

Gurbax Singh
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**IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH**

**VATAP No.45 of 2018 (O&M)
Date of decision: 07.05.2018**

**Excise and Taxation Commissioner, Haryana through Deputy Excise
and Taxation Commissioner (ST), Panchkula.**

.....Appellant

Vs.

**M/s Krishna Auto Industries Plot No. 89 Industrial Estate Barwala
District Panchkula and another**

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL,
ACTING CHIEF JUSTICE**

HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Ms. Mamta Singla Talwar, DAG, Haryana
for the appellant-revenue.

Ajay Kumar Mittal,(ACJ)

1. This order shall dispose of VATAP Nos. 45 and 46 of 2018 as according to the learned counsel for the appellant-revenue, the issue involved in both the appeals is identical. However, the facts are being extracted from the VATAP No. 45 of 2018.

2. The appellant-revenue has filed the instant appeal under Section 36 of the Haryana Value Added Tax Act, 2003 (in short, "the HVAT Act) against the order dated 08.09.2017, Annexure A.3, passed by the Haryana Tax Tribunal, (in short, "the Tribunal") in Appeal No. 45 of 2018, claiming following substantial questions of law:-

(a) "What is the amount of deferred tax within the meaning of Section 61(2)(d)(iii) of the Haryana Value Added Tax Act,

2003 read with Rule 69 of Haryana Value Added Tax Rules, 2003?

(b) Whether the learned Tribunal failed to appreciate that amount of input tax paid by the Assessee cannot be counted towards payment of 50 per cent of deferred tax upfront under Section 61(2)(d)(iii) of the Haryana Value Added Tax Act, 2003 ?

(c) Whether the facts and circumstances of the case, interest under Section 14(6) of Haryana Value Added Tax Act, 2003 is automatically leviable?

3. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The respondent-assessee M/s Krishna Auto Industries is doing business of manufacturing and sale of tractor parts. It is duly registered under the HVAT Act and Central Sales Tax Act, 1956 (CST Act). The assessee was granted an exemption certificate under Rule 28C Form No. 72B from 05.01.2001 to 04.07.2010 and VAT G-1 was issued for deferment of tax of ₹ 10,93,220/- dated 07.01.2005 whereby the assessee was entitled to tax deferment so as to make payment of one-half of the deferred tax upfront alongwith returns before the time prescribed for filing of quarterly returns. The Assessing Authority for the assessment year 2009-10 vide order dated 29.02.2013 created an additional demand under the CST Act amounting to ₹ 90,409/-. Aggrieved by the order, the assessee filed an appeal before the Joint Excise and Taxation Commissioner (Appeals) on the ground that assessment order was illegal, as the benefit of deferment was reduced which was allowable under Section 62(2)(d) (ii) of the HVAT Act. Vide order dated 02.01.2014, Annexure A.2, the Appellate Authority dismissed the appeal. Not satisfied with the order, the respondent-assessee filed second appeals before the

Tribunal. Vide order dated 08.09.2017, Annexure A.3, the Tribunal allowed the appeal, relying upon the order dated 25.07.2014 in the matter of ***M/s Sonex Auto Industries Private Limited, Bahadurgarh (Haryana) Vs. State of Haryana & others*** in VATAP No. 48 of 2012, and the orders of the Assessing Authority for the assessment year 2009-10 were set aside. The case was remanded to the Assessing Authority for fresh decision. In ***M/s Sonex Auto Industries Private Limited*** case's (supra) it was held that in case a unit opts for payment of half of the deferred tax upfront alongwith the returns, the deferred tax would be calculated without deducting the amount of input tax paid on the goods used in the manufacture and the amount of input tax paid by it is to be counted towards payment of 50 per cent of deferred tax upfront. The said order was challenged before the Apex Court and the same is pending adjudication. Hence the instant appeal by the appellant-revenue.

4. We have heard learned counsel for the appellant-revenue.

5. Admittedly, respondent-assessee had been granted exemption certificate under Rule 28-C of the Haryana General Sales Tax Rules, 1975 (in short, "the Rules") w.e.f. 05.01.2001 to 04.07.2010 and VAT G-1 was issued for deferment of tax for ₹ 10,93,220/- on 07.01.2005. Vide order dated 29.02.2013, Annexure A.1, Excise and Taxation Officer–cum–assessing authority decided the assessment case of the assessee for the assessment year 2009-10, creating an additional demand of ₹ 90,409/- under the CST Act. The appeal filed by the assessee against the order dated 29.02.2013 was rejected by the Joint Excise and Taxation Commissioner (Appeals). The appeal filed by the assessee before the Tribunal against the order dated 02.01.2014 was allowed. The orders passed by the authorities below were set aside and the matter was remanded back to the assessing

authority for fresh decision in accordance with law and the law laid down by this Court in ***M/s Sonex Auto Industries Private Limited case's*** (supra). It has been categorically recorded by the Tribunal that no reason has been assigned by the authorities below for denying the benefit of 50 per cent tax deferment to the assessee under the CST Act in the assessment year 2008-09 and under both the Acts i.e. HVAT and CST in assessment year 2009-10. Thus, the cases were remanded to the Assessing Authorities for allowing the said benefit within the permissible limits. The benefit had to be allowed on gross amount of tax before deducting the amount of Input Tax Credit, as held by this Court ***M/s Sonex Auto Industries Private Limited Vs. State of Haryana and others***. The relevant findings recorded by the Tribunal read thus:-

“No reason has been assigned by the Authorities below for denying the benefit of 50 per cent tax deferment to the assessee under the CST Act in assessment year 2008-09 and under both the Acts in assessment year 2009-10. Consequently, the cases have to be remanded to the Assessing Authority for allowing the said benefit within permissible limits. The said benefit has to be allowed on gross amount of tax before deducting the amount of Input Tax Credit, as held by Hon'ble High Court in the case of Sonex Auto Industries Private Limited Vs. State of Haryana and others (2014) 48 PHT 481 (P&H).

Resultantly, all these three appeals are allowed. Impugned orders of both the authorities below the assessment year 2009-10 are set aside relating to both the Acts and impugned orders of both the authorities below for assessment year 2008-09 are set aside relating to the CST Act only, and the cases are remanded to the Assessing Authority for fresh decision in accordance with law including the law laid down in the case of Sonex Auto Industries Private Limited (Supra), after giving reasonable opportunity for hearing to the assessee.

The assessee is directed to appear before the Assessing Authority on 8.11.2017.”

6. Learned counsel for the appellant-revenue has not been able to produce any material on record to controvert the findings recorded by the Tribunal warranting interference by this Court. Thus, no substantial question of law arises. Consequently, the appeals and applications for condonation of delay in filing the appeals stand dismissed.

(Ajay Kumar Mittal)
Acting Chief Justice

May 07, 2018	(Tejinder Singh Dhindsa)
‘gs’	Judge
Whether speaking/reasoned	Yes
Whether reportable	Yes