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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-4029-2017

Date of Decision : February 21, 2018

M/s H.N.Mehra & Co.

.... Petitioner

Versus

State of Haryana etc.

.... Respondents

**CORAM : HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SHEKHER DHAWAN**

Present Mr. Rajesh Mahna, Advocate,
Mr. Umesh Sarwal, Advocate, and
Mr. Rohit Sharma, Advocate,
for the Petitioner.

Ms. Mamta Singla Talwar, DAG, Haryana.

SHEKHER DHAWAN, J.

Challenge in the present writ petition filed under Article 226 of the Constitution is to the notification dated 31.03.2003 (Annexure P/1) read into Haryana Value Added Tax Act, 2003 (hereinafter referred to as “**the VAT Act**”) and the order dated 23.01.2017 (Annexure P/7) passed by Haryana Tax Tribunal, Chandigarh (for short, “**the Tribunal**”) in STA No.173-174 of 2011-12, whereby the preliminary issue raised by the petitioner was dismissed.

2. Petitioner company is registered under the VAT Act in the name and style of M/s H.M. Mehra & Co., and is being represented by Gaurav Mehra, its Director. The petitioner company is having a manufacturing and

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processing unit at G.T. Road, Kundli, District Sonapat (Haryana). Challenge in the present writ petition is to the validity of the notification dated 31.03.2003 and jurisdiction acquired by the State. As per the petitioner, the VAT Act came into operation only w.e.f. 1.4.2003 and as such enforcement of notification dated 31.03.2003 is not permissible and the action taken by the State under the said notification is not binding upon the petitioner being *per-se* without jurisdiction. Grounds taken in the petition are that the “words and expressions” as defined in Section 2(1) of the VAT Act are clear and there is no ambiguity and as such, there was no necessity of taking any support from any other Act. As per Section 1(c) of the VAT Act, the Act has come into force on the “appointed day”. The “appointed day” has been defined under Section 2(1)(c) of the VAT Act, which is extracted below:-

“(c) **“appointed day”** means the 1st day of April, 2003, unless declared by notification in the official Gazette, otherwise by the State Government.”

3. As per the petitioner, the State could not exercise any power under the provisions of the VAT Act, when the said Act had not come into existence on 31.03.2003. The Act was legislated and got the assent of Governor of Haryana on 28.03.2003 and the appointed day was provided in the Act itself. As such, no order, rule, bye-laws made prior to 1.4.2003 could be enforced and the same could have been issued only after coming into force of the VAT Act.

4. As per the petitioner, Haryana VAT Rules, 2003 were notified on 22.05.2003 and the VAT Act itself clarified that the Revisional Authority shall be appointed under the Act and the same can be appointed only when

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the VAT Act came into existence. "Appointed day" has its absolute significance as the same is part of the Principal Act and such expressions are unambiguous and clear. However, the Tribunal ignored the basic law contained in the Statute and the order passed by the Tribunal despite remand of the matter by this Court is *non est* and has no legal validity. The petitioner prayed that the impugned notification dated 31.03.2003 (Annexure P/1) be quashed and the subsequent order dated 30.08.2011 (Annexure P/3) for the assessment year 2005-2006 passed by the Deputy Excise & Taxation Commissioner (ST)-cum-Revisional Authority, Sonapat in purported exercise of the powers under the notification dated 31.3.2003, being without jurisdiction be also set-aside.

5. Respondent-State has taken the stand that respondent No.3, i.e., Deputy Excise & Taxation Commissioner (ST)-cum-Revisional Authority, Sonapat has passed a very reasonable, fair, legal and well reasoned order which is in conformity with the VAT Act and Rules framed thereunder. The revisional authority, i.e., Deputy Excise & Taxation Commissioner (ST)-cum-Revisional Authority in the State of Haryana were notified on 31.03.2003, but the operation of the said notification became effective only after the appointed day i.e., 1.4.2003. Section 20 of the General Clauses Act clearly lays down that the power can be exercised at any time after the passing of the Act, but the rules, bye-laws or orders made or issued, shall not take effect till the commencement of the Statute. The VAT Act got the assent of the Governor of Haryana on 26.03.2003 and the same was notified on 28.03.2003 to come into force on the appointed day i.e. 1.4.2003. As such, the provisions of the Punjab General Clauses Act, 1898

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protects the action of issuing notification on 31.3.2003 to be operative from 1.4.2003. There was nothing wrong on the part of the respondent-State in issuing the notification on 31.3.2003 and as such the writ petition deserves to be dismissed.

6. We have heard learned counsel for the parties and with their assistance, have gone through the record.

7. The main point involved in the present writ petition is – Whether the notification dated 31.03.2003 is legal and valid in the light of the fact that the VAT Act came into force on 1.4.2003 and that was the “appointed day” as per provisions of Section 1(c) of the VAT Act. For the purpose of decision of present writ petition, certain dates would be most relevant. The same are depicted below :-

(i).	Assent of the Governor of Haryana for VAT Act was obtained.	26.03.2003
ii).	The Haryana Value Added Tax Act, 2003 was notified on.	28.03.2003
lii).	Impugned notification Annexure P/1 issued by the State Government.	31.03.2003
iv).	Appointed day, as per Section 1(c) of the Act.	01.04.2003

8. To decide the present controversy, the points for decision would be:-

- 1). Whether a Notification could be issued under the VAT Act on 31.3.2003 when the Act itself came into force on 01.04.2003?
- 2). Whether issuance of impugned notification amounts to retrospective applicability of the VAT Act ?

9. There is no dispute on the facts that the impugned notification

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dated 31.03.2003 was issued prior to the date of "appointed day" i.e. 1.4.2003. As per said notification, appointment of Revisional authority, i.e., Deputy Excise & Taxation Commissioner (ST)-cum-Revisional Authority was made. There is also no dispute on the fact that the said Revisional authority i.e. Deputy Excise & Taxation Commissioner (ST)-cum-Revisional Authority exercised the power only after the appointed day i.e., 1.4.2003. There is again no dispute and it is not the case of the petitioner also that the VAT Act is liable to be struck-down on the ground it being contrary to the provisions of the Constitution or that it is not a valid piece of legislation. The only point involved in this writ petition is whether notification issued on 31.3.2003 is valid in law. The object of issuing the notification on 31.3.2003 is manifestly clear that the State Government wanted to appoint the authorities and to put the complete mechanism in order so as to effectively enforce the VAT Act w.e.f. 1.4.2003. There cannot be any bar on the State's power to do the ground-work for enforcement of a Statute, especially the tax statute where complete mechanism would be required to give effect to the provisions of the Statute for recovery of tax. The State of Haryana had issued notification on 31.3.2003 for appointment of Deputy Excise & Taxation Commissioner (ST) as Revisional Authority. But at any rate, the revisional authority had not exercised any power before the 'appointed day'. Rather, challenge to the order passed by the revisional authority in the present case is dated 30.8.2011 and that is relating to the assessment year 2005-2006 i.e., much after the 'appointed day'.

10. The matter was before the Tribunal and vide order dated 23.1.2007, this legal point was also raised and the learned Tribunal has

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rightly held that as per provisions of Section 21 of the Punjab General Clauses Act, 1956, the State is well within its power to frame rules or bye-laws and issuing order between the passing and commencement of the enactment. For ready reference, Section 21 of the Punjab General Clauses Act, 1956 is extracted below :-

“Making of rules or bye-laws and issuing of orders between passing and commencement of enactments - Where, by any Punjab Act which is not to come into force immediately on the passing thereof, a power is conferred to make rules bye-laws, or to issue order with respect to the application of the Act or with respect to the establishment of any Court or office or the appointment of any judge or officer thereunder or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act, then that power may be exercised at any time after the passing of the Act, but rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act.”

11. Similarly, in the present case, the impugned notification was issued on 31.3.2003 notifying the appointment of revisional authority after the VAT Act had obtained the assent of Governor of Haryana on 26.3.2003 and it stood notified on 28.3.2003. The State was thus well within its power to issue such notification in respect of appointment of an authority to give effect to the provisions of the VAT Act and in the present case also, the power was actually exercised by the revisional authority on 30.8.2011 i.e., much beyond the appointed day.

12. Learned counsel for the petitioner placed reliance upon the Division Bench judgment of Bombay High Court in **Commissioner of**

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Income Tax v. Bhartkumar Modi, [2000] 246 ITR 693 (Bom). which deals with the difference between lack of jurisdiction and irregular exercise of authority/jurisdiction. A proceeding is a nullity when the authority taking it has no power or seisin over the case.

13. Reliance was also placed upon decision of Hon`ble Apex Court in The State of Haryana and Ors. Vs. Hindustan Construction Company Ltd., MANU/SC/1185/2017, where the matter in controversy was whether the exercise of revisional power by the Authority after the repeal of the Act could be sustainable or justified. However, facts of both these judgments are quite distinguishable from the facts of the case in hand, because in the present case, challenge is to the notification dated 31.03.2003 only on the ground that the VAT Act came into operation w.e.f. 01.04.2003. As per the above discussion, there is no illegality in issuing such notification so as to create the mechanism for effective enforcement of the tax Statue especially when the revisional authority, i.e., Deputy Excise & Taxation Commissioner (ST) had not assumed or exercised any authority or passed any order before the 'appointed day'.

14. In view of the above, the present writ petition has no merit and the same stands dismissed.

(SURYA KANT)
JUDGE

(SHEKHER DHAWAN)
JUDGE

February 21, 2018.
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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes