IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

VATAP-299-2018 (O&M)

Date of Decision: 14.3.2019

M/s Himachal Bhawan, Chandigarh

....Appellant.

Versus

UT, Chandigarh and another

...Respondents.

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

PRESENT: Mr. Sandeep Goyal, Advocate for the appellant.

Mr. Ajay Jagga, Advocate for the respondents.

AJAY KUMAR MITTAL, J.

1. This order shall dispose of two appeals bearing VATAP Nos.299 and 300 as according to learned counsel for the parties, the facts and issues involved therein are identical. For brevity, the facts are being extracted from VATAP-299-2018.

2. VATAP-299-2018 has been filed by the dealer under Section 68 of the Punjab Value Added Tax Act, 2005 as applicable to UT, Chandigarh (in short "the Act") against the order dated 31.5.2018 (Annexure A-8) passed by the Value Added Tax Tribunal, Union Territory, Chandigarh (hereinafter referred to as "the Tribunal") in Appeal No. 31 of 2012, claiming the following substantial questions of law:-

i. Whether on the facts and circumstances of the case, the order passed by the Ld. Tribunal is justified in dismissing the appeal on account of non-maintainability of appeal being filed under

Section 63 of the PVAT Act and on the contrary, the said appeal also got dismissed for non-compliance of Section 63(3) of the PVAT Act, 2005?

ii. Whether the order passed by the learned Tribunal is sustainable in law as the penalty imposed in the present case is against the provisions of Section 11 (6) of the repealed Act of 1948 being barred by limitation qua the period in question?

3. The facts, in short, as mentioned in VATAP-299-2018 for adjudication are that the appellant is an independent entity being run by the Himachal Pradesh Tourism Development Corporation Ltd. and is providing facilities such as restaurant service, books, rooms for guests besides being used by the Government officials for staying and meeting purposes. The appellant had applied for registration vide application dated 22.6.2000 (Annexure A-1) for the purpose of sales tax. Vide notice dated 4.7.2000 (Annexure A-2), the Department had asked for certain documents. The said documents were supplied to the Department. The appellant vide letter dated 4.5.2001 (Annexure A-3) requested for withdrawal of the application for grant of registration certificate, but no action was taken thereon. The appellant filed sales tax return in Form ST-VIII on 1.6.2001 for the period 1.7.2000 to 4.12.2000 and paid tax of ₹ 80,240/- on a taxable turnover of ₹ 9,11,810/- at the rate of 8.8%. An inspection was carried out at the premises of the appellant on 19.11.2010 and certain documents, i.e. balance sheet for the years 2000-01 to 2009-10, sales statements etc. were impounded. The notices were issued to the appellant for framing

assessments for the aforesaid period. The Assessing Authority vide order dated 27.12.2010 (Annexure A-4) framed the assessment for the period from 1.7.2000 to 14.12.2005 and additional demand of ₹ 18,11,494/- was created. Thereafter, penalty proceedings were initiated by issuing notice under Section 11(6) of the Punjab General Sales Tax Act, 1948 (hereinafter referred to as "the PGST Act"). The Penalizing Officer vide order dated 30.5.2011 (Annexure A-5) imposed penalty of ₹ 4,55,000/-, i.e. 25% of the amount of tax upon the appellant. Against the order, Annexure A-5, the appellant filed an appeal before the Deputy Excise and Taxation Commissioner (Appeals) [for brevity "the DETC(A)"]. The DETC(A) vide order dated 1.8.2012 (Annexure A-6) dismissed the appeal. Being dissatisfied, the appellant filed an appeal under Section 63 of the Act before the Tribunal on 16.8.2012 (Annexure A-7). The Tribunal vide order dated 31.5.2018 (Annexure A-8) dismissed the appeal, both on account of non-compliance of the provisions of PGST Act or the Act as well as on merits. Hence, the present appeals.

4. We have heard learned counsel for the parties.

5. Learned counsel for the appellant submitted that the Assessing Officer vide order dated 27.12.2010 had passed the assessment order against the appellant by relying upon the division Bench judgment of the Madhya Pradesh High Court in **Battulal v. Commissioner of Sales Tax, Madhya Pradesh, Indore, 1962 (Vol. XIII) STC 893** holding that provision of Section 11(6) of the PGST Act are identical to Section 11(5) of Madhya Pradesh Sales Tax Act. Thereafter, penalty of ₹ 4,55,000/- was imposed vide order dated 30.5.2011 (Annexure A-5). The order of the assessing authority imposing penalty was affirmed in appeal by the DETC(A) and the

Tribunal. It was urged that the said Division Bench judgment of the Madhya Pradesh High Court in **Battulal's case (supra)** was overruled by the Full Bench of the Court in **Shyama Charan Shukla v. The State of Madhya Pradesh and others 1974 (Vol.34) STC 504** which decision was affirmed by the Apex Court in **State of M.P. and others v. Shyama Charan Shukla, 1990 (Vol.79) STC 439.**

6. On the other hand, learned counsel for respondents supported the orders passed by the authorities below and prayed for dismissal of the appeals.

7. In the assessment order passed by the assessing authority, reference has been made to Section 11(5) of the Madhya Pradesh Sales Tax Act, while relying upon decision of the Division Bench in **Battulal's case (supra)**, whereas it was Section 11(5) of the Central Provinces and Berar Sales Tax Act, 1947 which was under consideration in the said decision. In pursuance to the assessment order dated 27.12.2010, the penalty had been imposed vide order dated 30.5.2011 which had been affirmed by the DETC (A) and the Tribunal.

8. The Division Bench judgment of the Madhya Pradesh High Court in **Battulal's case (supra)** having been overruled by the Full Bench decision in **Shyama Charan Shukla's case (supra)** which decision was affirmed by the Apex Court in **Shyama Charan Shukla's case (supra)**, it would be appropriate that the matter is remitted to the Assessing Officer to decide the issue afresh in accordance with law.

9. Accordingly, in view of the above, without expressing any final opinion on the merits of the controversy, the appeals are allowed and the orders dated 30.5.2011 (Annexure A-5) passed by the assessing authority;

dated 1.8.2012 (Annexure A-6) passed by the DETC(A) and order dated 31.5.2018 (Annexure A-8) passed by the Tribunal are set aside. The matter is remanded back to the assessing authority to decide the same afresh, in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

March 14, 2019 **(MANJARI NEHRU KAUL)**
gbs **JUDGE**

Whether Speaking/Reasoned **Yes/No**

Whether Reportable **Yes/No**