IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VAT Appeal No.189 of 2019(O&M)
Date of Decision: 29.05.2019

Excise and Taxation Commissioner, Haryana .....Appellant

Versus

M/s S P Singla Contractor, Panipat and another .....Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Rajeev Doon, AAG, Haryana, for the appellant.

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JASWANT SINGH, J. (ORAL)

Since there is delay of 299 days in filing the present appeal, **CM No.12328-CII of 2019** has been filed seeking condonation of said delay.

For the reasons stated in the application accompanied by the affidavit, the same is allowed and delay in filing the present appeal is hereby condoned.

CM No.12329-CII of 2019 has been filed for staying the operation of impugned order dated 25.05.2018.

Main Case

The department/revenue has filed the present appeal under Section 36 (1) of the Haryana Value Added Tax Act, 2003 (in short "HVAT Act") assailing the order dated 25.05.2018 (**Annexure A-3**) passed by the Haryana Tax Tribunal under the HVAT Act.

The substantial questions of law raised are as follows:

"a) Whether the Haryana Tax Tribunal, in the facts and circumstances of the case was justified in holding that the Revisional Authority had no jurisdiction to initiate or levy penalty for the first time as the suppression of turnover was detected by it?

b) Whether in the facts and circumstances of the case, the Haryana Tax Tribunal, was justified in interpreting section 7(5) of the Haryana Value Added Tax Act, 2003, in the manner as held in order dated 25.05.2018 of the Haryana Tax Tribunal?

c) Whether the Revisional Authority was justified in giving the direction for calculating of penalty under section 7(5) of the HVAT Act, 2003 to the Assessing Authority by recalculating the case for this purpose?"

The fact necessary for adjudication of the appeal in brief are that respondent-contractor is engaged in the construction activity and not a lumpsum dealer under Section 9 of the Haryana Value Added Tax Act 2003 (for short the 'HVAT Act') and under the Central Sales Tax Act, 1956 (for short the 'CST Act'). For the assessment year 2009-10,respondent claimed sale of Rs.25,47,74,223/- taxable @ 4% against form D-1 to the Government Department. The assessing Authority vide order dated 28.03.2013 (**A-1**) framed assessment of the respondent for the year 2009-10 qualifying excess payment of tax of Rs.46,13,105/- under the HVAT Act. The Revisional Authority called upon the case under Revision under Section 34 of the HVAT Act and after affording opportunity to the respondent remanded the case back to the assessing Authority vide order dated 2.2.2016 (**A-2**). Aggrieved against the order A-2, Respondent filed appeal before the Haryana Tax Tribunal which was allowed vide order dated 25.05.2018 (**A-3**) impugned in the present appeal.

Heard learned Counsel for the appellant.

Learned counsel for the appellant-department/ revenue has not been able to refute that the questions of law raised are no longer *res integra*, as this Court in para-materia provisions of the Haryana General Sales Tax Act has already held in the cases of **Chaudhary Tractor Company, Tohana Vs. State of Haryana (2007) 30 PHT 573 (P&H)** and **Chaudhary Tractor Company, Tohana Vs. State of Haryana (2007) 30 PHT 659 (P&H)** that the Revisional Authority had no jurisdiction to initiate or levy penalty for the first time

Since the appeal stands dismissed on merits, **CM No.12329-CII of 2019** also stands dismissed.

(**JASWANT SINGH**)
JUDGE

(**ARUN KUMAR TYAGI**)
JUDGE

29.05.2019
Vinay-I/joshi

Whether speaking/reasoned Yes/No
Whether reportable Yes/No