HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP-93-2013
Reserved on 15.02.2023
Pronounced on 24.02.2023

M/s. Sony India Pvt. Ltd. **....Appellant**

V/s.

State of Haryana and others **.....Respondents**

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

Present: Mr. Rajiv Agnihotri, Advocate
for the appellant.

Ms. Mamta Singla Talwar, DAG, Haryana.

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Ritu Bahri, J.

The appellant has come up in appeal against the orders dated 19.10.2012 (Annexure A-11), dated 11.01.2008 (Annexure A-4) and dated 19.06.2006 (Annexure A-2) respectively for the assessment year 2001-02.

The appellant company is enaged in the manufacturing and trading of electronic goods etc., and is registered under the erstwhile Haryana General Sales Tax Act, 1973 and thereafter with the advent of Haryana Value Added Tax Act, 2003 under the Haryana Value Added Tax Act, 2003 as also under the Central Sales Tax Act, 1956. In the year 2004, the factory business was closed and the registration certificate of Rewari was surrendered on 03.02.2009. Assessment for the assessment year 2001-02 was framed by the Assessing Authority vide order dated 30.03.2006 (Annexure A-1) creating additional demands of Rs.79,66,788/- under the Haryana General Sales Tax Act, 1973 and Rs.5,21,227/- under the Central Sales Tax Act, 1956.

The appellant filed an appeal against the order dated 30.03.2006 (Annexure A-1) alongwith applications for stay of recovery proceedings. The appellate authority vide interim order dated 19.06.2006 (Annexure A-2) rejected the applications and directed the appellant to pay the entire additional demand of Rs.84,88,015/- in two equal monthly installments beginning July, 2006 payable by 10th of each month alongwith security for the balance amount with the first installment.

Aggrieved by the interim order dated 19.06.2006 (Annexure A-2), the appellant preferred appeals before the Haryana Tax Tribunal on 06.07.2006 vide STA Nos. 145 & 146 of 2006-07 (Annexure A-3 colly).

Vide ex-parte order dated 11.01.2008 (Annexure A-4), the Haryana Tax Tribunal (in short 'the Tribunal') directed the appellant to make payment in 30 days keeping in view the gross turnover. Aggrieved by this order (Annexure A-4) which was passed ex-parte, the appellant filed review petition No. STR 30 of 2008-09 dated 12.12.2008 (Annexure A-5). This review petition was dismissed vide order dated 26.11.2010 (Annexure A-6). However, the Tribunal extended the time for 30 days to deposit the afore-said amount to comply with order dated 11.01.2008. Thereafter, the appellant filed another review petition on 01.03.2011 in STR No. 82 of 2010 (Annexure A-7). The Tribunal again dismissed the review petition ex-parte on 06.09.2011 (Annexure A-8). The appellant, thereafter filed an application for re-admission of review petition in STR No. 82 of 2010 (Annexure A-9). The Haryana Tribunal accepted the contention of the appellant and restored the review application vide order dated 07.06.2012 (Annexure A-10). However, the said review petition was again dismissed on 19.10.2012 (Annexure A-11). Hence, the present appeal has now been filed.

Learned counsel for the appellant has referred to decisions given by the Haryana Tax Tribunal in ***H.M.Mehra and Co., Kundli, Sonept vs. State of Haryana, decided on 08.04.2010 (2010) 36 PHT 472 (HTT)*** and in ***M/s. Alcatel India Limited, Gurgaon vs. State of Haryana, decided on 12.11.2011 (2012) 42 PHT 52 (HTT)*** on the proposition that under Section 33 of the Haryana Vat Act, the tax disputes relating to the period before amendment in Section 33 of the HVAT Act vide Act No. 10 of 2009 dated 20.03.2009 shall be applicable and there shall be no requirement of pre-payment of the demand disputed in appeal for entertainment of the appeal.

Learned counsel for the State has referred to a Division Bench judgment of this Court in ***Khazan Chand Nathi Ram vs. State of Haryana and others, decided on 22.03.2004*** wherein it has been held that the right of appeal is a vested right and it will exist on the date of commencement of lis. The lis can be said to commence under the Haryana General Sales Tax Act (HGST) on the date when return is filed or is required to be filed. Therefore the provisions of Section 39(5) of the HGST Act would continue to govern the right of appeal vested in the petitioners which is saved in terms of Section 4 of the Punjab General Clauses Act (As applicable to State of Haryana).

A perusal of the judgment of ***Khazan Chand Nathi Ram's case (supra)*** further shows that this Court had examined Section 61(2) of the Haryana Vat Act 2003 and concluded that Section 61(2) of the Haryana Vat Act does not give any retrospective effect to the provisions of the aforesaid Act either expressly or by necessary implication. Section 61(2) of the

HVAT Act contemplates transfer of pending proceedings pertaining to application, appeal, revision or other proeedings to the authorities constituted under the HVAT Act and it is to be disposed of by the authorities so constituted. In para Nos. 34 to 36, it has been observed as under:-

> "34. In view of various judgments referred to above and on the reading of Section 61(2) of the HVAT Act, 2003 it is concluded that Section 61(2) of the HVAT Act does not give any retrospective effect to the provisions of the aforesaid Act either expressly or by necessary implication. Sub-section (2) of Section 61 of the HVAT Act, 2003, contemplates transfer of pending proceedings pertaining to application, appeal, revision or other proceedings to the authorities constituted under the HVAT Act, 2003 and to be disposed of by the authorities so constituted. Such authorities constituted under the HVAT Act has been given deemed fiction to be in existence for the purpose of such application, appeal, revision or such other proceedings so as to be in force on the date such application, appeal, revision or other proceedings have been made or preferred. Since expressly or by necessary intendment, no retrospective effect is sought to be given, therefore, the effect of repeal of the HGST Act is required to be examined with reference to Section 4 of the Punjab General Clauses Act, 1898 (as applicable to the State of Haryana).
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> 35. Section 4 of the Punjab General Clauses Act, 1898 (as applicable to the State of Haryana) is the relevant provision of

law in such a situation where the subsequent Act while repealing the old Act has not provided for any retrospective operation of the new Act either expressly or by implication. Section 4 of the Punjab General Clauses Act contemplates that in the absence of any contrary intention expressly or impliedly, any right, privilege, liability or obligation under the old law will continue to be governed under the old law. The assessee has a right to file appeal under the HGST Act with a liability or obligation to pre-deposit the amount of tax, interest and penalty. Such obligation or liability confers a right in favour of the State to insist upon pre-deposit of tax, interest or penalty. From the judgments of the honourable Supreme Court in ***Hoosein Kasam Dada's case [1953] 4 STC 114*** and ***Garikapatti Veeraya v. N. Subbiah Choudhury, AIR 1957 SC S40***, it is apparent that the right of appeal is a vested right and accrues to the litigant and exists as on and from the date the lis commences. Such right is actually exercised when the adverse judgment is pronounced. Such right is to be governed by the law prevailing on the date of the institution of the suit or proceeding and not by the law that prevails on the date of its decision or at the date of the filing of the appeal.

36 In civil proceedings, lis commences on the presentation of the plaint or in cases claiming compensation under the Motor Vehicles Act on filing claim application. The question is when lis can be said to commence under the taxation laws. Section 25 of the HGST Act enjoins a duty upon an assessee to file

quarterly return and deposit tax thereon. If such returns are accepted, there is no lis. Consequently, there would be no occasion for the parties to file an appeal. However if such returns are not accepted, the cause of action which arise on the date when returns are required to be filed. The cause of action can be said to be arisen also when an assessee is called upon to furnish return on his failure to do so in terms of the provisions of the old Act. In fact, that is the relevant date as in ***Vitthalbhai Naranbhai Patel v. Commissioner of Sales Tax, M.P., Nagpur, AIR 1967 SC 344***."

The judgments referred to by learned counsel for the appellant are not applicable in view of the Division Bench judgment of this Court in ***Khazan Chand Nathi Ram's case (supra)***.

Appeal is dismissed.

(RITU BAHRI)
JUDGE

24.02.2023
Divyanshi

(MANISHA BATRA)
JUDGE

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