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

**VATAP No. 8364/2018 (O&M)**
**Date of decision:02.09.2019**

M/s. Vamani Overseas Pvt. Ltd.

..............Appellant

v.

State of Haryana and another

..............Respondents

**Coram: Hon'ble Mr.Justice Jaswant Singh**
**Hon'ble Mr.Justice Lalit Batra**

Present:- Mr. Rishab Singla, Advocate for Appellant

**Jaswant Singh,J.**

**CM 29024-CII/ 2018**

Since there is delay of 59 days in refiling the appeal, CM 29024-CII/2018 has been filed seeking condonation of said delay.

For the reasons stated in the application, same is allowed and delay in refiling the appeal is condoned.

**CM 29026-CII/ 2018**

Since there is delay of 71 days in filing the appeal, CM 29026-CII/2018 has been filed seeking condonation of said delay.

For the reasons stated in the application, same is allowed and delay in refiling the appeal is condoned.

**CM 29025-CII/ 2018**

Present application is allowed and affidavit of Raj Kumar Bhatia alongwith Annexures A-1 to A-7 are taken on record.

**Main case**

Facts in brief are that the appellant-Company is engaged in the business of manufacture and sale of wooden furniture and readymade garments for export/domestic sales and registered under 2003 Act and CST Act with the Assessing Authority, Faridabad. Land

and building of another Company, namely M/s. Faridabad Gas Gadgets (P) Ltd., which went into liquidation, by way of an order dated 12.5.2005 passed by Hon'ble Delhi High Court were released to Sh. B.R. Bhatia, one of the Directors of the appellant-Company. It is alleged that as on 12.5.2005 neither the Department of Excise & Taxation Haryana had lodged any claim with the Official Liquidator nor if lodged was recognized or admitted by the Official Liquidator. All the properties and liabilities of the liquidated company were transferred to the appellant-Company vide order dated 5.3.2007 passed by Hon'ble High Court of Delhi. It was alleged that as on 5.3.2007, liability of the liquidated company was only qua Syndicate Bank, the sole secured creditor. It is alleged that DETC-cum-Collector, Faridabad, vide Notice dated 25.1.2011 asked the appellant-Company to make payment of Rs. 28,54,987/- as transferee of the business of M/s. Faridabad Gas Gadgets (P) Ltd. The appellant-Company vide letter dated 2.2.2011 denied its liability to pay the said demand as it was not transferree of the business. Thereafter, DETC vide recovery notice dated Nil (A-3) declared the said arrear as arrears under Land Revenue Act.

Aggrieved against the same, appellant filed an before the Joint Excise & Taxation Commissioner (Appeals), Faridabad, which was dismissed vide order dated 4.1.2013 (A-4). Thereafter, appellant made a request to DETC to allow the appellant to make the payment in question in installments. The said request of the appellant was acceded to by the DETC with certain conditions. The appellant made first installment of Rs.1,05,000/- on 11.5.2011 and the remaining balance as on 11.5.2011 stood as Rs.21,00,000/-. In the meantime, assessing authority framed assessment of the appellant for the assessment year 2008-2009 and declared a refund of Rs.20,62,287/- vide order dated 31.5.2011 (A-5). It is grievance of the appellant that the assessing authority instead of releasing the refund to appellant adjusted the said refund against the said arrears. The said order dated 31.5.2011 was challenged in appeal by the appellant before Appellate Authority. The said appeal stood dismissed vide order dated 20.6.2012 (A-6). Appellant further went in appeal before the Haryana Tax Tribunal,Chandigarh, which was dismissed vide order dated 31.10.2017I (A-7) Hence the present appeal raising following substantial questions of law:-

i) Whether on the facts and in the circumstances of the case the assessing authority was justified in adjusting the refund accrued to the appellant in the year 2008-09 against the outstanding liability of another company when the DETC Faridabad(W) had already issued writ of demand for effecting recovery under Section 67 of the Punjab Land Revenue Act?

ii) Whether on the facts and in the circumstances of the case the assessment order dated 31.5.2011 runs contrary to the provisions of Section 67 of the Punjab Land Revenue Act,1887?

iii)Whether on the facts and in the circumstances of the case the department could claim arrears from the appellant when the department never lodged any claim with the official liquidator at the time of winding up proceedings under the Companies Act,1956?.

Heard learned counsel for the appellant. The grievance of the appellant that the refund amount could not be adjusted towards outstanding amount which was permitted to be deposited in installments, has been dealt with by the learned Tribunal in paras 8 & 9 of its impugned order dated 31.10.2017 (A-7), the relevant extract of which is as under:-

> "8. xxxxxxxxxxxxx As mentioned above, vide order dated 03.05.2011 on appellant's application, the appellant was allowed to pay the outstanding amount in installments, inter alia subject to the condition that the appellant will not be entitled to any refund from the Department before realization of outstanding arrears. Consequently the excess amount found due to the appellant vide assessment order dated 31.05.2011 of the Assessing Authority for assessment year 2008-09 could not be refunded to the appellant before realization of the outstanding amount. Consequently adjustment of the

said excess amount against the outstanding amount also enured for the benefit of the appellant and was not in any manner detrimental to its interest. Even otherwise, in view of Section 20 (7) of the HVAT Act, 2003, before giving any refund to any person, it shall be first adjusted with any amount due from him under this Act or the Central Act. In view of thereof also, adjustment of the excess amount of assessment year 2008-09 was rightly done against the outstanding amount.

9. In addition to the aforesaid, the period for payment of outstanding amount in monthly installments as allowed by order dated 03.05.2011 has expired long ago. For this added reasons also, no relief can be granted to the appellant in the present appeal.

Learned counsel for the appellant has not been able to point out any error or illegality in the findings recorded by the Tribunal warranting interference by this Court. Consequently, the appeal stands dismissed.

**(Jaswant Singh)**
**Judge**

**02.09.2019.** **(Lalit Batra)**
joshi **Judge**

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| **Whether Speaking/reasoned** | **Yes/No** |
| **Whether Reportable** | **Yes/No** |