

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

**VATAP No.130 of 2017 (O&M)
Date of decision: May 13, 2019**

Excise and Taxation Commissioner, Haryana

.....Appellant

Vs.

M/s Frigoglass India Private Limited 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 for the appellant-revenue.

Mr. Sandeep Goyal, Advocate for the respondent-assessee(s).

Ajay Kumar Mittal,J.

1. This order shall dispose of a bunch of 27 appeals bearing VATAP Nos.130, 139 to 141, 143 to 146 of 2017, 149, 158, 161 to 164, 204, 205 and 206, 221 to 225, 315, 327, 328, of 2018, 35 and 36 of 2019 as learned counsel for the parties are agreed that the issues involved in all these appeals are identical. However, the facts are being extracted from VATAP No.130 of 2017.

2. VATAP No.130 of 2017 has been preferred by the appellant-revenue under Section 36 of the Haryana Value Added Tax Act, 2003 (in short, "the HVAT Act") against the order dated 13.2.2017, Annexure A.4, passed by the Haryana Tax Tribunal (In short, "the Tribunal") in Appeal Nos.STA No.1062 of 2014-15, claiming following substantial questions of law:-

- “i) Whether on the facts and in the circumstances of the case, the learned Tribunal has erred in ignoring the limitation of five years available under Section 28 of the HGST Act, 1973 for the purpose of proceeding with the assessment?
- ii) Whether the learned Tribunal has misdirected itself in considering Section 61(2)(a) of the HVAT Act, 2003 for the purpose of period of limitation governing assessments under the HGST Act, 1973?
- iii) Whether the learned Tribunal has erred in adopting a contradictory stand vis-a-vis its earlier position in ***HM Mehra & Co. vs. State of Haryana*** case as well as the decision of this Hon’ble Court in ***Mahabir Techno Limited vs. State of Haryana and another*** (as discussed above) where limitation of five years as available under Section 40 of the erstwhile HGST Act 1973 for revision was held to be applicable to cases under the repealed law? It is submitted that new law provided a limitation of three years for initiating and completing revisional proceedings.
- iv) Whether the learned Tribunal has erred in adopting two different lines of application of laws of limitation for the assessment under section 28 and revision under Section 40 of the HGST Act, 1973?
- v) Whether in the facts and circumstances of the case, the learned Tribunal was justified in ignoring the law laid down by this Hon’ble Court in ***Khazan Chand Nathi Ram*** case, reported as 136 STC 261 (P&H) wherein it has been laid down that the cases under the old law would continue to be governed by the old law?
- vi) Whether respondent No.1 is entitled to relief of legitimate tax payable by it voluntarily alongwith the returns, but avoided its payment willfully, solely on the ground of limitation?

vii) Whether the learned Tribunal has erred in not adjudicating and not deciding the merits of the case although the same merited consideration?

viii) Whether the learned Tribunal has not permitted respondent No.1 herein to take advantage of his own wrong as the delay in completion of its assessments was mainly on account of delaying tactics adopted by respondent No.1?”

3. A few facts relevant for the decision of the controversy involved as narrated in VATAP No.130 of 2017 may be noticed. The appellant-revenue is the Excise and Taxation Commissioner, Haryana who is engaged in administration/enforcement of taxation laws of the State and collection of the tax revenues. Respondent No.1-assessee – a registered dealer under the Haryana General Sales Tax Act, 1973 (in short, “the HGST Act”) had originally applied for sales tax concession under Rule 28B of the Haryana General Sales Tax Rules, 1975 (in short, “the HGST Rules”) vide application dated 1.3.2000 showing 25.1.2000 as the date of commercial production. Since the operative period of Rule 28B of the HGST Rules expired on 14.11.1999, the said application under Rule 28B of the said Rules could not be considered. This fact was conveyed to the respondent-assessee vide letter dated 24.3.2000, Annexure A.1. The respondent assessee was asked to apply afresh for grant of tax concessions under Rule 28C of the HGST Rules. The respondent assessee applied afresh vide its application dated 15.9.2000 for grant of concession under Rule 28C of the HGST Rules. The Higher Level Screening Committee (HLSC) in its 69th meeting cleared the case of grant of concession to the respondent assessee under Rule 28C of the HGST Rules from the date of commercial production vide its order dated 21.9.2000. However, the Deputy Excise and Taxation Commissioner

(DETC) Gurgaon (W) vide letter dated 18.10.2000, Annexure A.2 brought to the notice of the department that the tax concession under Rule 28C of the HGST Rules was available only from the issue of Entitlement Certificate by DETC and that there was no provision under the said Rule for allowing benefits from the date of production. Consequently, the HLSC in its 70th meeting on 5.12.2000 modified the grant of concession under Rule 28C of the HGST Rules as from date of issue of entitlement certificate instead of from the date of commercial production. The HLSC approved the case of the respondent-assessee under Rule 28C of the HGST Rules for availing tax concession to the extent of ₹ 1516.96 lacs during the period of 10 years from the date of issuance of entitlement certificate to be issued by the DETC. The entitlement certificate was however not issued to the respondent assessee as it had violated the conditions regarding payment of voluntary tax as provided under sub rule 3(c)(iv) of Rule 28C of the HGST Rules. Accordingly, DETC, Gurgaon(W) issued notice dated 6.7.2001 to the respondent assessee directing it to deposit the voluntary tax for the purpose of issuance of entitlement certificate under Rule 28C of the HGST Rules. The Assessing authority issued summons dated 13.8.2001 to the respondent assessee for recovery of voluntary tax demand for the assessment years 1999-2000, 2000-01 and 2001-02 for ₹ 1,00,58,626/- calculated on the basis of the returns filed by the respondent assessee. Thereafter, the respondent assessee approached this Court through CWP No.12880 of 2001 against the notice/summons for recovery of voluntary tax and the orders of the meetings of the HLSC which had resulted in change of date of benefit from the date of commercial production to the date of issue of entitlement certificate. Vide interim order dated 27.8.2001, this court stayed the

recovery of tax as arrears of land revenue. Vide order dated 10.5.2011, the writ petition was disposed of by this court, remanding the matter back to the HLSC to pass appropriate order in accordance with law after giving personal hearing to the respondent assessee. During the pendency of the said writ petition, the assessing authority commenced assessment proceedings of the assessee under section 28 of the HGST Act for assessment years 1999-2000 to 2002-03 by issuing notices in ST-25 on 24.11.2003 and 21.7.2005 as prescribed under the HGST Act. According to the appellant-revenue, the respondent assessee did not cooperate in the assessment proceedings and even issued legal notice through its counsel to the assessing authority alleging non assessability of its cases pending decision in the above writ petition and its harassment. The assessing authority finally framed assessment of the respondent assessee under section 28(4) of the HGST Act for the assessment year 1999-2000 vide its order dated 26.3.2009 raising additional demand of ₹ 26,79,152/- under HGST Act and ₹ 44,90,032/- under the CST Act. On 22.9.2009, this Court directed the respondent to deposit the sum of ₹ 8,79,86,514/- within three weeks as the assessing authority had filed an affidavit dated 14.7.2009 mentioning therein that the respondent could at best be allowed the tax benefit to the tune of ₹ 1516.96 lacs, whereas it had availed tax benefit to the extent of ₹ 2396.82 lacs upto 31.3.2009 as per the returns filed. The respondent deposited amount of ₹ 8,79,86,514/- vide demand draft dated 6.10.2009. The respondent appealed against the above orders of the assessing authority dated 26.3.2009 before the first appellate authority on 23.7.2009. Vide order dated 21.3.2014, Annexure A.3, the first appellate authority dismissed the appeal of the respondent assessee and upheld the orders of the assessing authority. Thereafter, the respondent assessee filed

second appeal before the Tribunal on 27.1.2015. The Tribunal vide its order dated 13.2.2017, Annexure A.4 upheld the respondent assessee's contention of bar of limitation and set aside the orders of the Assessing authority and the first appellate authority. The appellant-revenue asserts that the order dated 13.2.2017 passed by the Tribunal is wrong as it has deprived the State of its vested and substantial right to assess and collect accrued taxes under the HGST Act as saved under Section 61(1) of the HVAT Act. The Tribunal had erred in covering the cases under the provisions of the Section 61(2)(a) of the HVAT Act and holding that limitation period prescribed under the HVAT Act would apply being a procedural matter and did not even consider the merits of the case whereas the case of the respondent assessee was to be covered under the provisions of section 61(1) as amended on 4.10.2006 of the said Act. According to the appellant-revenue, the Tribunal erred in overlooking the substantive provisions regarding issuance of notice under Section 28 of the HGST Act within a period of five years to proceed to assess the case. Since the assessment proceedings were started within the time limits provided under the HGST Act, hence the bar of limitation would not be attracted in the present cases. Hence the instant appeals by the appellant-revenue.

4. We have heard learned counsel for the parties.

5. There is a delay in filing the appeals ranging from 58 days to 436 days for which no satisfactory explanation has been given by the learned counsel for the appellant-revenue.

6. Learned counsel for the appellant-revenue submitted that Section 61 of the Amended HVAT Act substituted sub section (1) of Section 61 by Act No.23 of 2006 dated 4.10.2006 with effect from

1.4.2003 inserting Proviso which inter alia provided that the repeal of HGST Act would not affect the previous operation of the said Act so repealed or anything done or suffered thereunder. It was claimed that the proceedings for assessment having been initiated within limitation under Section 28 of the HGST Act and when no limitation had been prescribed under the said provision for framing of the assessment, therefore, the assessment framed by the Assessing Officer at any time could not be held to be barred by limitation. Secondly, it was urged that the Tribunal had erred in relying upon Section 61(2)(a) of the HVAT Act which is only with regard to authorities under the HVAT Act who are competent to entertain the application, appeal, revision or other proceedings etc. which were pending at the commencement of HVAT Act. According to the learned counsel, the proceedings for Assessment years 1999-2000 to 2002-03 could not be held to be barred by limitation. Support was gathered from the judgments in *Khazan Chand Mathi Ram vs. State of Haryana*, (2004) 136 STC 261 (P&H), *Mahabir Techno Limited vs. The State of Haryana and another*, CWP No.5780 of 2007, decided on 2.8.2016.

7. On the other hand, learned counsel for the respondent assessee submitted that the assessment orders passed by the assessing authority are barred by limitation and liable to be set aside. It was contended that Section 61(1) of the HVAT Act repealed the HGST Act subject to certain exceptions. It was submitted that proceedings pending under the HGST Act were to be disposed of under the said Act on merits whereas the period of limitation having been prescribed under the HVAT Act for framing of assessment, the law of limitation being procedural in nature

respect of pending assessments. Reliance was placed on judgments in *Ballarpur Ind. Limited vs. State of Punjab and others*, (2010) 35 PHT 5 (P&H), *State of Punjab and others vs. Patiala Cooperative Sugar Mills Limited*, (2014) 76 VST 217 (P&H), *State of Punjab vs. Doaba Cooperative Sugar Mills Limited*, (2018) SCC OL P&H 1288, *Thirumalai Chemicals Limited vs. Union of India and others*, (2011) 6 SCC 739 and *Khazan Chand Nathi Ram's case (supra)*. According to the learned counsel, for cases prior to coming into force of HVAT Act, where limitation for framing of assessment under the HGST Act subsisted, the same could be validly passed upto 31.3.2006 and not thereafter as the limitation of three years for framing of assessment under HVAT Act has been prescribed. Further, the arguments raised by the State counsel relating to applicability of Section 61(1) of the Act, it was controverted by contending that the Proviso was inserted by Act No.23 of 2006 dated 4.10.2006 effective from 1.4.2003 related to substantive law under the HGST Act and question of limitation being procedural in nature was to be governed by the HVAT Act. Reliance was also placed on the further amendment made to sub-section (1) of Section 61 of HVAT Act by Act No.3 of 2010 dated 02.04.2010 retrospectively from 1st April 2003.

8. The primary issue that arises in these appeals is whether the assessment orders passed by the assessing authority on 26.3.2009, for the assessment years 1999-2000 to 2002-03, were barred by limitation or not.

9. Before adjudicating the issue involved, it would be apposite to reproduce the relevant statutory provision i.e. Section 61 of HVAT Act (amended and unamended). Section 61(1) of the HVAT Act, 2003 w.e.f.

1.4.2003 as originally enacted and amended in 2006 and 2010 retrospectively from 01.04.2003 reads thus:-

“Section 61 (Repeal and Saving) (original)

(1) The Haryana General Sales Tax Act, 1973 (20 of 1973) is hereby repealed.”

Section 61(1) (after the amendment dated 4.10.2006) vide Act No.23 of 2006 effective from 01.04.2003 reads thus:-

“61(1) The Haryana General Sales Tax Act, 1973 (20 of 1973), is hereby repealed.”

Provided that such repeal shall not-

- (a) affect the previous operation of the Act so repealed or anything duly done or suffered thereunder; or
- (b) affect any right, title, privilege, obligation or liability acquired, accrued or incurred under the said Act; or
- (c) affect any act done or any action taken (including any appointment, notification, notice, order, rule, form, regulation, certificate) in the exercise of any power conferred by or under the said Act;

and any such act done or any action taken in the exercise of the powers conferred by or under the said Act shall be deemed to have been done or taken in the exercise of the powers conferred by or under the said Act as if this Act was in force on the date on which such act was done or action taken;

and all arrears of tax and other amount due at the commencement of this Act may be recovered as if the same had accrued under this Act.”

Section 61(1) (after amendment dated 2.4.2010) vide Act No.3 of 2010 retrospectively from 01.04.2003 is as under:-

“The Haryana General Sales Tax Act, 1973 (20 of 1973) is hereby repealed.

Provided that such repeal shall not –

- (a) affect the previous operation of the Act so repealed or anything duly done or suffered thereunder; or
- (b) affect any right, title, privilege, obligation or liability acquired, accrued or incurred under the said Act; or
- (c) affect any act done or any action taken (including any appointment, notification, notice, order, rule, form, regulation, certificate) in the exercise of any power conferred by or under the said Act;

and any such act done or any action taken in the exercise of the powers conferred by or under the said Act shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this Act was in force on the date on which such act was done or action taken;

and all arrears of tax and other amount due at the commencement of this Act may be recovered as if the same had accrued under this Act.”

10. A perusal of Section 61(1) of the HVAT Act prescribes repeal of the Haryana General Sales Tax Act, 1973. Act No.23 of 2006 dated 4.10.2006 effective from 01.4.2003 inserted a proviso which provided that such repeal shall not affect the previous operation of the Act so repealed or anything duly done or suffered there under or affect any right, power, title, privilege, obligation or liability acquired, accrued or incurred under the said Act or affect any act done or any action taken including any appointment, notification, notice, order, rule, form, regulation certification in exercise of any power conferred by or under the said Act and any such act done or any action taken shall be deemed to have been done or taken in exercise of the powers conferred under this Act as if this Act was in force on the date on which such act was done or action taken and all arrears of tax and other amount due at the

commencement of this Act may be recovered as if the same had accrued under this Act. However, Act No.3 of 2010 dated 02.04.2010 retrospectively with effect from 01.04.2003 provided that where any action, power, right, title, privilege, obligation etc. acquired under the repealed HGST Act was deemed to have been done or taken in the exercise of the powers conferred by or under the HVAT Act taking the HVAT Act to be in force on the date on which such act was done or action taken.

11. We now proceed to examine the facet under Section 61(2)(a) of the HVAT Act on the basis of which Tribunal has adjudicated the issue in favour of the assessee. Section 61(2)(a) of the HVAT Act as substituted by Act No.23 of 2006 dated 4.10.2006 effective from 01.04.2003 reads thus:-

“61(2) Notwithstanding anything contained in sub-section (1), -

(a) any application, appeal, revision or other proceedings made or preferred to any officer or authority under the said Act and pending at the commencement of this Act, shall, after such commencement, be transferred to and disposed of by the officer or authority who would have had jurisdiction to entertain such application, appeal, revision or other proceedings under this Act as if the said Act had been in force on the date on which such application, appeal, revision or other proceedings were made or preferred. Notwithstanding anything to the contrary contained in any judgement, decree or order of any court or other authority, where no review, revision or corrective action could be initiated or finalized in respect of any assessment, order, proceeding under the said Act prior to or after 1st April, 2003, because of judgement or decree of any court or Tribunal and the said assessment or order passed under the said Act had attained finality, the limitation of five years as specified under section 40 of the said Act shall be deemed to be eight years;”

Section 61(2)(a) of the HVAT Act prescribes that notwithstanding the repeal of the HGST Act, all proceedings including appeals and revisions pending under the HGST Act at the commencement of the HVAT Act were to be disposed of by the corresponding authority under the HVAT Act. By virtue of Section 61(2)(a) of the HVAT Act, the Legislature, while repealing the HGST Act, saved the pending application, appeal, revision and other proceedings made or preferred to any authority under that Act and transferred the same for disposal by the officer or authority who would have had jurisdiction to entertain such application etc. under the new Act. Clause (a) of Section 61(2) of HVAT Act consists of two distinct sub parts. The first part deals with application, appeal, revision or other proceedings which had been pending under the HGST Act on 1.4.2003 whereas the second part beginning with the word “Notwithstanding” deals with review, revision or corrective action which could not be initiated or finalized in respect of any assessment, order or proceeding under the HGST Act because of any judgment, decree or order of any court or other authority and the said assessment or order has attained finality then it states that the period of limitation to revise such assessment or order prescribed as five years in Section 40 of the HGST Act shall be extended to eight years.

12. Having noticed and crystallized the meaning of the provision contained in Section 61(1) of the HVAT Act and also Section 61(2)(a) of the HVAT Act, effective from 1.4.2003, it would be essential to analyse the controversy involved here in these appeals. As noticed earlier, the revenue contended that in the absence of any specific period prescribed under HGST Act, the assessments for assessment years 1999-2000 to 2002-03 framed on 26.3.2009 were not time barred. On the other hand, the claim of the assessee was that law of limitation being procedural, it would operate retrospectively and HVAT Act had specified three years limitation for framing of assessment,

therefore, any assessment order passed after 31.3.2006 for the assessment years 1999-2000 to 2002-03 would be barred by limitation.

13. It is well settled that the law of limitation is a procedural law and operates retrospectively unless it has been provided differently in the amending statute. In other words, unless there is a contrary intention manifested by express or necessary implication of the legislation itself, procedural law is generally retrospective. Procedural law relating to limitation is not a substantive right and its object is not to create any right but to prescribe periods within which legal proceedings be initiated or completed for enforcement of rights existing under substantive law. Statutes of limitation are thus retrospective in so far as they apply to all legal proceedings brought after their operation for enforcing cause of action accrued earlier. However, there is an exception to this rule. Where the right of action is barred under the law of limitation in force before the new provision came into operation and a vested right had accrued, the new provision cannot revive the time barred right or take away the accrued vested right.

14. Identical issue came up for consideration before this Court in *State of Punjab and others vs. Patiala Cooperative Sugar Mills Limited*, (2014) 76 VST 217 (P&H) wherein it was held that in view of amendment of Section 11 of the Punjab General Sales Tax Act, 1948 (in short, “the 1948 Act”) by Ordinance of 1998 issued and effective from March 3, 1998 which was replaced by Punjab Act 12 of 1998 published on April 20, 1998 whereby limitation of three years for completion of assessment had been prescribed, no assessment order for assessment years upto 1997-98 could be passed after April 30, 2001. It was further held that the amended provisions prescribing limitation would operate retrospectively and would govern all assessments

pending relating to periods before the amendment came into operation. There was no limitation prescribed under Section 11 of the 1948 Act for passing an assessment order before the amendment. Therefore, the period of three years prescribed for passing an assessment order would be counted for all those assessment years under the amended provision effective from March 3, 1998. Accordingly, the assessment order passed on August 29, 2003 under Section 11(3) of the 1948 Act for the assessment year 1989-90 was clearly beyond the period of limitation of three years from the date of amendment and thus not sustainable in the eyes of law. The relevant observations read thus:-

“8. The primary issue that arises for consideration in these appeals is whether in view of amendment of Section 11 of the Punjab General Sales Tax Act, 1948 (in short, “the 1948 Act”) by Ordinance of 1998 issued and effective from 3.3.1998 which was replaced by Punjab Act 12 of 1998 published on 20.4.1998 whereby limitation of three years for completion of the assessment has been prescribed, any assessment order for assessment years upto 1997-98 can be passed after 30.4.2001.

9. In order to appreciate the controversy in its true perspective, it would be apposite to refer to the unamended provisions of Section 11(1), (2) and (3) of the 1948 Act and the amended provisions whereby amendment has been made in the provisions by Ordinance of 1998 issued on 3.3.1998 which was replaced by Punjab Act 12 of 1998 published on 20.4.1998.

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12. It is well settled that law of limitation is a procedural law and operates retrospectively unless it has been provided differently in the amending statute. In other words, unless there is a contrary intention manifested by express or necessary implication of the legislation itself, procedural law is generally retrospective. Procedural law is not a substantive right and its object is not to create any right but to prescribe periods within which legal proceedings be initiated or completed for enforcement of rights

existing under substantive law. Statutes of limitation are thus retrospective insofar as they apply to all legal proceedings brought after their operation for enforcing cause of action accrued earlier. The Apex Court in *Thirumalai Chemicals Limited v. Union of India and others*, AIR 2011 SC 1725, dealing with law of limitation has succinctly laid down as under:-

“19. Law of limitation is generally regarded as procedural and its object is not to create any right but to prescribe periods within which legal proceedings be instituted for enforcement of rights which exist under substantive law. On expiry of the period of limitation, the right to sue comes to an end and if a particular right of action had become time barred under the earlier statute of limitation the right is not revived by the provision of the latest statute. Statutes of limitation are thus retrospective insofar as they apply to all legal proceedings brought after their operation for enforcing cause of action accrued earlier, but they are prospective in the sense that neither have the effect of reviving the right of action which is already barred on the date of their coming into operation, nor do they have effect of extinguishing a right of action subsisting on that date. Bennion on Statutory Interpretation 5th Edn.(2008) Page 321 while dealing with retrospective operation of procedural provisions has stated that provisions laying down limitation periods fall into a special category and opined that although prima facie procedural, they are capable of effectively depriving persons of accrued rights and therefore they need be approached with caution.”

13. Thus, the effect of the amendment by Ordinance dated 3.3.1998 which was replaced by Punjab Act 12 of 1998 published on 20.4.1998 would be that the amended provisions prescribing limitation would operate retrospectively and would govern all assessments pending relating to periods before the amendment came into operation.

14. Further, once a period of limitation prescribed by law expires, the right to sue or pass an order comes to an end. Resultantly, a vested or an accrued right arises in favour of a party. On expiry of the period of limitation, the right to sue comes to an end and if a particular right of action had become time barred under the earlier statute of limitation the right is not revived by the provision of the latest statute. The Statutes of limitation are prospective in the sense that they neither have the effect of reviving the right of action which is already barred on the date of their coming into operation, nor do they have effect of extinguishing a right of action subsisting on that date. The legal position has been enunciated by the Apex Court in ***T.Kaliamurthi's*** case (supra) as under:-

“It is well settled that no statute shall be construed to have a retrospective operation until its language is such that would require such conclusion. The exception to this rule is enactments dealing with procedure. This would mean that the law of limitation, being a procedural law, is retrospective in operation in the sense that it will also apply to proceedings pending at the time of the enactment as also to proceedings commenced thereafter, notwithstanding that the cause of action may have arisen before the new provisions came into force. However, it must be noted that there is an important exception to this rule also. Where the right of suit is barred under the law of limitation in force before the new provision came into operation and a vested right has accrued to another, the new provision cannot revive the barred right or take away the accrued vested right.”

15. Further, Apex Court in ***Vinod Guridas Raikar v. National Insurance Co. Limited and others***, (1991) 4 SCC 333 observed as under:-

“.....So far the period of limitation for commencing a legal proceeding is concerned, it is adjectival in nature, and has to be governed by the new Act – subject to two conditions. If under the repealing Act the remedy suddenly

stands barred as a result of a shorter period of limitation, the same cannot be held to govern the case, otherwise the result will be to deprive the suitor of an accrued right. The second exception is where the new enactment leaves the claimant with such a short period for commencing the legal proceeding so as to make it unpractical for him to avail of the remedy.”

16. As noticed before, there was no limitation prescribed under Section 11 of the PGST Act for passing an assessment order before the amendment. Therefore, the period of three years prescribed for passing an assessment order would be counted for all those assessment years as per the amended provision effective from 3.3.1998. In other words, in respect of assessment years falling upto 1997-98, no assessment order could be validly passed after 30.4.2001.
17. Identical issue in respect of assessment years prior to amendment of Section 11(3) of the PGST Act with effect from 3.3.1998 came up for consideration before this court in Ballarpur Industries Limited’s case (supra), wherein it was held as under:-

“29. There is no dispute that prior to the amendment of provisions of Section 11 of the PGST Act w.e.f 3.3.1998 there was no limitation provided amount of tax due from the dealer on the basis of returns where the Assessing Officer was satisfied with the returns furnished by the dealer. There was also no limitation provided for the assessing authority to assess the dealer under sub section (3) of section 11 if he was not satisfied with the returns by issuance of statutory notice in the prescribed form under sub section (2) of Section 11 of the Act and consideration of evidence produced, if any. However, the position was materially altered w.e.f 3.3.1998 which provided that the assessing authority was required to pass an order of assessment on the basis of returns within a period

of three years from the last date prescribed for furnishing the last return in respect of such return for both assessment of tax due under sub section (1) as well as sub section (3) of section 11 of the PGST Act.

30. It is also not disputed that the notices in form ST XIV for the assessment years 1995-96 and 1996-97 were issued on 26.4.2001 and 21.4.2001 respectively. The assessment orders under Section 11(3) assessing demand of tax for a sum of Rs.18,18,318/- and Rs.10,51,851/- for the respective assessment years were passed on 27.7.2001. Therefore, it is not disputed that even if the three years' period of limitation was to be computed w.e.f 3.3.1998, the assessment orders for both the assessment years were beyond the period of limitation as per the amended provisions of section 11(3) of the Act. It is also not disputed that the learned Tribunal has on consideration of the provisions of PGST Act and ratio of judgments of cited case law has upheld the contention of the petitioner dealer that the amended period of limitation provided under sub section (3) being a piece of procedural law would be applicable to the pending cases like the present case. Learned Tribunal has also held that the assessments made by the assessing authority are not legally sustainable. It is also the admitted case of the State that the aforesaid findings of the Tribunal have not been challenged by the Sale Tax Department/Revenue. Thus, we do not consider it necessary to go into the question as to whether the amended provisions of sub section (1) and (3) of Section 11 providing a period of limitation would apply to the pending assessments for the years prior to 3.3.1998 or not as even if the amended

provisions are made applicable prospectively and limitation of three years is assumed to commence w.e.f 3.3.1998, admittedly, the assessment orders dated 27.7.2001 are clearly beyond the period of limitation of three years and thus not sustainable in the eyes of law. Hence there is no ascertainment/determination of the amount of tax due for the said two assessment years either by the assessee petitioner company under sub section (4) of Section 10 or by the assessing authority under Section 11 of the PGST Act.

31. Therefore, in view of the above discussion, we are of the considered opinion that the findings recorded by the learned Tribunal vide its impugned order (Annexure P.15) that there exists no justification for giving any relief to the petitioner company even after taking into account the limitation concept on the ground that the petitioner company cannot be absolved of their liability to pay purchase tax as per their returns by filing misleading statements, cannot be countenanced and thus are set aside. As a sequel thereto, impugned order dated 30.1.2005 (Annexure P.15) qua the demand of tax for the assessment years 1995-96 and 1996-97 is set aside.”

15. In *State of Punjab and others vs. The Doaba Cooperative Sugar Mills Limited*, 2018 SCC Online P&H 1288, the issue was whether the law laid down by this Court in *Shubh Timb Steel Limited vs. The State of Punjab*, (2010) 31 VST (P&H) 85 holding that where no period was provided, the assessment order was to be passed within three years and in any event not beyond the period of five years, could be made applicable in the cases decided much before the pronouncement of the judgment. Reference was made to the decision of this Court in *The*

Patiala Cooperative Sugar Mills Limited's case (supra) where the order of assessment passed after five years was set aside. In *CIT vs. Sadhu Ram* (1981) 127 ITR 517, it was held that the amendment carried out in the year 1998 prescribing period of three years for framing of assessment will apply in all pending cases. Thus, the question was answered against the revenue.

16. In *Thirumalai Chemicals Limited vs. Union of India and others*, (2011) 6 SCC 739, it was held by the Apex Court that law of limitation is prima facie procedural and retrospectively applicable. It needs to be approached with caution because its nature depends upon facts of each case. While interpreting the law of limitation, the following relevant observations need to be reproduced:-

“24. Right of appeal may be a substantive right but the procedure for filing the appeal including the period of limitation cannot be called a substantive right, and aggrieved person cannot claim any vested right claiming that he should be governed by the old provision pertaining to period of limitation. Procedural law is retrospective meaning thereby that it will apply even to acts or transactions under the repealed Act.

25. Law on the subject has also been elaborately dealt with by this Court in various decisions and reference may be made to few of those decisions. This Court in [Garikapati Veeraya vs. N. Subbiah Choudhry & Ors.](#) AIR 1957 SC 540, *New India Insurance Company Limited Vs. Smt. Shanti Mishra* (1975) 2 SCC 840, [Hitendra Vishnu Thakur & Ors. vs. State of Maharashtra & Ors.](#) (1994) 4 SCC 602; [Maharaja Chintamani Saran Nath Shahdeo vs. State of Bihar & Ors.](#) (1999) 8 SCC 16; [Shyam Sundar & Ors. vs. Ram Kumar & Anr.](#) (2001) 8 SCC 24, has elaborately discussed the scope and ambit of an amending legislation and its retrospectivity and held that every

litigant has a vested right in substantive law but no such right exists in procedural law. This court has held the law relating to forum and limitation is procedural in nature whereas law relating to right of appeal even though remedial is substantive in nature.

26. Therefore, unless the language used plainly manifests in express terms or by necessary implication a contrary intention a statute divesting vested rights is to be construed as prospective, a statute merely procedural is to be construed as retrospective and a statute which while procedural in its character, affects vested rights adversely is to be construed as prospective.
27. Right of appeal conferred under [Section 19\(1\)](#) of FEMA is therefore a substantive right. The procedure for filing an appeal under sub-section (2) of [Section 19](#) as also the proviso to sub-section (2) of [Section 19](#) conferring power on the Tribunal to condone delay in filing the appeal if sufficient cause is shown, are procedural rights.
28. We have already indicated that the proviso to sub-section(2) of [Section 19](#) operates retrospectively, but the question is in that process, whether it impairs or takes away any accrued right, to plead a time bar and on facts whether the Company has lost its right of appeal to the Tribunal under FEMA.

Law of Limitation

29. Law of limitation is generally regarded as procedural and its object is not to create any right but to prescribe periods within which legal proceedings be instituted for enforcement of rights which exist under substantive law. On expiry of the period of limitation, the right to sue comes to an end and if a particular right of action had become time barred under the earlier statute of limitation the right is not revived by the provision of the latest statute. Statutes of limitation are thus retrospective insofar as they apply to all legal proceedings brought after their operation for enforcing cause of action accrued earlier, but they

are prospective in the sense that neither have the effect of reviving the right of action which is already barred on the date of their coming into operation, nor do they have effect of extinguishing a right of action subsisting on that date. Bennion on Statutory Interpretation 5th Edn.(2008) Page 321 while dealing with retrospective operation of procedural provisions has stated that provisions laying down limitation periods fall into a special category and opined that although prima facie procedural, they are capable of effectively depriving persons of accrued rights and therefore they need be approached with caution.”

17. From the above legal position, it emerges in nut shell, the effect of sub-section (1) of Section 61 of the HVAT Act is that substantive provisions of the HGST Act shall be treated to be in existence for the purposes of action which had been initiated there under and were pending on the commencement of HVAT Act. Under Section 61(2)(a) of HVAT Act, the pending application, appeal, revision and other proceedings made or preferred to any authority under HGST Act would stand transferred for disposal to the officer or authority who would have jurisdiction to entertain such application under the HVAT Act. The period of revision of five years provided under HGST Act for revision shall stand extended to eight years in certain eventualities. Further, HVAT Act would not affect the concluded actions or the assessments etc. In other words, in so far as assessment finalized for assessment years prior to coming into force of HVAT Act, the limitation under the HGST Act would be applicable. However, law of limitation being procedural law, amended or new provision of law under HVAT Act relating to limitation shall apply to the pending proceedings initiated under the HGST Act in respect of cases upto assessment year 2002-03 as well.

18. Adverting to the factual matrix in the present case, the assessment proceedings in question were initiated under the HGST Act and therefore, after enactment of the HVAT Act which came into force w.e.f 01.04.2003, the limitation period prescribed under Section 15 thereof became applicable to the said assessment proceedings. As per Section 15(3) of the HVAT Act, the limitation period for finalizing the judgment assessment is three years from the close of the year to which the assessment relates whereas Section 15(4) of the HVAT Act provides three years for best judgment assessments from the close of the year to which the assessment relates. The HVAT Act came into force on 1.4.2003 and thus, the limitation period of three years was to be computed from that date for all assessment years prior to 1.4.2003 as in the present cases. Consequently, the limitation period for the assessment in the present cases ended on 31.3.2006 whereas the impugned assessment orders were passed on 26.3.2009 i.e. long after the expiry of limitation. Thus, the Tribunal rightly held the assessment orders being barred by limitation and allowed the appeals filed by the assesses. The relevant findings recorded by the Tribunal read thus:-

“6. We have carefully considered that matter. According to section 61(2)(a) of the HVAT Act, notwithstanding the repeal of the HGST Act, all proceedings including appeals and revision pending under the HGST Act at the commencement of the HVAT Act were to be disposed of by the corresponding authority under the HVAT Act. In the instant cases, the assessment proceedings in question under the HGST Act were pending when the HVAT Act came into force and therefore under the HVAT Act, limitation period prescribed under Section 15 of the HVAT Act became applicable to the said assessment proceedings. The new law of HVAT Act regarding limitation being procedural law also otherwise became applicable to the proceedings pending under the HGST Act. In this view, we are

supported by the cases of *Allied Exports & Imports (supra)*, *Balarpur Industries Limited (supra)* and the *Patiala Cooperative Sugar Mills Limited (supra)*. According to section 15(4) of the HVAT Act, limitation period for finalizing best judgment assessment is three years. The HVAT Act came into force on 1.4.2003 and therefore the said limitation period of the years is to be computed from that date for all assessment years prior to 1.4.2003 as in the instant cases. Consequently the limitation period for the assessment in the instant cases ended on 31.3.2006. However, the impugned assessment orders in all the cases were passed by the assessing authority on 26.3.2009 i.e. long after the expiry of limitation. This issue is fully covered in favour of the assessee by the case of *Pawan Kumar Vijay Kumar (supra)*. When the impugned orders of the assessing authority are hit by limitation, impugned order of the first appellate authority automatically goes.

7. The impugned assessment orders are not saved from the bar of limitation due to pendency of writ petition filed by the assesses in Hon'ble High Court in the matter of grant of tax concession. Contention on behalf of the state in this regard is not tenable. Admittedly, in the writ petition, Hon'ble High Court by interim order had stayed only the recovery of tax as arrears of land revenue but had not stayed the assessment proceedings. On the other hand, the impugned assessment orders were also passed during the pendency of said writ petition and not after decision. Both the authorities below have rather themselves observed in the impugned orders that the assessment or appellate proceedings had not been stayed by the Hon'ble High Court and the same could, therefore be finalized/disposed of. Thus it cannot be said that pendency of the writ petition as an obstacle in passing the impugned assessment orders. In the absence of any stay against the passing of final assessment order, limitation period for passing the assessment orders did not cease to operate or get extended merely due to pendency of the aforesaid writ petition. The impugned assessment orders were passed long after the expiry of imitation period as already discussed. Contention raised on behalf of the state to save

the said orders from the bar of limitation is completely unacceptable.”

19. Adverting to the judgments relied upon by the learned counsel for the appellant-revenue, it may be noticed that in ***Khazan Chand Nathi Ram***’s case (supra), it was held that Section 61(2) of the HVAT Act does not give any retrospective effect to the provisions of the Act either expressly or by necessary implication. Sub section (2) of Section 61 of the HVAT Act contemplates transfer of pending proceedings pertaining to applications, appeals, revisions or other proceedings to the authorities constituted under the HVAT Act and to be disposed of by the authorities so constituted. It was further recorded that since expressly or by necessary intendment, no retrospective effect is sought to be given, the effect of repeal of the HGST Act is required to be examined with reference to Section 4 of the Punjab General Clauses Act, 1898 which contemplates that in the absence of any contrary intention expressly or impliedly, any right, privilege, liability or obligation under the old law will continue to be governed under the old law. In ***Mahabir Techno Limited***’s case (supra), the notices issued under Section 40 of the HGST Act for certain assessment years for suo moto revision of assessment were challenged. The plea taken by the petitioner was that the language in Section 40 of the said Act suggests that no order shall be revised after the expiry of period of five years from the date of the order. Learned counsel for the State submitted that the matter had been remitted back by the Apex Court to consider the issue as to whether the period as provided under the Act was the outer limit for conclusion of revisional proceedings or for initiation thereof. After examining the relevant statutory provision and the case law on the point, it was held by this Court that in case of failure on the part of the assessee to file return or respond to a notice, the assessing authority may proceed to assess to the best of his judgment within

five years after the expiry of such period which would mean initiation of proceedings. It was concluded that the proceedings have to be concluded with the passing of the order. It is not merely initiation of proceedings for revision. In these cases, the factual position being different, the same cannot be of any advantage to the learned counsel for the appellant-revenue.

20. Learned counsel for the appellant-revenue has not been able to point out any error or illegality in the findings recorded by the Tribunal or to cite any law contrary to the settled position of law as discussed above, warranting interference by this Court. As a result, no substantial question of law arises. Consequently, all the appeals are hereby dismissed both on merits as well as on the ground of delay.

(Ajay Kumar Mittal)
Judge

May 13, 2019
‘gs’

(Manjari Nehru Kaul)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes