HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP-26-2022
Date of decision: 30.01.2023

M/s. Kissan Fats Ltd. Fazilka ....Appellant

V/s.

State of Punjab and others .....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Aman Bansal, Advocate for the appellant.

Ms. Anu Pal, Sr. DAG, Punjab.

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Ritu Bahri, J.

The appellant-Kissan Fats Ltd. Fazilka has filed an appeal against the orders dated 26.11.2021 (Annexure A-3) passed by Value Added Tax Tribunal, Punjab (for brevity 'Tribunal') in appeal No. 67 of 2017, order dated 29.04.2016 (Annexure A-2) passed by respondent No. 2-Deputy Excise and Taxation Commissioner, Faridkot Division, Head Quarter at Bathinda, Punjab and order dated 19.11.2015 (Annexure A-1) passed by respondent No. 3-Designated Officer-cum-Assistant Excise and Taxation Commissioner, Fazilka District, Ferozepur, Punjab.

The facts of the present case are that the appellant had filed its quarterly returns for the year 2008-09. Respondent No. 3 finalized the assessment vide order dated 19.11.2015 (Annexure A-1) and created additional demand of Rs.4,96,76,696/- under the CST Act, 1956. The first Appellate Authority had dismissed the appeal of the appellant vide order dated 29.04.2016 (Annexure A-2).

The main grievance of the appellant is that the initial assessment order dated 19.11.2015 which he received on 21.01.2016 was *void ab initio* as the assessment framed was barred by time and was violative of statutory provisions of Section 29 (4) of the Punjab VAT Act. Section 29(4) of the Punjab VAT Act was amended on 15.11.2013 and prior to this amendment, the provision was as under:-

> (4)An assessment under sub section (2) or sub-section (3) may be made within (three) years, after the date when the annual statement was filed or due to be filed whichever is later.
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> Provided that where circumstances so warrant, the Commissioner may be an order in writing, allow assessment of a taxable person or a registered person after three years, but not later than six years, from the date, when annual statement was filed or due to be filed by such person, whichever is later.

After amendment on 15.11.2013, the provision of Section 29(4) of the Punjab VAT Act reads as under:-

> An assessment under sub section (2) or sub-section (3), may be made within (six) years after the date when the annual statement was filed or due to be filed whichever is later.
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> Provided that the assessment under sub-section (2) or sub-section (3), in respect of which annual statement for the assessment year 2006-07 has already been filed, can be made till the 20^{th} day of November, 2014.
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> Explanations:-
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> 1. The limitation period of six years for an assessment under sub-section (2) or sub-section (3), shall also apply to those cases in which the aforesaid period of six years has yet not expired.
> 2. It is clarified that prior to commencement of the Punjab

Value Added Tax (Second Amendment) Act, 2013, the Commissioner was not required to issue any notice to the concerned person before extending the limitation period of assessment.

The Tribunal had referred to the judgment passed by Hon'ble Supreme Court in the case of ***State of Punjab and another vs. Bharat Petroleum Corporation Limited***, decided on 11.05.2016 wherein it has been held that **when the assessment order is saved by way of amendment which has retrospective effect then assessee will be required to pay only principal amount of sales tax and no interest of penalty shall be made.** The Tribunal, vide order dated 26.11.2021 partly allowed the appeal of the assessee and set aside the order of the Designated Officer imposing interest u/s 32(3) amounting to Rs.15624220/- and the imposition of penalty u/s 53 to the tune of Rs.20832293/- upon the assessee. However, the tax calculated had to be paid by the assessee.

In the present case, the short question for consideration is whether as per the amendment made under Section 29(4) of the Punjab Vat Act, the order dated 19.11.2015 (Annexure A-1) passed by the Assessing Authority for the assessment year 2008-09 was within limitation?

At the outset, reference can be made to the judgment passed by the Division Bench of this Court in ***CWP-21811-2014*** titled as ***M/s. Amrit Banaspati Company Limited vs. The State of Punjab and others, 2015 SCC OnLine P&H 13715*** whereby constitutional validity of amendment to Section 29 of the Punjab Value Added Tax Act, 2005 by the Punjab Value Added Tax Act, 2013 was challenged. The vires were upheld and the petition was dismissed.

After the dismissal of the writ petition challenging vires of Section 29, the present case will be examined in view of the above said provision. The present case involves assessment made in the year 2008-09. The assessment order was passed on 19.11.2015 and as per the amendment made in Section 29(4) of the Punjab Vat Act, an assessment order under sub- section (2) or sub-section (3) can be passed by the Commissioner within a period of six years after the date when the annual statement was filed or due to be filed whichever is later. Even the amended sub-section(2) or sub-section (3), also extended time for passing the assessment order for the assessment year 2006-07 till 20.11.2014. In the present case, the assessment year is 2008-09 and the assessment order was passed on 19.11.2015. The period of six years would come to an end in the year 2016. The order passed by the respondent No. 2-Deputy Excise and Taxation Commissioner was 29.04.2016 (Annexure A-2). The appeal filed by the assessee before the respondent No.2 was pending when 6 years period had not expired. Hence, for all intents and purposes, order dated 29.04.2016 passed by respondent No.2 (Annexure A-2) is within limitation of 6 years as per the amended Act.

Further, the Hon'ble Supreme Court in Civil Appeal Nos. 5021-2022 of 2016 titled as ***State of Punjab and another vs. Bharat Petroleum Corporation Ltd.***, the Hon'ble Supreme Court was examining the amendment made by the State Legislature vide Punjab General Sales Tax (Amendment and Validation) Act, 2005 and Section 11-CC was added and this amendment was to come into force w.e.f. 19.07.2000 and was deemed to remain in force upto 11.09.2002. The amendment was held to be retrospective in nature and covered the period of assessment year 2001-02.

Since the period of limitation got extended from three years to five years and the assessment order with respect to assessment year 2001-02 was made on 10.07.2006 which was held to be within the limitation as provided by amended Section 11-CC. Therefore, the appeal filed by the State of Punjab was dismissed, however, it was held that the assessee was liable to pay only the principal amount of sales tax and no interest of penalty was to be paid by him.

Applying the above ratio to the facts of the present case, the amendment in Section 29(4) of Punjab VAT Act was made by notification No. 49-Leg./2013 (Punjab Act No. 38 of 2013) dated 15.11.2013. Even the proviso of Section 29(4) had extended the period of limitation for the assessment year 2006-07 till 20.11.2014. In the present case, since the assessment year is 2008-09, the period of limitation of 6 years had not expired when the proceedings were pending before the Commissioner when he passed order dated 28.04.2016. The Tribunal, vide order dated 26.11.2021 had rightly partly allowed the appeal of the assessee by setting aside the order of the Designated Officer imposing interest u/s 32(3) amounting to Rs.15624220/- and the imposition of penalty u/s 53 to the tune of Rs.20832293/- and the tax calculated had to be paid by the assessee.

Hence, the present appeal is dismissed being devoid of any merit.

(RITU BAHRI)
JUDGE

30.01.2023 **(MANISHA BATRA)**
Divyanshi **JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No