IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Decided on: 14.05.2019
1. VAP-240-2018 (O&M)

Excise and Taxation Commissioner, Haryana .... Appellant

Versus

M/s. Sunil Trading Company and another .... Respondents

2. VAP-308-2018 (O&M)

Excise and Taxation Commissioner, Haryana through Excise and Taxation Officer-cum-Assessing Authority, Narnaul .... Appellants

Versus

M/s. Sunil Trading Company and another .... Respondents

3. VATAP-3349-2018 (O&M)

Excise and Taxation Commissioner, Haryana through Excise and Taxation Officer-cum-Assessing Authority, Narnaul
.... Appellant

Versus

M/s Sunil Trading Company 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 (ORAL)

CM-21080-CII-2018

This is an application under Section 151 of the Code of Civil Procedure for condonation of 11 days' delay in re-filing the appeal.

After hearing learned State counsel and perusing the application, which is supported by an affidavit, the delay of 11 days in re-filing the appeal is condoned.

CM stands disposed of.

Main case(s)

This order shall dispose of VAT Appeal Nos. 240, 308 and 3349 of 2018, as according to the learned counsel for the State, the issue involved in these appeals is identical. However, the facts are being extracted from VATAP No.240 of 2018.

2. VATAP No.240 of 2018 has been preferred by the appellant under Section 36 (1) of the Haryana Value Added Tax Act, 2003 (in short, "the HVAT Act") against the order dated 14.11.2017 (Annexure A-3), passed by respondent No.2-Haryana Tax Tribunal (In short, "the Tribunal") in Appeal No. STA-134 of 2015-16 filed by respondent No.1, claiming following substantial questions of law:-

> "i) Whether in 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 erred in adopting a contradictory stand vis-a-vis its earlier position in ***HM Mehra & Co. Sonepat vs. State of Haryana*** case as well as by 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 Act?
>
> iii) 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?

iv) 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?

3. There is a delay in filing the appeals ranging from 62 days to 245 days for which no satisfactory explanation has been given by the learned State counsel.

4. It was fairly admitted by learned counsel for the State that the issue involved herein stands concluded by the decision of this Court in VATAP No.130-2017 titled as ***"Excise and Taxation Commissioner, Haryana vs. M/s. Frigoglass India Pvt. Ltd. and anr"*** decided on 13.05.2019, wherein it has been held that any assessment in respect of assessment year prior to 2002-03 shall be beyond limitation after 31.03.2006. The relevant part of said judgment reads thus:-

> "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. xx xx xx xx xx”

5. In view of the above, the appeals are dismissed both on merits as well as on the ground of delay.

(AJAY KUMAR MITTAL)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

14.05.2019
Dinesh

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No