IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

VATAP No.212 of 2019(O&M)

Date of decision:20.01.2020

M/s Bharat Trading Company
..............Appellant

v.

State of Haryana & Anr.
..............Respondents

Coram: Hon'ble Mr.Justice Jaswant Singh

Hon'ble Mr.Justice Sant Parkash

Present:- Mr. Rajiv Sharma, Advocate for the Appellant.

Jaswant Singh,J(Oral).

This common order shall dispose of 6* Appeals, as detailed below in the footnote of this order, as common questions of facts & law are involved therein. However, for the sake of convenience facts are being noticed from VATAP No.212 of 2019.

The appellant a proprietorship concern is a registered dealer under Haryana Value Added Tax Act, 2003 as well as under Central Sales Tax Act, 1957 and engaged in the business of cotton trading. The firm was closed due to huge financial losses and its TIN Registration was cancelled in March 2015. It provisionally claimed refund of Rs.9,97,166/- and Rs.9,93,621/- for the quarter ending 30.06.2013 and 30.09.2013 during the assessment year 2013-14. The refund was allowed to it. However, on suspicion the Assessing Authority, Sirsa conducted enquiries regarding the transport companies through whom the goods were allegedly transported and on finding that no such transport company existed at the time of inquiry, selected appellant's case for scrutiny under the provisions of Section 15 of the HVAT Act, 2003. Statutory notice in Form N-2 was issued to the appellant for 24.02.2015 and was served by way of pasting on the last known address of appellant. On 24.02.2015 neither the appellant nor its authorised person appeared before the Assessing Authority. Again notice was issued for 30.03.2015 by way of pasting and this time also neither the appellant nor its authorised person appeared before the Assessing Authority. On 30.03.2015 notice was issued to the appellant for 10.04.2015, on which date again the appellant remained unrepresented and the Assessing Authority proceeded ex-parte. The Assessing Authority vide impugned order dated 10.04.2015 (**A-1**) in the said ex-parte assessment proceedings disallowed provisional refund of Rs.19,90,787/- and created an additional demand of Rs.2,71,72,389/- on the ground that the GRs annexed by the appellant with the quarterly returns in support of movement of goods from Sirsa to Nohar were not genuine and there was not actual movement of goods and that all the inter-state transactions shown by the dealer was just paperwork to claim the refund.

Aggrieved from the order dated 10.04.2015 (**A-1**) appellant filed an appeal before Joint Excise & Taxation Commissioner (Appeals) Rohtak. In the proceedings before the JETC(Appeals), Rohtak, on 20.07.2016, Sh. Ramesh Sahuwala, Advocate, who had put in appearance on behalf of the appellant, was directed to submit either proof of payment of demand or proof of submission of surety bond on the next date of hearing i.e. 16.08.2016 failing which the appeal would not be entertained. On 16.08.2016 surety bond was not submitted and instead Mr. Ramesh Sahuwala, Counsel for the appellant requested to entertain the appeal without surety bond. The said request of the appellant was opposed by the Revenue. Learned JETC(A), Rohtak after hearing both sides vide order dated 23.08.2016 (**A-2**) due to non furnishing of bank guarantee or adequate surety dismissed the appeal in view of Section 33 Sub Section 5 of Haryana Value Added Tax Act, 2003.

Still aggrieved from the order dated 23.08.2016 (**A-2**) appellant preferred an appeal before the Haryana Tax Tribunal, Chandigarh. The learned Tribunal vide order dated 28.05.2018 (**A-4**) dismissed the appeal for non compliance of condition laid down in Section 33(5) of the HVAT Act and thus upheld the order dated 23.08.2016 (**A-2**) passed by JETC(A), Rohtak. Hence the present appeal.

At the outset, learned counsel for the appellant in view of the recent judgment of Hon'ble Supreme Court in **M/s Tecnimont Pvt. Ltd. (Formerly known as Tecnimont ICB Pvt. Ltd.) vs. State of Punjab, 2019 VIL 31 SC**, wherein it has been held that the authorities have no power to waive off condition of pre-deposit for entertaining the appeal, prays for permission to withdraw the present appeals so as to enable their clients to seek remedy in accordance with law.

Dismissed as withdrawn with liberty aforesaid.

(Jaswant Singh)
Judge

20.01.2020. **(Sant Parkash)**
joshi **Judge**

***1. VATAP No.212 of 2019 M/s Bharat Trading Company Vs. State of Haryana & Anr.**

2. VATAP No.213 of 2019 M/s Bharat Trading Company Vs. State of Haryana & Anr.

3. VATAP No.216 of 2019 M/s Bharat Trading Company Vs. State of Haryana & Anr.

4. VATAP No.217 of 2019 M/s Bharat Trading Company Vs. State of Haryana & Anr.

5. VATAP No.218 of 2019 M/s Bharat Trading Company Vs. State of Haryana & Anr.

6. VATAP No.258 of 2019 M/s Bharat Trading Company Vs. State of Haryana & Anr.