IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

VATAP-150-2018 (O&M)
Date of Decision: 14.3.2019

Excise and Taxation Commissioner, Haryana

....Appellant.

Versus

M/s Anant Raj Ltd. Rewari 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.

****

AJAY KUMAR MITTAL, J.

1. This order shall dispose of bunch of six appeals bearing VATAP Nos.150, 250, 251, 254, 255 and 284 of 2018 as according to learned State counsel, the facts and issues involved therein are identical. For brevity, the facts are being extracted from VATAP-150-2018.

2. VATAP-150-2018 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 3.3.2017 (Annexure A-2) passed by the Haryana Tax Tribunal (hereinafter referred to as "the Tribunal") in STA No. 46 of 2013-14, claiming the following substantial questions of law:-

a) Whether in the facts and circumstances of the case, the order dated 3.3.2017 (Annexure A-2) passed by Ld. Haryana Tax Tribunal is legally justified, reasonable and sustainable in the eyes of law?

b) Whether the mandate of Section 7(6) of the Haryana Value Added Tax Act, 2003 is not clear about granting exemption from payment of VAT to an 'individual industrial unit or dealer' and not to a developer or a co-developer' of a SEZ area?

c) Whether the Central Special Economic Zone (CSEZ) Act, 2005 has overriding effect on Haryana Special Economic Zone Act, 2005 wherein the specific provision under Section 11(1) of the HSEZ Act, 2003 does not provide any exemption from payment of tax to Developer/co-developer?

d) Whether in view of the clarification under Section 56(3) of HVAT Act, 2003 issued by the Government, the benefit of exemption from payment of VAT is applicable only to 'an individual Industrial Unit' and not applicable to a 'developer or a co-developer?

3. Put shortly, the facts necessary for adjudication of the instant appeal as narrated in VATAP-150-2018 may be noticed. Respondent No.1 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 respondent No.1 was granted license to set up and develop the SEZ as developer. Respondent No.1 awarded contract to M/s Anant Raj Construction and Development Pvt. Ltd. to assist in executing and undertaking construction activity in SEZ area as a co-developer. M/s Dr. Fresh SEZ Private Ltd., Gurugram had sought clarification as to 'whether the benefit of the 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 for setting up of the unit in SEZ area. Feeling aggrieved, respondent No.1 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"). Hence, the present appeals.

4. After hearing learned counsel for the parties, we do not find any merit in the appeals.

5. It would be advantageous to refer Section 7(6) of the Act and Section 11(1)(i) of the HSEZ Act which read thus:-

> "7(6). Notwithstanding anything contained in this Section, no tax under this Act shall be payable by any dealer in respect of sale of any goods made by such dealer to a registered dealer for the purpose of setting up, operation maintenance, manufacture, trading, production, processing, assembling, repairing, reconditioning, re-engineering, packaging or for use as packing material of packing accessories in a unit located in any Special Economic Zone."

Section 11(1)(i) of HSEZ Act:

> "11(1) The following shall be exempt from payment of

any tax, duty, cess or any other levies under any existing State law, namely:-

(i) any goods exported out of or imported into the Special Economic Zone."

6. A perusal of Section 7(6) of the Act shows that only an individual industrial unit undertaking the activity of setting up of the unit in a SEZ area has been exempted from payment of tax and not a developer or co-developer of a SEZ. According to Section 11(1)(i) of the HSEZ Act, 'any goods exported out or imported into the SEZ have been exempted from payment of any tax duty, fees, cess or any other levies under any existing State Law including the Act.'

7. The Tribunal had noticed that the developer or co-developer of a SEZ has not been exempted from payment of tax under the Act by Section 7(6) of the Act and only an individual unit/dealer has been exempted for setting up of the unit in SEZ area. The Tribunal while setting aside the observations of the appellant as recorded in para 3 (iii) of the clarification order issued under Section 56(3) of the Act, had recorded that a developer and co-developer of an SEZ are entitled for exemption from payment of tax under the Act by virtue of Section 11(1)(i) of the HSEZ Act. The relevant findings recorded by the Tribunal read thus:-

"For the reasons aforesaid, we find that although the conclusion in the impugned order that developer or co-developer of a SEZ has not been exempted from payment of tax under the HVAT Act by section 7(6) of the HVAT Act and only an individual unit/dealer has been exempted for setting up of the unit in SEZ area is correct, but observation in para 3 (iii) of the impugned order is unsustainable and is liable to be set aside and the impugned order has to be supplemented by holding that a developer and co-developer of a SEZ are entitled to exemption from payment of tax under the HVAT Act by virtue of Section 11(1)(i) of the HSEZ Act. It is ordered accordingly."

8. No illegality or perversity could be pointed out by the learned counsel for the appellant in the aforesaid conclusion recorded by the Tribunal which may warrant interference by this Court. No question of law arises in this appeal.

9. Since the appeals were barred by time, the applications under Section 5 of the Limitation Act, 1963 were filed for condonation of delay in filing the appeals. For the reasons mentioned in the application, no ground is made out for condonation of delay in filing the appeals.

10. Accordingly, all the appeals are dismissed on merits as well as being barred by time.

(AJAY KUMAR MITTAL)
JUDGE

March 14, 2019
gbs

(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned	**Yes**
Whether Reportable	**Yes**