IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.5967 of 2017 (O&M)
Date of Decision.24.07.2018

M/s Mahabir Techno Ltd. ...Petitioner

Vs

The State of Haryana and another ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sandeep Goyal, Advocate
for the petitioner.

Ms. Mamta Singla Talwar, DAG, Haryana.

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RAJESH BINDAL J.

The petitioner has approached this Court impugning the notice dated 03.02.2017 issued under Section 17 of the Haryana Value Added Tax Act, 2003 (for short, the VAT Act) and the order dated 01.03.2017 passed by respondent No.2 rejecting preliminary objection raised by the petitioner regarding the action being time barred.

The contention raised by learned counsel for the petitioner is that re-assessment proceedings for the year 2009-10 were initiated while issuing notice on 03.02.2017, which was served upon the petitioner on 13.02.2017. Assessment for the year in question was finalized on 20.03.2013. As per Section 17 of the VAT Act, as existed prior to 03.08.2015, re-assessment was possible within five years from the date of close of the assessment year or before expiry of two years following the date when the assessment had become final, whichever is later. In the case in hand, the assessment year being 2009-10, period of five years expired on 31.03.2015 and second part of the provision will not be applicable as two years period expired on 20.03.2015 as the assessment itself was final, there being no appeal filed by the assessee or no other proceedings initiated by the Department. As the period provided under Section 17 of the VAT Act for re-assessment had expired on 31.03.2015, right of the Department to re-assess will not revive, in view of the amendment carried out subsequently on 03.08.2015, which provided for a period of eight years instead of five years for framing re-assessment from the close of the year.

In support of the argument, reliance has been placed upon a Division Bench judgment of this Court in ***M/s Dhingra Jardine Infrastructure Pvt. Ltd. Vs. The State of Haryana and others (2017) 101 VST 34 (P&H)***. He further submitted that the Special Leave Petition (Civil) No.114 of 2018 titled as "***The State of Haryana and others Vs. Dhingra Jaradine Infrastructure Private Limited etc. etc.*** filed by the State against the aforementioned judgment was dismissed by Hon'ble the Supreme Court on 16.04.2018, hence, impugned order passed by the authority rejecting the preliminary objection relying upon the amendment carried out on 03.08.2015, extending the period of limitation for framing re-assessment after expiry thereof, deserves to be set aside.

On the other hand, learned counsel for the State could not dispute the fact that the period as provided in Section 17 of the VAT Act before the amendment carried out on 03.08.2015 had expired, when amendment extending the period from five years to eight years was carried out. She further did not dispute that the issue regarding extending period of limitation being available in cases where the same had already expired before the amendment had been gone into by Division Bench of this Court in ***M/s Dhingra Jardine Infrastructure Pvt. Ltd.'s*** case (supra) and the opinion expressed was in favour of the assessee.

After hearing learned counsel for the parties and considering that the issue as to whether period of limitation as provided for framing re-assessment having already expired can be revived by way of later amendment having been gone into by this Court in the aforesaid judgment and the opinion being in favour of assessees, for the reasons recorded in detail in ***M/s Dhingra Jardine Infrastructure Pvt. Ltd.'s*** case (supra), in our opinion, the impugned notice dated 03.02.2017 (Annexure P-2) issued for framing of re-assessment and the order dated 01.03.2017 (Annexure P-6) rejecting the preliminary objection regarding notice being time barred, deserve to be set aside.

Ordered accordingly.

The writ petition is disposed of accordingly.

(RAJESH BINDAL)
JUDGE

(AMIT RAWAL)
JUDGE

July 24, 2018
Pankaj*

Whether speaking/reasoned Yes/No
Whether reportable Yes/No