IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: May 17th, 2019

(1) Review Application No. 71 of 2019 in
CWP No. 12139 of 2006

Merino Panel Products Limited

Non-applicant/Petitioner

v.

Deputy Excise & Taxation Commissioner (I)-cum
Revisional Authority, Jhajjar

Applicant/Respondent

(1) Review Application No. 97 of 2019 in
CWP No. 11713 of 2006

Merino Panel Products Limited

Non-applicant/Petitioner

v.

Deputy Excise & Taxation Commissioner (I)-cum
Revisional Authority, Jhajjar

Applicant/Respondent

CORAM: HON'BLE MR. JUSTICE KRISHNA MURARI,
CHIEF JUSTICE
HON'BLE MR. JUSTICE AMIT RAWAL, JUDGE
HON'BLE MR. JUSTICE AVNEESH JHINGAN, JUDGE

Present: Mrs. Mamta S. Talwar, Deputy Advocate General, Haryana
for the State.of Haryana.

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AVNEESH JHINGAN, J.

CM No. 1974 of 2019 in RA No. 71 of 2019

For the reasons mentioned in the application, delay of 131 days in filing the review application is condoned.

CM stands disposed of.

CM No. 3165 of 2019 in RA No. 97 of 2019

For the reasons mentioned in the application, delay of 149 days in filing the review application is condoned.

CM stands disposed of.

Review Applications

The Excise and Taxation Officer-cum-Assessing Authority, Bahadurgarh has filed afore-mentioned two applications under Order 47 Rule 1 of the Code of Civil Procedure, 1908 for reviewing the orders dated 28.8.2018 passed by this Court in CWP Nos. 11713 and 12139 of 2006.

A common issue involved in both the applications is "whether power of revision under Section 40 of the Haryana General Sales Tax Act, 1973 (for short, 'the 1973 Act') can be invoked after 1.4.2003 (the date Haryana Value Added Tax Act, 2003 came into force repealing the 1973 Act) (for short, 'the 2003 Act') in cases where no revision proceedings were pending under the repealed Act."

The relevant facts in CWP No. 11713 of 2006 are that assessment year involved was 2000-01. The assessment was finalised vide order dated 16.1.2003. Notice for initiating the action under Section 40 of the 1973 Act was issued on 17.1.2006. The revisional order was passed on 15.5.2006.

In CWP No. 12139 of 2006, the assessment year involved was

2002-03. The assessment was finalised on 21.6.2005. Notice under Section 40 of the 1973 Act was issued on 17.1.2006. The revisional order was passed on 27.3.2006.

The petitioner filed two writ petitions challenging the notices of revision and orders of the revisional authority on the ground that no revision proceedings were pending on 1.4.2003 and the initiation of proceedings is bad as the notices of revision have been issued after 1.4.2003.

This Court in **Hindustan Construction Company Limited v. State of Haryana and others, 2005(28) R.C.R. (Civil) 352** as per Section 61 of the 2003 Act opined that only pending proceedings have been saved and there is no power to initiate fresh proceedings or *suo-motu* revision of assessment order passed under the 1973 Act.

Thereafter, CWP Nos. 11713 and 12139 of 2006 came up for hearing before the Division Bench of this Court. The decision of this Court in **Hindustan Construction Company Limited's case (supra)** was doubted and the matter was referred to the Larger Bench vide order dated 4.8.2006.

The State of Haryana being aggrieved of the order of this Court in **Hindustan Construction Company Limited's case (supra)** also challenged the same in the Supreme Court and vide judgment reported as **State of Haryana and others v. Hindustan Construction Company Limited, (2017) 9 SCC 463**, order of this Court was upheld.

The writ petitions came up before the Larger Bench of this Court. Reliance was placed upon the decision of the Hon'ble Supreme Court in **State of Haryana and others v. Hindustan Construction Company Limited (supra)**. The State took only one stand that case of the petitioner fell under the provisions of Section 61(2)(d) of the 2003 Act. Vide orders dated 28.8.2018, both the writ petitions were allowed in view of the decision of the Hon'ble Supreme Court, as in the present cases the notices under Section 40 of the 1973 Act were issued subsequent to 1.4.2003 and no revision proceedings were pending on the said date. The contention raised by the State that the case of the petitioner is covered by the provisions of Section 61(2)(d) of the 2003 Act was rejected. It was held that the provision does not deal with exercise of revisional power but saves only the benefits granted to the industrial units during the currency of the 1973 Act in terms of the provisions of Sections 13(B) and 25(A) thereof and the Rules, framed, thereunder.

It would be pertinent to note that Section 61 of the 2003 Act was further amended in 2010 after the amendment of 2006 which was duly considered by Hon'ble the Supreme Court.

The contention of the State in the review applications is that the facts of the present cases are distinguishable from the facts of **Hindustan Construction Company Limited's case (supra)**, as the assessment proceedings in the one case were finalised on 21.6.2005 and in other on 16.1.2003 by the Excise and Taxation Officer-cum-Assessing Authority, Bahadurgarh. In one case, there was no occasion to initiate revisional proceedings before the commencement of the new Act and in the second case there was not enough time to initiate revisional proceedings, accordingly the revision notices were sent on 17.1.2006, this fact has escaped the notice, therefore, there is error apparent on record.

There is no dispute on the fact that in both the cases no revisional proceedings were pending on 1.4.2003.

The Hon'ble Supreme Court specifically held that Section 61 of the 2003 Act saved only pending proceedings under the repealed Act i.e. 1973 Act. It was further held that Section 4 of the Punjab General Clauses Act, 1858 had no application in view of the contrary intendment expressed in Section 61 of the 2003 Act.

The pin pointed issue decided is that no proceedings under Section 40 of the 1973 Act can be initiated after 1.4.2003 in cases in the absence of pendency of any proceedings.

The endeavour in the review applications is to get the matter re-heard. The scope in review proceedings is very limited. It is only in cases where there is some mistake or error apparent on the face of record.

No error apparent on the face of record is made out.

No case is made out for reviewing the orders dated 28.8.2018.

Resultantly, the review applications are dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

(AMIT RAWAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

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May 17th ,2019
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No