IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

VATAP-84-2019 (O&M)

Date of Decision: 20.3.2019

Excise and Taxation Commissioner, Haryana

....Appellant.

Versus

M/s Lafarge India Ltd., Panchkula and another

...Respondents.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.

PRESENT: Ms. Mamta Singla Talwar, DAG, Haryana.

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AJAY KUMAR MITTAL, J.

1. This appeal has been filed by the State under Section 36 of the Haryana Value Added Tax Act, 2003 (in short "the Act") against the order dated 12.3.2018 (Annexure A-5) passed by the Haryana Tax Tribunal-respondent No.2 (hereinafter referred to as "the Tribunal") in STA No. 344 of 2016-17, claiming the following substantial questions of law:-

a) Whether in the facts and circumstances of the case, the order dated 12.3.2018 (Annexure A-5) passed by Ld. Haryana Tax Tribunal is legally justified, reasonable and sustainable in the eyes of law?

b) Whether Section 7(6) of the Haryana Value Added Tax Act, 2003 grants exemption from payment of VAT to an individual industrial unit or dealer in the developed SEZ and not to a developer or co-developer of an SEZ?

c) Whether on the facts and in the circumstances of the case, the Ld. HTT is justified in ignoring the provisions contained in Section 19(i) of the HSEZ Act, 2005, which was referred to and relied upon by the Revisional Authority in the order dated 21.4.2016 (Annexure A-4), which provides that nothing in the said Act shall effect any right, privilege, obligation, liability acquired, accrued or incurred under any other law?

d) Whether on facts and in the circumstances of the case, the Ld. HTT was not required to undertake strict interpretation of the exempting provisions contained in Section 7(6) of HVAT Act, 2003 and 11(1)(i) read with Section 19(i) of HSEZ Act, 2005 which provide for tax exemption to only an individual industrial unit?

2. A few facts necessary for adjudication of the instant appeal as narrated therein may be noticed. Respondent No.1 is engaged in the manufacturing of Ready Mix Concrete (RMC) having TIN No. 06292506421. One M/s Anant Raj Ltd., Rewari submitted a proposal to set up a Special Economic Zone (SEZ) at Rai, Sonepat. The said proposal was approved and notified by the Central Government vide notification dated 1.9.2008 and the said firm was granted license to set up and develop the SEZ as developer. M/s Anant Raj Ltd., Rewari awarded contract to

respondent No.1. Respondent No.1 during the assessment year 2011-12 sold RMC in notified area of SEZ in Rai Industrial Area, Sonepat to the developer M/s Anant Raj Ltd. showing the deemed sale of ₹ 2,76,30,342/- as exempted sale in the returns. M/s Dr. Fresh SEZ Private Ltd., Gurugram had sought clarification as to 'whether the benefit of VAT exemption under Section 7(6) of the HVAT Act on procurement of goods can be extended to SEZ developers for activities that are to be undertaken which are necessarily required for carrying out setting up of SEZ unit within the processing area of SEZ.' In response thereto, the Principal Secretary to Government of Haryana, Excise and Taxation Department issued clarification dated 12.2.2013 (Annexure A-1) that the developer or co-developer of a SEZ is not exempted from payment of VAT under the Act for setting up of the unit in SEZ area. Feeling aggrieved, M/s Anant Raj Ltd., Rewari filed an appeal before the Tribunal. The Tribunal vide order dated 3.3.2017 (Annexure A-2) allowed the appeal by holding that a developer and co-developer of an SEZ are entitled to exemption from payment of tax under the Act by virtue of Section 11(1)(i) of the Haryana Special Economic Zone Act, 2005 (in short "HSEZ Act"). The Assessing Authority vide order dated 31.3.2015 (Annexure A-3) framed the assessment of respondent No.1 for the year 2011-12 under Section 15(3) of the Act permitting exemption of tax on turnover related to construction activity for development of the said SEZ. The Revisional Authority vide order dated 21.4.2016 (Annexure A-4) revised the assessment order, Annexure A-3 and created an additional demand of ₹ 38,02,770/- under the Act disallowing the claim of exemption of ₹ 2,76,30,342/- in view of clarification dated 12.2.2013 (Annexure A-1) issued by the Government. Against the order, Annexure A-4, respondent

No.1 filed an appeal before the Tribunal. The Tribunal vide order dated 12.3.2018 (Annexure A-5) allowed the appeal. Hence, the present appeal. Since the appeal was barred by time, CM-6644-CII-2019 has been filed under Section 5 of the Limitation Act, 1963 for condonation of 234 days' delay in filing the appeal.

3. We have heard learned State counsel and have gone through the paper-book.

4. It was not disputed by the learned State counsel that the issue raised herein is covered by the decision of this Court in **VATAP-150-2018 (Excise and Taxation Commissioner, Haryana v. M/s Anant Raj Ltd. Rewari and another)** and other connected appeals decided on 14.3.2019 wherein the appeals filed by the State were dismissed on merits as well as being time barred.

5. Accordingly, the present appeal is also dismissed on merits as well as being time barred.

(AJAY KUMAR MITTAL)
JUDGE

March 20, 2019 **(MANJARI NEHRU KAUL)**
gbs **JUDGE**

Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No