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

VATAP No. 39 of 2016 (O&M)

Date of decision : 10.9.2018

M/s Aggarwal Overseas .. Appellant

versus

The State of Punjab and another .. Respondents

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

Present: Mr. Sandeep Goyal, Advocate, for the appellants in VATAP Nos. 39, 48, 88 and 90 of 2016 and Mr. M. R. Sharma, Advocate, for the appellant in VATAP No. 81 of 2016.

Mr. Pankaj Gupta, Additional Advocate General, Punjab.

Rajesh Bindal, J.

This order will dispose of five appeals bearing VATAP Nos. 39, 48, 81, 88 and 90 of 2016, as common questions of law and facts are sought to be raised.

The assessee is in appeal before this Court against the order passed by the Value Added Tax Tribunal, Punjab (for short, 'the Tribunal).

VATAP Nos. 39, 48, 81 and 88/2016

Assessment of the appellants in the present appeals for the assessment year 2007-08 was framed vide order dated 30.3.2012. Appeal filed against the order was dismissed by the 1st Appellate Authority vide order dated 11.3.2013. In further appeal, the Tribunal vide order dated 16.9.2013 (in VATAP No. 81 and 88 of 2013) and order dated 20.9.2013 (in

VATAP No. 39 and 48), set aside the order passed by the 1st Appellate Authority and remitted the matter to the 1st Appellate Authority for passing a speaking order. The 1st Appellate Authority vide order dated 3.2.2014 had opined that the assessment has been made within the period of limitation and was not time barred. The appeal filed against the order dated 3.2.2014 was dismissed by the Tribunal on 5.11.2015. The aforesaid appeals have been filed raising the following substantial question of law:-

> "Whether on the facts and in the circumstances of the case, the order passed by the Assessing Authority is barred by limitation in view of the provisions of Section 29(4) as prevalent on the date of assessment order?

VATAP No. 81/2016

In the present case, assessment of the appellant for the assessment year 2007-08 was framed vide order dated 29.10.2013. Appeal filed against the order was dismissed by the 1st Appellate Authority vide order dated 25.7.2014. The appeal filed before the Tribunal was dismissed on 20.11.2015. The present appeal has been filed raising the following substantial questions of law:-

> "(i) Whether in the facts and in the circumstances of the case the orders (Annexure A-1), (Annexure A-2) and (Annexure A-3) are legally sustainable in law ?
>
> (ii) Whether in the facts and in the circumstances of the case the VAT Tribunal Punjab Chandigarh has grossly erred in upholding the order of the Assessing Officer now known as Notified Authority Cum Excise & Taxation Officer as upheld by the Deputy Excise & Taxation Commissioner (Appeals) Patiala more so by

following the judgment of this Hon'ble Court which is still a matter under challenge before the Hon'ble Supreme Court of India and wherein leave has been granted ?

(iii) Whether in the facts and in the circumstances the order levying purchase tax u/s 19 of the Punjab VAT Act, 2005 and not allowing ITC on the said purchase tax without assigning reason is correct in law in the view of the various pronouncements in this behalf ?

(iv) Whether in the facts and in the circumstances the order of the Tribunal upholding the assessment framed in this case vide and order dated 29.10.2013 although the limitation had expired on 20.11.2011. Further whether the order dated 29.10.2013 is antedated. More so the same has been served on 02.01.2014 as upheld by the VAT Tribunal is correct in law in view of the various pronouncement in this behalf ?

(v) Whether in the facts and in the circumstances of the case the VAT Tribunal Punjab Chandigarh has grossly erred in upholding the order of the Assessing Officer as upheld by the Deputy Excise & Taxation Commissioner (Appeals) Patiala has grossly erred in levying purchase tax under Section 4-B of the Punjab VAT Act on the State Advised Price instead of SMP paid by the appellant as per order of assessment (ANNEXURE A-1) ?”

Arguments

Learned counsel for the appellants submitted that in terms of Section 29(4) of the Punjab Value Added Tax Act, 2005 (for short, 'the Act'), assessment could be framed within 3 years after the date when the annual statement was filed or due to be filed, whichever is later. For the assessment year 2007-08, the last date for filing the return was 30.11.2008. Hence, assessment could be framed only upto 30.11.2011. It is only the proviso to the aforesaid section which empowers the Commissioner to extend the period for framing the assessment by an order in writing upto 6 years, but in the case in hand, there is no order passed by the Commissioner extending the period for framing the assessment.

He further submitted that though amendment was carried out in Section 29(4) of the Act on 15.11.2013, vide Punjab Act No. 38 of 2013, extending the period for framing the assessment from 3 years to 6 years, however the same will not apply in the case of appellants. He fairly submitted that this is despite the fact that the aforesaid amendment has been held to be retrospective in nature but will be applicable only in pending proceedings. Reference was made to judgment of this court in *Amrit Banaspati Company Limited vs State of Punjab and others* (2016) 88 VST 372. He further referred to judgment of this Court in VATAP No. 84 of 2013 *State of Punjab vs M/s Olam Agro India Limited,* decided on 20.8.2013, whereby action of the State was held to be without jurisdiction. The Tribunal in that case had accepted the appeal of the assessee finding the assessments to be barred by time as the same were framed beyond 3 years from the last date of filing of returns and the Tribunal was not satisfied that there was any valid extension of period granted by the Commissioner. It was further submitted that Special Leave Appeal (c) No. 8185 of 2015 *State of Punjab vs M/s Olam Agro India Limited,* filed by the State was dismissed by Hon'ble the Supreme Court, on 8.5.2015, after the amendment had already been carried out in Section 29(4) of the Act.

Reference was also made to order passed by this Court in VATAP No. 71 of 2014 *State of Punjab and others vs M/s Chirag Industries,* decided on 7.8.2015, whereby appeal filed by the State raising similar question of law was dismissed while referring to earlier judgment in *M/s Olam Agro India Limited*'s case (supra).

Mr. M. R. Sharma, learned counsel for the appellant appearing in VATAP No. 81 of 2016 submitted that as far as question nos. 2 to 5 are concerned, the same are covered against the assessee vide judgment of this Court in VATAP No. 176 of 2013 *M/s A. B. Sugars Limited vs State of Punjab and another*, decided on 21.9.2016.

As far as the question regarding the assessment being time barred, he adopted the contentions raised by Mr. Goyal, however, he further submitted that in the case in hand though it was pleaded by the State that extension was granted by the Commissioner but nothing was placed on record and the order of extension was not served. The case is fully covered by *M/s Olam Agro India Limited*'s case (supra).

On the other hand, learned counsel for the State submitted that arguments raised by learned counsel for the appellants are totally misconceived and if the same are accepted, it will create an anomalous situation. Though this Court has held the amendment of Section 29(4) of the Act, as carried out vide notification dated 15.11.2013, to be retrospective in nature but the stand of the appellant is that the same will apply only in pending cases and not in the concluded ones. Once the amendment has retrospective effect that will automatic take care of the orders passed during the extended period. Vide aforesaid amendment, the period of limitation for framing the assessment was increased from 3 years to 6 years, hence, the legal issue sought to be raised by the appellant is fully covered by judgment of this Court in _Amrit Banaspati Company Limited_'s case (supra). It was further submitted that the judgment in _M/s Olam Agro India Limited_'s case (supra), will not be applicable in the case in hand for the reason that it was decided prior to the amendment of Section 29(4) of the Act, extending the period for framing of assessment. He further submitted that in all the cases notices were issued well within three years of the last date of filing of returns and the assessments were also framed within six years.

In response learned counsel for the appellants submitted that wherever the amendment intended, the assessments have been protected i.e. in the year 2006-07, as provided in proviso to Section 29(4) of the Act. He further disputed the fact that notices were issued to the appellants within three years of the last date for filing of returns.

Heard learned counsel for the parties and perused the paper book.

Discussions

Proviso to Section 29(4) of the Act as existed prior to the amendment carried out vide Punjab Act No. 38 of 2013 and after that, are extracted below:-

Before Amendment

Section 29. Assessment of Tax:

(1) Where a return has been filed under sub-section (1) or sub-section (2) of section 26 or in response to a notice under sub-section (6) of Section 26, if any tax or interest is found due on the basis of such return, after adjustment of any tax paid on self-assessment and any amount paid otherwise by way of tax or interest, then,

without prejudice to the provisions of sub-section (2), an intimation shall be sent to the person specifying the sum so payable, and such intimation shall be deemed to be a notice of demand issued under sub-section (11) and all the provisions of this Act shall apply accordingly:

Provided that except as otherwise provided in this sub-section, the acknowledgment of the return shall be deemed to be intimation under this sub-section, in case, either no sum is payable by the person or no refund is due to him:

Provided further that no intimation under this sub-section shall be sent after the expiry of one year from the end of financial year in which the return is filed.

(2) Notwithstanding anything contained in sub-section (1), the Commissioner or the designated officer, as the case may be, may, on his own motion or on the basis of information received by him, order or make an assessment of the tax, payable by a person to the best of his judgement and determine the tax payable by him, where,-

(a) a person fails to file a return under section 26; or

(b) there are definite reasons to believe that a return filed by a person is not correct and complete; or

(c) there are reasonable grounds to believe that a person is liable to pay tax, but has failed to pay the amount due; or

(d) a person has availed input tax credit for which he is not eligible; or

(e) provisional assessment is framed.

(3) The Commissioner on his own motion or on the basis of information received by him may, by an order in writing, direct the designated officer to make an assessment of the amount of tax payable by any person or

any class of person for such period, as he may specify in his order.

(4) An assessment under sub-section (2) or sub-section (3), may be made within three years after the date when the annual statement was filed or due to be filed, whichever is later:

Provided that where circumstances so warrant, the Commissioner may, by an order in writing, allow assessment of a taxable person or a registered person after three years, but not later six years from the date, when annual statement was filed or due to be filed by such person, whichever is later.

<u>After Amendment</u>

Section 29. Assessment of Tax:

(1) Where a return has been filed under sub-section (1) or sub-section (2) of section 26 or in response to a notice under sub-section (6) of Section 26, if any tax or interest is found due on the basis of such return, after adjustment of any tax paid on self-assessment and any amount paid otherwise by way of tax or interest, then, without prejudice to the provisions of sub-section (2), an intimation shall be sent to the person specifying the sum so payable, and such intimation shall be deemed to be a notice of demand issued under sub-section (11) and all the provisions of this Act shall apply accordingly:

Provided that except as otherwise provided in this sub-section, the acknowledgment of the return shall be deemed to be intimation under this sub-section, in case, either no sum is payable by the person or no refund is due to him:

Provided further that no intimation under this sub-section shall be sent after the expiry of two years from the end of financial year in which the return is filed.

(2) Notwithstanding anything contained in sub-section (1), the Commissioner or the designated officer, as the case may be, may, on his own motion or on the basis of information received by him, order or make an assessment of the tax, payable by a person to the best of his judgement and determine the tax payable by him, where,-

(a) a person fails to file a return under section 26; or

(b) there are definite reasons to believe that a return filed by a person is not correct and complete; or

(c) there are reasonable grounds to believe that a person is liable to pay tax, but has failed to pay the amount due; or

(d) a person has availed input tax credit for which he is not eligible; or

(e) provisional assessment is framed.

(3) The Commissioner on his own motion or on the basis of information received by him may, by an order in writing, direct the designated officer to make an assessment of the amount of tax payable by any person or any class of person for such period, as he may specify in his order.

(4) An assessment under sub-section (2) or sub-section (3), may be made within a period of six years after the date when the annual statement was filed or due to be filed, whichever is later:

Provided that the assessment under sub-section (2) or sub-section (3), in respect of which annual statement for the assessment year 2006-07 has already been filed, can be made till the 20th day of November, 2014.

Explanations: (1) The limitation period of six years for an assessment under sub–section (2) or sub-section (3), shall also apply to those cases in which the aforesaid period of six years has yet not expired.

(2) It is clarified that prior to commencement of the Punjab Value Added Tax (Second Amendment) Act, 2013, the Commissioner was not required to issue any notice to the concerned person before extending the limitation period of assessment.

xx xx xx

(10-A) Notwithstanding anything to the contrary contained in any judgement, decree or order of any court, tribunal or other authority, an order passed by the Commissioner under sub-section (4) prior to commencement of the Punjab Value Added Tax (Second Amendment) Act, 2013, shall not be invalid on the ground of prior service of notice or communication of such order to the concerned person."

Common question of law raised in all the appeals is as to whether the assessments framed beyond a period of 3 years after the last date for filling of returns for the assessment years in question are barred by limitation, if considered in the light of the provisions of Section 29(4) of the Act, as existing on the date of assessment order.

No doubt the date on which the assessment was framed, the period prescribed was 3 years, which was extendable to 6 years, by an order passed by the Commissioner in writing to that effect.

In the aforesaid case it is not in dispute that the assessments were framed beyond the period of 3 years after the last date of filling of returns. There is a dispute as to whether notices were issued within 3 years of filling of returns or after 3 years. We are not going into another issue sought to raised by the parties that there was any extension granted by the Commissioner or not.

The fact which is in dispute is that the period for framing the assessment was increased from 3 years to 6 years vide amendment carried on 15.11.2013 vide Punjab Act No. 38 of 2013. The validity of the aforesaid amendment was subject matter of consideration in *Amrit Banaspati Company Limited*'s case (supra). In the aforesaid case for the assessment year 2006-07, notice for framing of assessment was issued on 23.9.2014. The writ petition was filed challenging the amendment claiming that the same was not retrospective, hence, will not take away the vested rights of the assessee, the period of assessment having lapsed. While dismissing the writ petition, Division Bench of this Court held the amendment to be retrospective in nature. Relevant para 47 of the aforesaid judgment is extracted below:-

> "47. What is even more important is this. We have already held that the opening part of Section 29(4) as amended operates retrospectively. Thus, the period for making an assessment within six years after the date when the annual statement was filed or due to be filed whichever is later stands extended under the opening part of the section itself as it is retrospective. We held that it was retrospective in view of the proviso and explanation (1) to the amended Section. Thus, in any event, the period of six years under the amended section was to apply retrospectively. Explanation (2) is, therefore, merely clarificatory."

Special Leave Petition against the aforesaid judgment of this Court in *Amrit Banaspati Company Limited*'s case (supra), is stated to be pending, however, there is no interim stay.

In view of the aforesaid enunciation of law whereby the amendment carried out vide Punjab Act No. 38 of 2013 has been held to be retrospective in nature and the period for framing assessment has been extended to 6 years from 3 years and in the case in hand, the assessment of the appellants in all the cases was framed within the period of six years from the last date fixed for filing of returns, hence, the same cannot be said to be beyond limitation.

Argument of learned counsel for the appellants that the amendment will apply only in the pending cases and not where the assessment had already been framed, is totally misconceived and deserves to be rejected, as any amendment of law with retrospective effect, cannot be read in the manner suggested by the appellants.

Reliance on the judgment of this Court in *M/s Olam Agro India Limited*'s case (supra), is also misplaced for the reason that in the aforesaid case the assessment was framed prior to the amendment vide Punjab Act No. 38 of 2013 and even appeal was decided by this Court before the amendment was carried out, hence, dealt with in terms thereof. Though Special Leave Petition against the aforesaid judgment was dismissed, however, issue regarding amendment in the Act has not been dealt with. Similar is the position with regard to order passed in *M/s Chirag Industries*'s case (supra), as appeal filed by the State in that case was dismissed relying upon judgment of this Court in *M/s Olam Agro India Limited*'s case (supra). No doubt, the Review Application filed by the State was withdrawn, however, the fact remains that the effect of the amendment vide Punjab Act No. 38 of 2013, was not considered.

For the reasons mentioned above, we do not find that there is any error in the order passed by the Tribunal to the extent that the assessments for the year in question, which have been framed within six years from the last date fixed for filing of returns, are within limitation in terms of the amended provisions.

As far as VATAP No. 81 of 2016 is concerned, learned counsel for the assessee had raised 5 questions out of which question no.1 is formal. So far as question no.4 is concerned, the same pertains to limitation for framing of assessment, which has been dealt with in the earlier part of the judgment. As far as other questions are concerned, concededly those are covered against the appellant vide judgment of this Court in *Amrit Banaspati Company Limited*'s case (supra). Hence, these do not arise for consideration in the present appeal.

For the reasons stated above, we do not find any merit in the present appeals. No substantial question of law arises. The appeals are accordingly dismissed.

(Rajesh Bindal)
Judge

10.9.2018 (Amit Rawal)
vs Judge

Whether speaking/ reasoned Yes/No

Whether Reportable Yes/No