods, as the case may be, and shall be paid voluntarily without payment of interest on or before 31st March, 2004, whereafter interest at the rate of 18 per cent per annum on the amount of tax due for the period of delay shall be charged: Provided that where a dealer has charged tax at a rate more than four per cent, the tax shall be calculated and payable at such rate; (f) the tax levied under section 6 read with section 17 of the Act of 1973 on the last purchase of paddy effected between 1st April, 1981 and 31st March, 2003
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	effected between 1st April, 1981 and 31st March, 2003 (both days inclusive), by a dealer liable to tax under the said Act, shall be valid notwithstanding anything to the contrary contained in any judgment, decree or order of any court or other authority, any levy, assessment, re-assessment or collection of any amount by way of tax made or purporting to have been made in respect of purchase of paddy effected in the said period and used in the manufacture of rice sold in course of export of goods out of the territory of India within the meaning of section 5 of the Central Act and any action taken or thing done or purporting to have been taken or done in relation to such levy, assessment, reassessment or collection, shall be deemed to be as valid and effective as if such levy, assessment, re-assessment or collection, had been made or action taken or thing done under the said Act, and accordingly- (i) all acts, proceedings or things done or action taken by the State Government or by any officer of the State	(both days inclusive), by a dealer liable to tax under the said Act, shall be valid notwithstanding anything to the contrary contained in any judgment, decree or order of any court or other authority, any levy, assessment, re-assessment or collection of any amount by way of tax made or purporting to have been made in respect of purchase of paddy effected in the said period and used in the manufacture of rice sold in course of export of goods out of the territory of India within the meaning of section 5 of the Central Act and any action taken or thing done or purporting to have been taken or done in relation to such levy, assessment, reassessment or collection, shall be deemed to be as valid and effective as if such levy, assessment, re-assessment or collection, had been made or action taken or thing done under the said Act, and accordingly- (i) all acts, proceedings or things done or action taken by the State Government or by any officer of the State Government or by any authority, in connection with
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	Government or by any authority, in connection with the levy, assessment, re-assessment or collection of such tax shall, for all purposes be deemed to be, and to have always been, done or taken accordance with law; (ii) no suit or other proceedings shall be maintained or continued in any court or before any authority for the refund of any such tax so collected; and (iii) no court or authority shall enforce any decree or order directing the refund of any such tax so collected.	the levy, assessment, re-assessment or collection of such tax shall, for all purposes be deemed to be, and to have always been, done or taken accordance with law; (ii) no suit or other proceedings shall be maintained or continued in any court or before any authority for the refund of any such tax so collected; and (iii) no court or authority shall enforce any decree or order directing the refund of any such tax so collected.
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8. This Court in Hindustan Construction Company Limited's case (supra), opined that after repeal of the 1973 Act with enactment of the 2003 Act with effect from 1.4.2003, no fresh proceedings could be initiated under Section 40 of the 1973 Act as only pending proceedings had been saved. Division Bench of this Court doubting the correctness of the abovesaid judgment referred the matter to be considered by a Larger Bench. The State also being aggrieved against the judgment of this Court in Hindustan Construction Company Limited's case (supra), filed appeal before Hon'ble the Supreme Court. While the matter was still pending in this Court, Hon'ble the

Supreme Court has dismissed the appeal filed by the State upholding the judgment of this Court, with the following observations:

“8. We have considered the respective submissions. A simple repeal of an Act leaves no room for expression of a contrary opinion. However, if the repeal is followed by a fresh enactment on the same subject, the applicability of the General Clauses Act would undoubtedly require an examination of the language in the new enactment to see if it expresses a different intention from the earlier Act. The enquiry would necessitate an examination if the old rights and liabilities are kept alive or whether the new Act manifests an intention to do away with or destroy them. If the new Act manifests a different intention, the application of the General Clauses Act will stand excluded.

9. There were no proceedings pending against the respondent under the Act of 1973 when the new Act came into force on 1-4-2003. The suo-moto revisional power under Section 40 of the former Act was exercised on 7-6-2004. The repeal and saving clause in Section 61 of the 2003 Act, saved only pending proceedings under the repealed Act. The intendment clearly was that matters which stood closed under the 1973 Act had to be given a quietus and could not be reopened. (emphasis supplied).

10. The assessment under the Act of 1973 having been completed and refund ordered, the exercise of suo-moto revisional powers under Section 40 of the same after repeal was clearly unsustainable

in view of the contrary intention expressed under Section 61 of the 2003 Act, saving only pending proceedings. Section 4 of the Punjab General Clauses Act, 1858 will have no application in view of the contrary intendment expressed in Section 61 of the repealing Act. Had a contrary intention not been expressed, the issues arising for consideration would have been entirely different. The observations in State of Punjab v. Mohar Singh Pratap Singh, as extracted below are considered relevant: (1955) 1 SCR 893)

“8.....Whenever there is a repeal of an enactment, the consequences laid down in Section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject we would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention.

The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them.....”

The observations in Gammon India Ltd. (supra) at para 73 are to the same effect.

11. The legislature, in its wisdom having noticed the limitation and constraints under Section 61 of the 2003 Act, made necessary amendments to the same by Act No. 3 of 2010 on 2-4-2010. Any interpretation saving the revisional power under Section 40 of the Act of 1973, without any proceedings pending on the relevant date, by resort to Section 4 of the Punjab General Clause Act, 1858 would render the amendment redundant, and an exercise in futility, something which the legislature never intended to do. Such an incongruous interpretation leading to absurdity has to be avoided.”

9. In the case in hand, it is undisputed fact on record that notice for revision of the order of assessment was issued to the petitioner after the repeal of the 1973 Act and enactment of 2003 Act, on 15.5.2006, which is much after the repeal of the 1973 Act. Hence, in view of the enunciation of law, as referred to above in Hindustan Construction Company Limited's case (supra), the proceedings initiated against the petitioner for revision of the order of assessment as well as the order passed are without jurisdiction and deserve to be set aside.

10. There is no merit in the contention raised by learned counsel for the State that in the case of the petitioner provision of Section 61(2)(d) of the 2003 Act will be applicable, as the aforesaid provision does not deal with exercise of revisional power by the authorities rather only saves the benefits granted to the industrial units during the currency of the 1973 Act in terms of provisions of Section 13(B) and 25(A) thereof and the Rules framed

thereunder. Any application, appeal, revision have not been referred to in the aforesaid sub-section.

11. For the reasons mentioned above, the writ petition is allowed. The order of revisional authority dated 27.3.2006 is set aside.

(Rajesh Bindal)
Judge

(Amit Rawal)
Judge

28.8.2018
vs

(Avneesh Jhingan)
Judge

Whether speaking/ reasoned Yes/No

Whether Reportable Yes/No