IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

VATAP-71-2019 (O&M)
Date of decision:23.09.2022

Excise and Taxation Commissioner, Haryana through Excise & Taxation Officer-cum-Assessing Authority, Yamunanagar

..... Appellant

versus

M/s Vijay Timber Industries and another

......Respondents

CORAM : HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present:- Ms. Shruti Jain Goel, DAG, Haryana
for the appellant.

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TEJINDER SINGH DHINDSA, J. (ORAL)

CM-6421-CII-2019

In view of the averments made in the application duly supported by an affidavit, sufficient cause has been shown as regards the delay of 354 days that has occurred in filing the accompanying appeal.

Application is allowed.

Delay condoned.

Application disposed of.

Main appeal

Instant appeal is directed against the order dated 19.12.2017 passed by the learned Haryana Tax Tribunal.

The short issue arising for consideration in the appeal is as to whether the Revisional Authority could validly exercise revisional power under the Haryana General Sales Tax Act 1973 even after its repeal w.e.f. 01.04.2013.

We find that the issue culled out hereinabove is no longer *res integra*.

The Hon'ble Supreme Court of India in **The *State of Haryana and others Vs. Hindustan Construction Company Ltd. 2017 (9) SCC 463*** has already dealt with the issue and as held as follows:-

> *We have considered the respective submissions. A simple repeal of an Act leaves no room for expression of a contrary opinion. However, if the repeal is followed by a fresh enactment on the same subject, the applicability of the General Clauses Act would undoubtedly require an examination of the language in the new enactment to see if it expresses a different intention from the earlier Act. The enquiry would necessitate an examination if the old rights and liabilities are kept alive or whether the new Act manifests an intention to do away with or destroy them. If the new Act manifests a different intention, the application of the General Clauses Actwill stand excluded.*
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> *9. There were no proceedings pending against the respondent under the Act of 1973 when the new Act came into force on 01.04.2003. The suo-moto revisional power under Section 40 of the former Act was exercised on 07.06.2004. The repeal and saving clause in Section 61 of the Act of 2003, saved only pending proceedings under the repealed Act. The intendment clearly was that*

matters which stood closed under the Act of 1973 had to be given a quietus and could not be reopened.

10. The assessment under the Act of 1973 having been completed and refund ordered, the exercise of suo-moto revisional powers under Section 40 of the same after repeal was clearly unsustainable in view of the contrary intention expressed under Section 61 of the Act of 2003, saving only pending proceedings. Section 4 of the Punjab General Clauses Act, 1858 will have no application in view of the contrary intendment expressed in Section 61 of the repealing Act. Had a contrary intention not been expressed, the issues arising for consideration would have been entirely different. The observations in ***State of Punjab vs. Mohar Singh Pratap Singh, (1955) 1 SCR 893,*** *as extracted below are considered relevant:-*

"8……….Whenever there is a repeal of an enactment, the consequences laid down in Section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject we would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them….."

The observations in ***Gammon India Ltd. (supra)*** *at paragraph 73 are to the same effect.*

11. The legislature, in its wisdom having noticed the limitation and constraints under Section 61 of the Act of 2003, made necessary amendments to the same by Act No. 3 of 2010 on 02.04.2010. Any interpretation saving the revisional power under Section 40 of the Act of 1973, without any proceedings pending on the relevant date, by resort to Section 4 of the Punjab General Clause Act, 1858 would render the amendment redundant, and an exercise in futility, something which the legislature never intended to do. Such an incongruous interpretation leading to absurdity has to be avoided.

12. In Civil Appeal 10840-10841 of 2011, an additional ground has been urged that the power of review under Section 41 of the Act of 1973 was exercised on 12.8.2003, by the Deputy Excise and Taxation Officer, to review an order of assessment dated 4.3.2002. Section 35 of the new Act vested the power of review in the Tribunal exclusively.

13. The legislative provisions being different in the precedents cited on behalf of the appellants, the same have no relevance to the issue in controversy. The order of the High Court calls for no interference.

14. The appeals, for reasons discussed, lack merit and are dismissed.

In view of the dictum laid down by the Apex Court in ***Hindustan Construction Company Ltd. (supra),*** the instant appeal is dismissed.

Pending application(s), if any, shall also stands disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

23.09.2022
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Whether speaking/reasoned? Yes/No

Whether Reportable? Yes/No