

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

**VATAP No.64 of 2018 (O&M)
Date of decision: 25.5.2018**

Excise and Taxation Commissioner, Haryana

.....Appellant

Vs.

M/s AEI Lamination Pvt. Limited 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.64 and 65 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 VATAP No.64 of 2018.

2. VATAP No.64 of 2018 has been filed by the appellant-revenue under Section 36 of the Haryana Value Added Tax Act, 2003 (in short, "the HVAT Act") against the order dated 26.5.2017, Annexure A.3 passed by the

Haryana Tax Tribunal (in short, “the Tribunal”) in STA No.412 of 2013-14, 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% of deferred tax upfront under Section 61(2)(d)(iii) of the Haryana Value Added Tax Act, 2003?”

3. A few facts relevant for the decision of the controversy involved as narrated in VATAP No.64 of 2018 may be noticed. The respondent assessee is engaged in the business of manufacturing and sale of tractor parts. It is duly registered under the HVAT Act and the Central Sales Tax Act, 1956 (in short, “the CST Act”). The assessee was granted an exemption certificate under Rule 28 C Form Number 72B from 16.5.2001 to 15.5.2010 and VAT G-I was issued for deferment of tax of ₹51,01,250/- dated 16.5.2001 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 2008-09 vide order dated 1.3.2012, Annexure A.1, created an additional demand under the CST Act amounting to ₹11,35,235/-. The assessee challenged the order dated 1.3.2012 before the Joint Excise and Taxation Commissioner (Appeals) [JETC(A)] on the ground that the assessment order was illegal and benefit of deferment which was allowable under Section 61(2)(d)(ii) of the HVAT Act was wrongly reduced. Vide order dated 26.11.2013, Annexure A.2, the JETC(A) dismissed the appeal. Not satisfied with the order, the assessee filed second appeals before the

Tribunal. Vide common order dated 26.5.2017, Annexure A.3, the Tribunal allowed the appeals relying upon the judgment of this Court dated 25.7.2014 in *M/s Sonex Auto Industries Private. Limited, Bahadurgarh (Haryana) vs. State of Haryana* in VATAP No.48 of 2012. Hence the instant appeals by the appellant-revenue.

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

5. It is not disputed by the learned counsel for the appellant revenue that the case is covered against the revenue by the decision of this Court in *M/s Sonex Auto Industries Private Limited's* case (supra). In the said case, the question was whether the tax deferred would be calculated as the amount of tax payable on the taxable turnover of goods manufactured by the unit without deducting the input tax paid by the unit on the goods used in the manufacture of the goods or after deducting the input tax. After examining the relevant statutory provisions and the case law on the point, it was concluded that in case the 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% of deferred tax upfront. The relevant observations recorded by this Court in *M/s Sonex Auto Industries Private Limited's* case (supra) read thus:-

“18. From the reading of section 61(2)(d) of HVAT Act, it is deduced that sections 13B and 25A along with the rules 28A, 28B and 28C have been saved for the purpose of extending tax concessions to the industrial units which had been availing of those concessions at the time of repeal of the HGST Act for the balance time period and the extent of monetary capping limit of

the concession as was available. Some fundamental changes in the nature of the concessions were made. Under the HVAT Act, the only form of tax concession made available was deferment of tax, both tax exemption and capital subsidy were done away with. Clause (iii) of section 61(2) (d) deals with concession of tax deferment. An optional provision for payment of half of the amount of deferred tax along with returns at the discretion of the industrial unit, is made in it and on payment of that amount, the whole of the amount of tax due according to the returns would be deemed to have been paid.

XXXXX.....

23. Under section 61(2) (d) (iii) of the HVAT Act read with Rule 69(2) of the HVAT Rules, the tax benefit under the HGST Act is to be continued in the form of tax deferment under the HVAT Act for the remaining period and the remaining extent of benefit that was admissible under the HGST Act. The expression falling in Clause (iii) of Section 61(2) (d) is “pay half of the amount of the deferred tax upfront alongwith returns and on making payment in this manner, the tax due according to the returns shall be deemed to have been paid in full.” A plain reading of the same shows that what is required to be paid by a unit opting for payment of 50% of deferred tax, is the payment of half of the amount of the deferred tax upfront. The provision nowhere provides that deferred tax would be calculated after computation of tax payable is determined according to the returns. It only provides that if half of the deferred tax is paid, then it would be assumed that the tax due according to returns is deemed to have been paid in full. Thus what is required to be paid, is 50% of the deferred tax which would be computed on the basis of tax on sale of the goods manufactured by the industrial unit and the benefit of the payment of tax on the purchase of the goods used in manufacture i.e. input tax shall be allowed as the tax paid in advance. The illustration in Rule 28C(5) supports the aforesaid view regarding the calculation of deferred tax and the liability to pay 50% tax upfront.

24. In other words, the amount of tax payable according to the returns is the amount of tax calculated on the sales of the goods manufactured minus the input tax credit. In case the unit opts for payment of half of the deferred tax upfront along with 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% of the deferred tax upfront.”

6. In view of the reasons recorded in *M/s Sonex Auto Industries Private Limited’s* case (supra), the substantial questions of law are answered accordingly and both the appeals stand dismissed. In view of the dismissal of appeals on merits, the applications for condonation of delay in filing the appeals are also dismissed.

(Ajay Kumar Mittal)
Acting Chief Justice

May 25, 2018
‘gs’

(Tejinder Singh Dhindsa)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes