HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-20870-2018
Date of Decision: 10.05.2023

M/s. Hari Kewal Vanaspati Mills ....Petitioner

Vs.

State of Haryana and others ....Respondents

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

Present: Mr. Sandeep Goyal, Advocate
for the petitioner.

Ms. Mamta Singla Talwar, DAG, Haryana.

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Ritu Bahri, J.

1. The petitioner is seeking direction to the respondents to refund an amount of Rs.17,06,322/- pursuant to the order dated 03.10.2012 (Annexure P-4) passed by the Haryana Tax Tribunal and the judgment dated 05.12.2014 (Annexure P-6) passed by this Court whereby appeal filed by the State against the order of Tribunal dated 03.10.2012 (Annexure P-4) had been dismissed.

2. The brief facts of the case are that the petitioner is engaged in the manufacturing of vegetable ghee. For the purpose of sales tax, the petitioner was registered under the Haryana VAT Act having TIN 06301528607 with the Assessing Authority, Hisar. Vide order dated 09.01.2001 (Annexure P-1), the Assessing Authority concluded the assessment proceedings with respect to assessment year 1999-2000 and the returned version of the assessee was accepted.

2. The Deputy Excise & Taxation Commissioner-cum-Assessing

Authority, Hisar initiated reassessment proceedings under Section 31 of the Haryana General Sales Tax Act, 1973 by issuing notices in Form 25 and in Form 27 and vide order dated 12.06.2002 (Annexure P-2) concluded the reassessment of the assessee holding that it had suppressed purchases and further raised an additional demand of Rs.18,20,000/-.

3. The petitioner filed an appeal before the Joint Excise & Taxation Commissioner, who upheld the findings of the reassessment vide order dated 19.12.2002 (Annexure P-3) but marginally reduced additional demand to the tune of Rs. 17,06,322/- keeping in view that the rate of tax on the purchases made by the petitioner from 04.03.2000 to 31.03.2000 was 4% and prior to that, the rate of tax was 7%.

4. Against the order dated 19.12.2002 (Annexure P-3), the petitioner preferred an appeal before the Haryana Tax Tribunal, and on account of difference of opinion between the members, the case was referred to third member to obtain the majority decision, who dismissed the appeal. The petitioner challenged that order by way of filing CWP-19799-2006. Vide order dated 19.01.2010 passed in CWP-19799-2006, this Court quashed all the orders passed by the authorities below and remitted the case back to the Tribunal for fresh decision. Thereafter, vide order dated 03.10.2012 (Annexure P-4), the Tribunal passed the order in favour of the petitioner by holding that the cross-examination of third party was warranted and in this backdrop, the decision given for reassessment was without following principles of natural justice. The relevant portion of the said order is reproduced as under:-

> "15. Hence, from the legal position as discussed, it would follow that it is not mandatory in every case that the

cross-examination of the third party should invariably be allowed by the Assessing Authority. Decidedly, the assessment proceedings are quasi judicial proceedings and subject to observance of the principles of natural justice. Whether cross-examination of a person providing information is required or not will depend on the facts and circumstances of the case under assessment. However, in the present case as pointed out in paras 8, 10 and 14 above, there was deficiency in the observance of the principles of natural justice amounting to violation thereof. The information gathered from the third party and relied upon by the Assessing Authority for reassessment needed to be tested through a detailed enquiry to ascertain the genuineness of the purchases alleged to have been suppressed. Therefore, in view thereof and in view of the ratio of the judgments cited by the appellant, we hold that the cross-examination of the third party was warranted in this case. Disposed of accordingly."

5. Aggrieved by the above said order, the State of Haryana preferred VATAP-173-2013 before this Court and vide order dated 18.11.2014 (Annexure P-5), notice of motion was issued on the limited question of restoring the assessment to the Assessing Officer for affording a reasonable opportunity to the assessee. When the matter was finally heard, the appeal was dismissed vide order dated 05.12.2014 (Annexure P-6). However, while dismissing the appeal, **the case was neither remanded back nor restored with the Assessing Authority to pass any fresh order.**

6. The petitioner has placed on record notice dated 12.03.2015

(erroneously written as 12.03.2014 in the notice) (Annexure P-7) for disposal of the remand case for the assessment years 1995-96 to 2000-01. The petitioner was also directed therein to produce complete account books for the above said assessment years. The petitioner filed reply on 08.04.2015 (Annexure P-8) stating that the Tribunal had not remanded the case but had set aside the orders passed by the authorities below.

7. On 13.04.2015 (Annexure P-9), the Assessing Authority had again sent a revised notice and the petitioner was again called to appear before the Assessing Authority on or before 28.04.2015.

8. The petitioner gave its reply on 12.06.2015 (Annexure P-10) contending that the Tribunal in the majority, already held that cross-examination of third party was warranted and reassessment order was violative of principles of natural justice and it was requested that the reassessment proceedings against the petitioner should be dropped and an amount of Rs.17,06,322/- alongwith interest be refunded to the petitioner.

9. The petitioner, thereafter, gave an application to the Deputy Excise and Taxation Commissioner, Hisar dated 27.04.2018 (Annexure P-11) for grant of refund.

10. The petitioner has filed the present writ petition seeking direction to the respondents to refund an amount of Rs.17,06,322/- alongwith interest as the judgment dated 05.12.2014 passed by this Court in VATAP-173-2013 (Annexure P-6) dismissing the appeal filed by State of Haryana has attained finality.

11. On notice of this petition, written statement on behalf of respondents No. 1 to 3 dated 17.01.2019 has been filed by the Excise & Taxation Officer-cum-Assessing Authority, Hisar. All the facts till

dismissal of the VATAP-173-2013 on 05.12.2014 filed by State of Haryana had been inhibited. The further stand of the respondents therein was that the application for refund is premature as the order dated 03.10.2012 (Annexure P-4) passed by the Tribunal has not attained finality and as per Section 20(5) of the Haryana VAT Act, 2003 (hereinafter referred to as Act, 2003), refund cannot be granted. The said Section is as under:-

> "20(5) Any amount refundable to any person as a result of an order passed by any court, appellate authority or revising authority, shall be refunded to him on an application containing the prescribed particulars accompanied with the prescribed documents made in the prescribed manner to the prescribed authority."

12. While referring to limitation under Section 18 of the Act, 2003, the stand taken by the respondents was that this provision is not applicable. It is applicable only when the reassessment proceedings have started, then the same are to be completed within a period of two years of receipt of copy of such order by the assessing authority. In the present case, since the High Court, while dismissing the appeal (VATAP-173-2013) of the State of Haryana vide order dated 05.12.2014 (Annexure P-6) had not remanded the case back to the Assessing Authority, hence limitation of two years as per Section 18 of Act, 2003 cannot start unless an order is received by the Assessing Authority to start the reassessment proceedings again.

13. Another affidavit of Excise and Taxation Commissioner, Haryana, Panchkula dated 18.03.2020 has been filed. In this affidavit, it is stated that the Department had challenged order dated 03.10.2012 passed by the Tribunal by way of VATAP-173-2013 in the High Court, which was

dismissed on 05.12.2014. The High Court only decided the issue of right of cross-examination of third party but did not decide the issue of restoration of the case to the Assessing Authority. Hence, the reassessment order stands as it is. The question of refund will accrue only if the reassessment order dated 12.06.2002 (Annexure P-2) for the A.Y. 1999-2000 is set aside either by the Haryana Tax Tribunal or by any other Court. The Department has filed an STM (Application for deciding STA No. 07 of 2003-04) before the Tribunal on 09.01.2020 to clear this ambiguity that the Tribunal should give directions for reassessment of the case by remanding the matter back to the Assessing Authority which is still pending.

14. Learned counsel for the petitioner has referred to Section 35 of the Act, 2003 which deals with the process of review of any order passed by any authority. As per Section 35(2) of the Act, 2003, an application for review can be preferred within one year from the date of the order sought to be reviewed and in the present case, order of the Tribunal was passed on 03.10.2012 (Annexure P-4) and an application for review/modification has been made now on 09.01.2020 by the Department as per the affidavit dated 18.03.2020. Hence, the period of one year has already elapsed and the said application is not maintainable. Moreover, once the order dated 03.10.2012 (Annexure P-4) has not been modified, the Assessing Authority has no jurisdiction to issue notices dated 12.03.2015 (Annexure P-7) and 13.04.2015 (Annexure P-9). He has argued that since the provision for filing review under Section 35 was available with the department, the Assessing Authority could not initiate reassessment proceedings on its own level.

15. Learned counsel for the respondents has argued that the

provisions of Section 18 of HVAT Act to decide the remanded case within two years cannot be made applicable in this case as the Tribunal had not remanded the case back and the case is to be remanded even now to the Assessing Authority keeping in view that the High Court had dismissed the VATAP-173-2013 filed by the State holding that right of cross-examination to the third party cannot be denied to assessee during reassessment proceedings. Moreover, an application (Application for deciding STA No. 07 of 2003-04) has already been filed before the Tribunal on 09.01.2020 by the State to modify the order dated 03.10.2012 (Annexure P-4) by remanding the case back for reassessment to the Assessing Authority.

16. Heard learned counsel for the parties.

17. In the facts of the present case, initial assessment order was passed wayback on 09.01.2001 (Annexure P-1). Thereafter, reassessment order was passed on 12.06.2002 (Annexure P-2) and a demand for Rs.18,20,000/- was raised. Thereafter, appeal filed by the assessee before the Joint Excise and Taxation Commissioner (A), Hisar was dismissed vide order dated 19.12.2002 (Annexure P-3). However, the demand was reduced to Rs.17,06,322/-. The said order was challenged by the petitioner whereby the Tribunal disposed of the appeal on 03.10.2012 (Annexure P-4) by observing that the assessee had a right for cross-examination to the third party in reassessment proceedings. However, the Tribunal did not remand back the matter to the Assessing Authority for reassessment vide order dated 03.10.2012 (Annexure P-4). For all intents and purposes, orders from 09.01.2001 (Annexure P-1) till the order dated 19.12.2002 (Annexure P-3) passed by Joint Excise and Taxation Commissioner (A), Hissar have attained finality. Even if the Department has filed application for

modification of the order of the Tribunal dated 03.10.2012 (Annexure P-4) as reflected in the affidavit filed by the Excise and Taxation Commissioner dated 18.03.2020, the time taken from 03.10.2012 till 09.01.2020 (date of filing application) i.e. 8 years cannot be condoned as per Section 35 of the Act, 2003 which reads as under:

> "(1) Any person including an authority under this Act considering himself aggrieved by an order of the Tribunal and who, from the discovery of any new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when such order was made, or on account of some mistake or error of law of facts, desires to obtain a review of the order made against the State or him, may apply for a review of such order to the Tribunal.
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> **2. The application for review shall be preferred within one year from the date of the order sought to be reviewed in the manner prescribed and where the application is preferred by an assessee it shall be accompanied by such fee not exceding five hundred rupees, as may be prescribed.**
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> 3. The Tribunal of its own accord after giving notice to the parties concerned, review on account of some mistake or error of law or facts, any order made by it before the expiry of eight years from the date of the order."

18. There is a period of one year provided as per the Act, 2003 for seeking review of any order passed by the Tribunal. Hence, the time for getting the reassessment order reviewed has already elapsed and the

reassessment order has already attained finality. The order of the Tribunal dated 03.10.2012 (Annexure P-4) cannot be reviewed after a gap of 8 years and as on today almost 13 years have gone by and even at this stage, application filed by the respondents for reviewing order dated 03.10.2012 (Annexure P-4) is still pending for adjudication. Moreover, Section 18 of HVAT Act is not attracted in the present case for deciding the remanded case in two years as the present case was not remanded back to the Assessing Authority. As per Section 35 of the Act, 2013, even review application is not maintainable and has to be dismissed on the ground of delay.

19. Keeping in view the observations made above, the writ petition is allowed and direction is given to the respondents to refund an amount of Rs.17,06,322/- pursuant to order dated 19.12.2002 (Annexure P-3) alongwith statutory interest as per law.

(RITU BAHRI)
JUDGE

10.05.2023 **(MANISHA BATRA)**
Divyanshi **JUDGE**

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