IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

102 *Neutral Citation No. 2023:PHHC:157948 -DB*

(1) **VATAP-84-2020 (O&M)**

M/s VE Commercial Vehicles Ltd. ....Appellant(s)

Versus

U.T.Chandigarh & another .... Respondent(s)

(2) **VATAP-269-2018**

M/s Eicher Motors Ltd. ....Appellant(s)

Versus

U.T.Chandigarh & another .... Respondent(s)

(3) **VATAP-272-2018**

M/s B.L.Mehta Constructions Pvt. Ltd. ....Appellant(s)

Versus

U.T.Chandigarh & another .... Respondent(s)

(4) **VATAP-282-2018**

M/s B.L.Mehta Constructions Pvt. Ltd. ....Appellant(s)

Versus

U.T.Chandigarh & another .... Respondent(s)

(5) **VATAP-9-2019**

M/s Eicher Motors Ltd. ....Appellant(s)

Versus

U.T.Chandigarh & another .... Respondent(s)

(6) **VATAP-13-2019**

M/s Eicher Motors Ltd. ....Appellant(s)

Versus

U.T.Chandigarh & another .... Respondent(s)

Decided on : 11.12.2023

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE LAPITA BANERJI

Present: Mr.Sandeep Goyal, Advocate
Mr.Rishab Singla, Advocate, for the appellant(s).

Mr.Ajay Jagga, Advocate, for the respondents.

G.S. Sandhawalia, J. (Oral) :-

1. CM-6817-CII-2020 in VATAP-84-2020

Application for condonation of delay of 58 days in filing the appeal is allowed in view of the averments made in the application, duly supported by affidavit. Delay of 58 days in filing the appeal is hereby condoned.

CM stands disposed of.

Main appeals

2. The present judgment shall dispose of 6 appeals bearing VATAP-84-2020, VATAP-269, 272 & 282-2018, VATAP-9 & 13-2019 involving common questions of law and facts. Facts have been taken from VATAP-269-2018.

3. The appellant has filed the present appeal under Section 68 of the Punjab Value Added Tax Act, 2005 (as applicable to UT, Chandigarh) (for short, the 'Act') aggrieved against the order dated 06.03.2018 (Annexure A-4) whereby the Tribunal has dismissed the 3 appeals against the orders dated 19.11.2009, 01.11.2010 & 17.11.2011 (Annexure A-3 Colly.) passed by the Excise & Taxation Commissioner, U.T. Chandigarh.

4. In principal, the Commissioner, vide the said three orders while exercising the powers under proviso to Section 29(4) of the Act, had extended the period of limitation for the Assessment Year 2005-06 upto 20.11.2010 vide the first order dated 19.11.2009. The second extension was granted vide order 01.11.2010 whereby the period for Assessment Years 2005-06 and 2006-07 upto 20.11.2011. Similarly, vide order dated 17.11.2011, for the Assessment Year 2005-06, the period of limitation was extended upto 20.11.2012. The assessment order dated 18.05.2012

(Annexure A-1) led the appellant to challenge the said extensions before the Tribunal by filing appeals under Section 63 of the Act. At the same time, against the assessment order, the appellant also filed an appeal on merits before the Deputy Excise & Taxation Commissioner, U.T. Chandigarh.

5. The Tribunal primarily dismissed the three appeals on the ground that reference has been made to Section 63 of the Act which provided that an appeal could be filed against an order of the Appellate Authority under the Act by a person or an authorized officer of the State Government. Resultantly, a finding was recorded that no order was passed by the Appellate Authority and the appeals deserve to be dismissed on account of non-maintainability. The Tribunal also opted to go into the merits of the case and noted that an appeal was pending against the Assessment Order and came to the conclusion that parallel litigation cannot be permitted.

6. We are of the considered opinion that the actual provision would be Section 62 of the Act under which the said order could be challenged. A perusal of the appeal filed would go on to show that various issues were raised including the fact whether the orders passed by the Commissioner were ante-dated only for the purpose of saving the limitation. The fact that notice had not been issued and whether the limitation would be extended in a wholesale manner or opportunity of hearing had to be granted to the concerned persons was the issue to be decided by the Tribunal. The substantial question thus which was to be considered by the Tribunal was brushed aside solely on the ground that reference had been made to Section 63 of the Act in the heading of the appeal. We are of the considered opinion that it is settled principle that the

heading of the appeal or an application is not what is to be considered by the Appellate Authority which is a creature of statute but it has to decide substantially the issue which has been raised before it. Reliance can be placed upon **Pruthvirajsinh Nodhubha Jadeja (D) By LRs Vs. Jayeshkumar Chhakaddas Shah & others, 2019 (9) SCC 533,** wherein an application for impleadment was dismissed which had wrongly been filed under Order 1 Rule 10 CPC wherein it should have been Order 22 Rule 10 CPC. Resultantly, it was held that mere mentioning of an incorrect provision is not fatal to the application if the power is available with the Court and therefore the application which was dismissed was held not to be justified since the said person had vital interest and would continue with the suit.

7. The issue thus was whether the notifications were justified. Section 62(1)(c) of the Act reads as under:

> "Section 62. FIRST APPEAL:
>
> (1) An appeal against every original order passed under this Act or the Rules made thereunder shall lie. -
>
> xxxx xxxx xxxx
>
> (c) if the order is made by the Commissioner or any Officer exercising the powers of the Commissioner, to the Tribunal."

8. As per the above provision, there was a remedy provided to the appellant. We are of the considered opinion that merely on account of the fact that the assessment order was also challenged on merits was not a ground to reject the case on technicalities that a wrong section had been mentioned. Resultantly, we are of the considered opinion that <u>VATAP-269-2018, VATAP-9 & 13-2019</u> are liable to be allowed on this ground itself and the matter is liable to be remanded to the Tribunal.

9. The fact also remains that the Tribunal while deciding the second appeal on merits thereafter on 04.11.2019 (Annexure A-7) which is subject matter of consideration in VATAP-84-2020, came to the conclusion that the assessment had been done after obtaining extension from the Excise & Taxation Officer vide orders dated 19.11.2009, 01.11.2010 and 17.11.2011 and they were within the time-period and the same was not barred. In our considered opinion valuable rights of the appellant has thus been taken away as decision had not been taken on merits regarding the issue of extension of limitation by the Commissioner which can be challenged by filing an appeal under Section 62(1)(c) of the Act. Resultantly, the order of the Tribunal dated 04.11.2019 also cannot be sustained on this ground that firstly it has to decide the first 3 appeals on the question whether the extension could be granted by the Commissioner but it has put the cart before the horse.

10. Accordingly, in view the above discussion, the present appeals are allowed and the matter is remanded to the Tribunal to decide the issues in a consolidated manner on merits while considering the three appeals filed before it bearing Appeal Nos.36, 35 & 34 of 2012 and treating them as appeals filed under Section 62(1)(c) of the Act.

(G.S. SANDHAWALIA)
JUDGE

11.12.2023 **(LAPTIA BANERJI)**
sailesh **JUDGE**

Whether speaking/reasoned : Yes
Whether Reportable : Yes