IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

VATAP No. 121 of 2013 (O&M)
Date of decision: September 11, 2018

The State of Punjab and others

.. Appellants

v.

The Doaba Co-operative Sugar Mills Ltd.

.. Respondent

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

Present: Mr. Pankaj Gupta, Additional Advocate General, Punjab.

Mr. Sunil K. Mukhi, Advocate for the respondent
in VATAP Nos. 121, 125, 126 and 138 to 140 of 2013.

Mr. M. R. Sharma, Advocate for the respondent
in VATP Nos. 122 to 124 of 2013 and

Mr. G. R. Sethi and Mr. Suvir Sehgal, Advocates
for the respondent in VATAP Nos. 163 to 165 of 2013 and
42 of 2014.

...

Rajesh Bindal J.

1. This order will dispose of a bunch of appeals bearing VATAP Nos. 121 to 126, 138 to 140, 163 to 165 of 2013 and 42 of 2014, as similar common questions of law are involved.

2. Brief facts of different cases are noticed hereunder:

3. VATP No. 121 of 2013

Order dated 1.4.2013 passed by Value Added Tax Tribunal, Punjab (for short, 'the Tribunal') has been challenged by filing the present appeal by the State raising the following substantial questions of law:

"(i) Whether the order passed by the learned Tribunal is sustainable in law ?

(ii) Whether the order passed by the learned Tribunal by relying upon the judgment of this Hon'ble High Court in the case of M/s Subh Timb Steel Ltd., is sustainable in law ?

(iii) Whether the law laid down by this Hon'ble High Court in the case of M/s Subh Timb Steel Ltd. In 2010 holding that where no period was provided the assessment order is to be passed within 3 years and in any event not beyond the period of 5 years could be made applicable in the cases decided much before the pronouncement of this judgment ?”

Assessment of the respondent-assessee for the year 1988-89 was framed by the Assessing Officer under Section 11(3) of the Punjab General Sales Tax Act, 1948 (for short, 'the Act') on 5.3.1999 levying purchase tax on sugarcane. Vide order dated 25.1.2002, Deputy Excise and Taxation Commissioner (Appeals), Jalandhar (hereinafter described as 'the appellate authority') set aside the assessment order passed by the Assessing Authority and remanded the case back to the Assessing Authority to be decided afresh in terms of the observations made in the order. The assessee preferred further appeal before the Tribunal, who vide order dated 1.4.2013, accepted the appeal filed by the assessee referring to the judgment of this Court in M/s Shubh Timb Steel Ltd. and others v. The State of Punjab, (2010) 31 VST (P&H) 85. The order of assessment was set aside as the same had been passed more than 5 years after the close of the assessment year.

4. VATAP No. 122 of 2013

Assessment of the respondent-assessee for the year 1987-88 was framed by the Assessing Officer under Section 11(3) of the Act on 27.11.2002 levying purchase tax on sugarcane. Vide order dated 20.6.2005, the appellate authority set aside the assessment order passed by the Assessing Authority and remanded the case back to the Assessing Authority to be decided afresh in terms of the observations made in the order. The assessee preferred further appeal before the Tribunal, who vide order dated 14.3.2013, accepted the appeal filed by the assessee referring to the judgment of this Court in M/s Shubh Timb Steel Ltd. and others' case (supra). The order of assessment was set aside as the same had been passed more than 5 years after the close of the assessment year.

5. VATAP No. 123 of 2013

Assessment of the respondent-assessee for the year 1988-89 was framed by the Assessing Officer under Section 11(3) of the Act on 28.11.2002 levying purchase tax on sugarcane. Vide order dated 20.6.2005, the appellate authority set aside the assessment order passed by the Assessing Authority and remanded the case back to the Assessing Authority to be decided afresh in terms of the observations made in the order. The assessee preferred further appeal before the Tribunal, who vide order dated 14.3.2013, accepted the appeal filed by the assessee referring to the judgment of this Court in M/s Shubh Timb Steel Ltd. and others' case (supra). The order of assessment was set aside as the same had been passed more than 5 years after the close of the assessment year.

6. VATAP No. 124 of 2013

Assessment of the respondent-assessee for the year 1989-90 was framed by the Assessing Officer under Section 11(3) of the Act on 29.11.2002 levying purchase tax on sugarcane. Vide order dated 29.6.2005, the appellate authority set aside the assessment order passed by the Assessing Authority and remanded the case back to the Assessing Authority to be decided afresh in terms of the observations made in the order. The assessee preferred further appeal before the Tribunal, who vide order dated 14.3.2013, accepted the appeal filed by the assessee referring to the judgment of this Court in M/s Shubh Timb Steel Ltd. and others' case (supra). The order of assessment was set aside as the same had been passed more than 5 years after the close of the assessment year.

7. VATAP No. 125 of 2013

Assessment of the respondent-assessee for the year 1989-90 was framed by the Assessing Officer under Section 11(3) of the Act on 29.9.1995 levying purchase tax on sugarcane. Vide order dated 25.1.2002, the appellate authority set aside the assessment order passed by the Assessing Authority and remanded the case back to the Assessing Authority to be decided afresh in terms of the observations made in the order. The assessee preferred further appeal before the Tribunal, who vide order dated 1.4.2013, accepted the appeal filed by the assessee referring to the judgment of this Court in M/s Shubh Timb Steel Ltd. and others' case (supra). The order of assessment was set aside as the same had been passed more than 5 years after the close of the assessment year.

8. VATAP No. 126 of 2013

Assessment of the respondent-assessee for the year 1992-93 was framed by the Assessing Officer under Section 11(3) of the Act on 30.12.1999 levying purchase tax on sugarcane. Vide order dated 25.1.2002, the appellate authority set aside the assessment order passed by the Assessing Authority and remanded the case back to the Assessing Authority to be decided afresh in terms of the observations made in the order. The assessee preferred further appeal before the Tribunal, who vide order dated 1.4.2013, accepted the appeal filed by the assessee referring to the judgment of this Court in M/s Shubh Timb Steel Ltd. and others' case (supra). The order of assessment was set aside as the same had been passed more than 5 years after the close of the assessment year.

9. VATAP No. 138 of 2013

Assessment of the respondent-assessee for the year 1987-88 was framed by the Assessing Officer under Section 11(3) of the Act on 21.3.1996 levying purchase tax on sugarcane. Vide order dated 26.2.2002, the appellate authority set aside the assessment order passed by the Assessing Authority and remanded the case back to the Assessing Authority to be decided afresh in terms of the observations made in the order. The assessee preferred further appeal before the Tribunal, who vide order dated 1.4.2013, accepted the appeal filed by the assessee referring to the judgment of this Court in M/s Shubh Timb Steel Ltd. and others' case (supra). The order of assessment was set aside as the same had been passed more than 5 years after the close of the assessment year.

10. VATAP No. 139 of 2013

Assessment of the respondent-assessee for the year 1993-94 was framed by the Assessing Officer under Section 11(3) of the Act on 30.12.1999 levying purchase tax on sugarcane. Vide order dated 25.1.2002, the appellate authority set aside the assessment order passed by the Assessing Authority and remanded the case back to the Assessing Authority to be decided afresh in terms of the observations made in the order. The assessee preferred further appeal before the Tribunal, who vide order dated

1.4.2013, accepted the appeal filed by the assessee referring to the judgment of this Court in M/s Shubh Timb Steel Ltd. and others' case (supra). The order of assessment was set aside as the same had been passed more than 5 years after the close of the assessment year.

11. VATAP No. 140 of 2013

Assessment of the respondent-assessee for the year 1989-90 was framed by the Assessing Officer under Section 11(3) of the Act on 29.9.1995 levying purchase tax on sugarcane. Vide order dated 25.1.2002, the appellate authority set aside the assessment order passed by the Assessing Authority and remanded the case back to the Assessing Authority to be decided afresh in terms of the observations made in the order. The assessee preferred further appeal before the Tribunal, who vide order dated 1.4.2013, accepted the appeal filed by the assessee referring to the judgment of this Court in M/s Shubh Timb Steel Ltd. and others' case (supra). The order of assessment was set aside as the same had been passed more than 5 years after the close of the assessment year.

12. VATAP No. 163 of 2013

Assessment of the respondent-assessee for the year 1977-78 was framed by the Assessing Officer under Section 11(3) of the Act on 20.3.1986 levying purchase tax on sugarcane. Vide order dated 8.10.2004, the appellate authority set aside the assessment order passed by the Assessing Authority and remanded the case back to the Assessing Authority to be decided afresh in terms of the observations made in the order. The assessee preferred further appeal before the Tribunal, who vide order dated 29.4.2013, accepted the appeal filed by the assessee referring to the judgment of this Court in M/s Shubh Timb Steel Ltd. and others' case (supra). The order of assessment was set aside as the same had been passed more than 5 years after the close of the assessment year.

13. VATAP No. 164 of 2013

Assessment of the respondent-assessee for the year 1979-80 was framed by the Assessing Officer under Section 11(3) of the Act on 12.12.1986 levying purchase tax on sugarcane. Vide order dated 8.10.2004, the appellate authority set aside the assessment order passed by the Assessing Authority and remanded the case back to the Assessing Authority to be decided afresh in terms of the observations made in the order. The assessee preferred further appeal before the Tribunal, who vide order dated 29.4.2013, accepted the appeal filed by the assessee referring to the judgment of this Court in M/s Shubh Timb Steel Ltd. and others' case (supra). The order of assessment was set aside as the same had been passed more than 5 years after the close of the assessment year.

14. VATAP No. 165 of 2013

Assessment of the respondent-assessee for the year 1978-79 was framed by the Assessing Officer under Section 11(3) of the Act on 24.10.1986 levying purchase tax on sugarcane. Vide order dated 8.10.2004, the appellate authority set aside the assessment order passed by the Assessing Authority and remanded the case back to the Assessing Authority to be decided afresh in terms of the observations made in the order. The assessee preferred further appeal before the Tribunal, who vide order dated 29.4.2013, accepted the appeal filed by the assessee referring to the judgment of this Court in M/s Shubh Timb Steel Ltd. and others' case (supra). The order of assessment was set aside as the same had been passed more than 5 years after the close of the assessment year.

15. VATAP No. 42 of 2014

Assessment of the respondent-assessee for the year 1976-77 was framed by the Assessing Officer under Section 11(3) of the Act on 20.3.1986 levying purchase tax on sugarcane. Vide order dated 27.1.2005, the appellate authority set aside the assessment order passed by the Assessing Authority and remanded the case back to the Assessing Authority to be decided afresh in terms of the observations made in the order. The assessee preferred further appeal before the Tribunal, who vide order dated 29.4.2013, accepted the appeal filed by the assessee referring to the judgment of this Court in M/s Shubh Timb Steel Ltd. and others' case (supra). The order of assessment was set aside as the same had been passed more than 5 years after the close of the assessment year.

Arguments of the appellant/State

16. Learned counsel for the State submitted that under Section 11 (3) of the Act, as existed originally, there was no time limit prescribed for framing of assessment, however, the same was amended on 20.4.1998. Period of three years was provided for framing of assessment from the last date of filing of returns for the year in question. The amendment was effective w.e.f. 3.3.1998. The period involved in all the appeals is prior to 1998, however, in some cases, the assessments were framed before 3.3.1998, whereas in some cases these were thereafter. The Tribunal, while accepting the appeal filed by the assessee, set aside the same only on the ground that the same was framed more than 5 years after the close of the assessment year, treating 5 years to be reasonable period for framing the assessment. He submitted that judgment in M/s Shubh Timb Steel Ltd. and others' case (supra) is distinguishable. The Tribunal, while setting aside the

orders passed by the authorities below had recorded that there were no exceptional circumstances for not framing assessment within reasonable time, i.e., 5 years, whereas in the case in hand, these were available. The matter regarding levy of purchase tax on the sugarcane by the sugar mills was pending before Hon'ble the Supreme Court, which was decided on 4.10.1994, vide judgment in Jagatjit Sugar Mills and others v. State of Punjab and another, (1995) 1 SCC 67. There was interim stay therein. Thereafter, the matters pending before this Court, which had been referred to be heard after the judgment of Hon'ble the Supreme Court, were decided vide judgment in M/s Morinda Co-operative Sugar Mills Ltd., Morinda v. The Assessing Authority, Ropar and others, 1995(3) PLR 445. There is no period of limitation provided for framing of assessment. In fact, in all the cases, the assessments had been kept pending on the request of the assessees in view of pendency of matters before Hon'ble the Supreme Court on the legal issue involved in all the cases. As there were exceptional circumstances immediately after the legal issue involved in the cases was decided by Hon'ble the Supreme Court in Jagatjit Sugar Mills and others' case (supra) and by Full Bench of this Court in M/s Morinda Co-operative Sugar Mills Ltd.'s case (supra), the assessment proceedings were taken up and concluded by passing the orders of assessment, hence, the Tribunal has gone wrong in simply relying upon the law laid down by this Court in M/s Shubh Timb Steel Ltd. and others' case (supra), whereas there were good reasons available on record for not framing the assessments within 5 years.

Arguments on behalf of the assessees

17. On the other hand, learned counsel for the assessees submitted that in none of the cases even notices for assessments were served within 5

years what to talk of framing the assessments. Hence, to claim that assessment proceedings were kept pending on request of assessees is misconceived. The date of service of notice has not even been mentioned in the orders of assessment. Undisputedly, the assessments have been framed more than 5 years after the close of assessment year in question. There was no stay of proceedings in the cases in hand either by Hon'ble the Supreme Court or this court, hence, the assessment proceedings were required to be concluded. In some cases, only recovery had been stayed, that too pertained to the year in question.

18. It was further submitted that Section 13-B of the Act provides that records are to be preserved by an assessee only for a period of five years. Section 11-C of the Act prescribes that there is no time limit for completion of assessment or re-assessment in certain cases. Sub-section (2) thereof provides that where the assessment proceedings relating to any dealer remained stayed under the orders of any court or other authority for any period, such period shall be excluded in computing the period of limitation for assessment or re-assessment provided under this Act. But in the present cases, there was no stay.

19. It was further submitted by learned counsel for the assessees that the plea that assessments had been kept pending on account of pendency of matters before Hon'ble the Supreme Court is not correct, as in some of the cases those had been framed.

20. The order passed by this Court in VATAP No. 110 of 2013— State of Punjab v. The Patiala Cooperative Sugar Mills Limited, decided on 26.2.2014, was relied upon, where order of assessment passed after five years was set aside. Reliance was also placed upon CIT v. Sadhu Ram,

(1981) 127 ITR 517 to submit that the amendment carried out in the year 1998 prescribing period of three years for framing of assessment will apply in all pending cases.

Response of the State

21. In response, learned counsel for the State submitted that in all the cases assessments had been framed within 3 years after the amendment was carried out by the State in Section 11(3) of the Act. The plea of retention of record only for a period of 5 years is misconceived as in any case, where proceedings are pending, the assessee is bound to keep the record.

Discussion

22. Heard learned counsel for the parties and perused the relevant referred records.

23. The tabulated information as provided by learned counsel for the State regarding assessment years in all appeals, the dates for which notices for assessment were issued (wherever available) and the date of passing of order of assessment are mentioned below:

Sr. No.	*VATAP No.*	*Assessee*	*Assessment year*	*Date of order*	*Notice For*
1	121 of 2013	M/s Doaba Cooperative Sugar Mills	1988-89	15.3.1999	
2	122 of 2013	M/s Tarn Taran Cooperative Sugar Mills	1987-88	29.3.1995	26.12.1988
3	123 of 2013	M/s Tarn Taran Cooperative Sugar Mills	1988-89	17.3.1997	25.9.1989
4	124 of 2013	M/s Tarn Taran Cooperative Sugar Mills	1989-90	29.8.1997	31.1.1995
5	125 of 2013	M/s Doaba Cooperative Sugar Mills	1989-90	02.09.95	25.4.1995
6	126 of 2013	M/s Doaba Cooperative Sugar Mills	1992-93	30.12.1999	29.9.1996
7	138 of 2013	M/s Doaba Cooperative Sugar Mills	1987-88	21.3.1996	12.03.1991

8	139 of 2013	M/s Doaba Cooperative Sugar Mills	1993-94	30.12.1999	25.9.1996
9	140 of 2013	M/s Doaba Cooperative Sugar Mills	1989-90	02.09.95	25.4.1994
10	163 of 2013	M/s Morinda Cooperative Sugar Mills	1977-78	20.3.1986	
11	164 of 2013	M/s Morinda Cooperative Sugar Mills	1979-80	12.12.86	
12	165 of 2013	M/s Morinda Cooperative Sugar Mills	1978-79	24.10.1986	
13	42 of 2014	M/s Morinda Cooperative Sugar Mills	1976-77	20.3.1986	

24. The issue under consideration in the writ petitions decided by Hon'ble the Supreme Court in Jagatjit Sugar Mills and others' case (supra) was as to whether the sugar mill is liable to pay purchase tax on the sugarcane purchased by it from the growers of sugarcane. The claim made in the writ petitions before Hon'ble the Supreme Court was rejected. The aforesaid judgment was delivered on 4.10.1994. The purchase tax was held to be leviable. Last paragraph of the judgment records that all the interim orders passed are vacated. The State was at liberty to collect the tax in accordance with law. Thereafter, a bunch of petitions pending in this court pertaining to the years 1982 to 1987 were decided by a Bench consisting of five Judges vide judgment dated 10.7.1995. The view expressed by Hon'ble the Supreme Court in Jagatjit Sugar Mills and others' case (supra) was followed opining that purchaser of sugarcane is liable to pay tax on its purchase. While disposing of the writ petitions, the authorities were directed to decide the matters expeditiously and determine tax liability in the light of judgment of Hon'ble the Supreme Court in Jagatjit Sugar Mills and others' case (supra). Interim orders passed were vacated.

25. A perusal of the order passed by this Court in M/s Morinda Co-operative Sugar Mills Ltd., Morinda's case (supra) shows that bunch of

twenty one writ petitions were decided. The petitioners before this Court in the aforesaid petitions were M/s Jagatjit Sugar Mills; M/s Morinda Co-operative Sugar Mills Ltd.; M/s Batala Cooperative Sugar Mills Ltd.; M/s Janta Cooperative Sugar Mills Ltd.; M/s Doaba Cooperative Sugar Mills Ltd. and M/s Punjab Khand Udyog Limited. The details of the writ petitions, the petitioners therein and the assessment year involved, wherever could be located from the record, are extracted below:

Sr. No.	Writ Petition	Name of the petitioner	Assessment year
1	661 of 1984	M/s Morinda Cooperative Sugar Mills	1973-74
2	126 of 1980	M/s Batala Cooperative Sugar Mills	1974-75
3	127 of 1980	M/s Batala Cooperative Sugar Mills	*
4	128 of 1980	*	*
5	202 of 1980	*	*
6	232 of 1980	M/s Jagatjit Sugar Mills	1975-76
7	427 of 1980	M/s Jagatjit Sugar Mills	1974-75
8	2975 of 1980	M/s Janta Cooperative Sugar Mills	*
9	5248 of 1982	M/s Jagatjit Sugar Mills	1977-78
10	5249 of 1982	M/s Jagatjit Sugar Mills	1978-79
11	5363 of 1982	M/s Doaba Cooperative Sugar Mills	1972-73
12	5364 of 1982	M/s Doaba Cooperative Sugar Mills	1974-75
13	5365 of 1982	M/s Doaba Cooperative Sugar Mills	1973-74
14	5366 of 1982	M/s Janta Cooperative Sugar Mills	1972-73
15	5367 of 1982	M/s Janta Cooperative Sugar Mills	1973-74
16	5368 of 1982	M/s Janta Cooperative Sugar Mills	1974-75
17	5369 of 1982	M/s Janta Cooperative Sugar Mills	1975-76
18	189 of 1983	M/s Janta Cooperative Sugar Mills	1977-78
19	4943 of 1984	M/s Janta Cooperative Sugar Mills	1978-79
20	5771 of 1987	M/s Punjab Khand Udyog Limited	1981-82
21	4993 of 1985	*	*

[* As reported by the Registry, the record burnt in fire incident]

26. In <u>Patiala Co-operative Sugar Mills Limited's</u> case (supra), the assessment year involved was 1989-90 and the assessment was framed on 29.8.2003. The issue which came up for consideration before this court was as to whether the assessment was time barred. The plea sought to be raised by the State was that prior to the amendment in Section 11 of the Act, as

carried out vide Ordinance dated 3.3.1998, there was no limitation prescribed for framing of assessment, hence, any amendment carried out later on prescribing the period of limitation for framing assessment will not take away the accrued right of the State to frame the assessment even after expiry of period of three years from the date the amendment was carried out. Rejecting the contention and holding that procedural law apply in all the pending cases and further that assessment in the present case was framed beyond three years from the date the amendment ibid, the order passed by the Tribunal holding the assessment to be time barred was upheld.

27. In Shubh Timb Steels Limited's case (supra), bunch of References under the Act were decided. The main issue, which was considered by this court was as under:

> "(iii) Whether, in the facts and the circumstances of the case, the assessment (original as well as assessment on remanded case) of the dealer framed by the Assessing Authority is assessment under section 11(4) of the Punjab General Sales Tax Act, 1948 and therefore time barred having been completed beyond the period of five years prescribed under the said sub-section?"
>
> (Under Section 11(4) of the Act, period of five years was not prescribed as such).

28. Relying upon the judgment of Hon'ble the Supreme Court in State of Punjab v. Bhatinda District Coop. Milk P. Union Ltd., (2007) 10 VST 180, it was opined that assessments framed after 5 years from the last date prescribed for filing of return were illegal, hence, set aside.

29. A perusal of the facts, as noticed in paragraph No. 23 above shows that assessments in the cases of different assessees for different assessment years in bunch of appeals were framed much after 5 years after the last date for filing of return. For none of the assessment years in bunch of appeals under consideration, writ petitions were pending in this court, which were disposed of vide common judgment in M/s Morinda Co-operative Sugar Mills Ltd.'s case (supra). Hence, there was no interim stay.

30. The plea sought to be raised by learned counsel for the State was that in view of the pendency of matters before Hon'ble the Supreme Court and this Court pertaining to the legal issue regarding taxability of sugarcane purchased by the sugar mills from the farmers, the assessment proceedings were kept pending on the request of assessees, however, nothing was pointed out from the record in support thereof, therefore, rejected.

31. The aforesaid statement is also not worth reliance as in the case of M/s Morinda Co-operative Sugar Mills Ltd.'s case (supra), the assessments for the years 1976-77 to 1979-80 were framed way back in the year 1986, whereas CWP No. 661 of 1984 filed by it for the assessment year 1973-74 was pending in this Court. In the absence of any interim stay granted by any court pertaining to the assessments for the year in question will not extend the period to frame the same unreasonably.

32. For the reasons mentioned above, in our opinion, no substantial questions of law arise in the present appeals, as the issues have been decided by the Tribunal while rightly appreciating the facts and the legal

issues involved.

33. The appeals are, accordingly, dismissed.

(Rajesh Bindal)
Judge

(Amit Rawal)
Judge

September 11,2018
mk

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