

VATAP No.105 of 2018 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 17.01.2023

1. VATAP No.105 of 2018 (O&M)

M/s M.C.S. Electronics, Sirsa

...Appellant

Vs.

The State of Haryana and others

...Respondents

1. VATAP No.210 of 2018 (O&M)

M/s M.C.S. Electronics, Sirsa

...Appellant

Vs.

The 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(s).

Ms. Mamta Singla Talwar, DAG, Haryana.

Ritu Bahri, J. (oral)

This judgment shall dispose of VATAP Nos.105 of 2018 and 210 of 2018 together as common questions of law and facts are involved in both the appeals. For reference, facts are being extracted from VATAP No.105 of 2018.

The instant appeals, under Section 36 of the Haryana Value

Added Tax Act, 2003 for the assessment year 2002-2003, is against the

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order dated 09.10.2017 (Annexure A-4) passed by the Haryana Tax Tribunal, Chandigarh, rejecting the appeal of the appellant against the order dated 26.05.2008 (Annexure A-2) passed by the Commissioner (I)-cum-Revising Authority, Sirsa (H.Q. at Hisar).

Brief facts of the case are that the appellant was registered under the Haryana General Sales Tax Act with the Department of Sales Tax and also under the Haryana Value Added Tax Act, 2003, as well as under the Central Sales Tax Act, 1956. Assessment under Section 28 of the Haryana General Sales Tax Act, 1973 for the assessment year 2002-2003 was framed by the Assessing Authority, Sirsa, vide order dated 19.03.2007 (Annexure A-1). Thereafter, the Revisional Authority, Hisar, vide order dated 26.05.2008 (Annexure A-2) rejected the submissions made by the appellant. The said order has been affirmed by the Tribunal vide order dated 09.10.2017 (Annexure A-4). Hence, the present appeal.

Learned counsel for the appellant has argued that assessment for the year 2002-2003 was framed by the Assessing Authority vide order dated 19.03.2007 (Annexure A-1). The Deputy Excise & Taxation Commissioner, while exercising the powers of the Revisional Authority under the Haryana Value Added Tax assumed powers under the Haryana General Sales Tax Act, 1973 and issued notice for revision, which is beyond jurisdiction. As per Section 61 (1) of the Repeal and Saving clause, only certain proceedings were saved by way of Section 61(2), which were pending at the commencement of the Haryana Value Added Tax Act, 2003. In this case, after passing of the assessment order dated 19.03.2007 (Annexure A-1), no proceedings were pending under the Haryana General Sales Tax Act, 1973 and hence, the revisional powers could not be exercised

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Added Tax Act, 2003. The Repealing and Saving clause is reproduced as under:-

“Repeal and Saving.

61 (1) The Haryana General Sales Tax Act, 1973 (20 of 1973) is hereby repealed:

(2) Notwithstanding anything contained in sub-section (1),-

(a) any application, appeal, revision or other proceedings made or preferred to any authority under the said Act, and pending at the commencement of this Act, shall, after such commencement, be transferred to and disposed of by the officer or authority who would have had jurisdiction to entertain such application, appeal, revision or other proceedings under this Act as if it had been in force on the date on which such application, appeal, revision or other proceedings was made or preferred.”

Learned counsel for the appellant has referred to the judgment passed by this Court in **Excise and Taxation Commissioner, Haryana vs. M/s Frigoglass India Private Limited and another**, VATAP No.130 of 2017 (decided on 13.05.2019). In that judgment, this Court was considering the provisions of Section 61 (1) and 61 (2) of the Haryana Value Added Tax Act, 2003. In para nos. 17, 18 and 19, it was observed as under:-

“17. From the above legal position, it emerges in nut shell, the effect of sub-section (1) of Section 61 of the HVAT Act is that substantive provisions of the HGST Act shall be treated to be in existence for the purposes of action which had been initiated there under and were pending on the commencement of HVAT Act. Under Section 61(2)(a) of HVAT Act, the pending application, appeal, revision and other proceedings made or preferred to any authority under HGST Act would stand transferred for disposal to the officer or authority who would have jurisdiction to entertain such application under the HVAT Act. The period of revision of five years provided under HGST Act for revision shall stand extended to eight years in certain eventualities. Further, HVAT Act would not affect the concluded actions or the assessments etc. In other words, in so far as assessment finalized for assessment years prior to coming into force of HVAT Act, the limitation under the HGST Act would be applicable. However, law of limitation being procedural law, amended or new provision of law under HVAT Act relating to limitation shall apply to the pending proceedings initiated under the HGST Act in respect of cases upto assessment year 2002-03 as well.

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18. Adverting to the factual matrix in the present case, the assessment proceedings in question were initiated under the HGST Act and therefore, after enactment of the HVAT Act which came into force w.e.f 01.04.2003, the limitation period prescribed under Section 15 thereof became applicable to the said assessment proceedings. As per Section 15(3) of the HVAT Act, the limitation period for finalizing the judgment assessment is three years from the close of the year to which the assessment relates whereas Section 15(4) of the HVAT Act provides three years for best judgment assessments from the close of the year to which the assessment relates. The HVAT Act came into force on 1.4.2003 and thus, the limitation period of three years was to be computed from that date for all assessment years prior to 1.4.2003 as in the present cases. Consequently, the limitation period for the assessment in the present cases ended on 31.3.2006 whereas the impugned assessment orders were passed on 26.3.2009 i.e. long after the expiry of limitation. Thus, the Tribunal rightly held the assessment orders being barred by limitation and allowed the appeals filed by the assessee. The relevant findings recorded by the Tribunal read thus:-

“6. We have carefully considered that matter. According to section 61(2)(a) of the HVAT Act, notwithstanding the repeal of the HGST Act, all proceedings including appeals and revision pending under the HGST Act at the commencement of the HVAT Act were to be disposed of by the corresponding authority under the HVAT Act. In the instant cases, the assessment proceedings in question under the HGST Act were pending when the HVAT Act came into force and therefore under the HVAT Act, limitation period prescribed under Section 15 of the HVAT Act became applicable to the said assessment proceedings. The new law of HVAT Act regarding limitation being procedural law also otherwise became applicable to the proceedings pending under the HGST Act. In this view, we are supported by the cases of **Allied Exports & Imports (supra)**, **Balarpur Industries Limited (supra)** and **the Patiala Cooperative Sugar Mills Limited (supra)**. According to section 15(4) of the HVAT Act, limitation period for finalizing best judgment assessment is three years. The HVAT Act came into force on 1.4.2003 and therefore the said limitation period of the years is to be computed from that date for all assessment years prior to 1.4.2003 as in the instant cases. Consequently the limitation period for the assessment in the instant cases ended on 31.3.2006. However, the impugned assessment orders in all the cases were passed by the assessing authority on 26.3.2009 i.e. long after the expiry of limitation. This issue is fully covered in favour of the assessee by the case of **Pawan Kumar Vijay Kumar (supra)**. When the impugned orders of the assessing authority are hit by limitation, impugned order of the first appellate authority automatically goes.

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7. The impugned assessment orders are not saved from the bar of limitation due to pendency of writ petition filed by the assesses in Hon'ble High Court in the matter of grant of tax concession. Contention on behalf of the state in this regard is not tenable. Admittedly, in the writ petition, Hon'ble High Court by interim order had stayed only the recovery of tax as arrears of land revenue but had not stayed the assessment proceedings. On the other hand, the impugned assessment orders were also passed during the pendency of said writ petition and not after decision. Both the authorities below have rather themselves observed in the impugned orders that the assessment or appellate proceedings had not been stayed by the Hon'ble High Court and the same could, therefore be finalized/disposed of. Thus it cannot be said that pendency of the writ petition as an obstacle in passing the impugned assessment orders. In the absence of any stay against the passing of final assessment order, limitation period for passing the assessment orders did not cease to operate or get extended merely due to pendency of the aforesaid writ petition. The impugned assessment orders were passed long after the expiry of imitation period as already discussed. Contention raised on behalf of the state to save the said orders from the bar of limitation is completely unacceptable."

19. Adverting to the judgments relied upon by the learned counsel for the appellant-revenue, it may be noticed that in **Khazan Chand Nathi Ram's** case (supra), it was held that Section 61(2) of the HVAT Act does not give any retrospective effect to the provisions of the Act either expressly or by necessary implication. Sub section (2) of Section 61 of the HVAT Act contemplates transfer of pending proceedings pertaining to applications, appeals, revisions or other proceedings to the authorities constituted under the HVAT Act and to be disposed of by the authorities so constituted. It was further recorded that since expressly or by necessary intendment, no retrospective effect is sought to be given, 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 which 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. In **Mahabir Techno Limited's** case (supra), the notices issued under Section 40 of the HGST Act for certain assessment years for suo moto revision of assessment were challenged. The plea taken by the petitioner was that the language in Section 40 of the said Act suggests that no order shall be revised after the expiry of period of five years from the date of the order. Learned counsel for the State submitted that the matter had been remitted back by the Apex Court to consider the issue as to whether the period as provided under the Act was the outer limit for conclusion of revisional proceedings or for initiation thereof. After examining the relevant statutory provision and the case law on the point, it was held by this Court that in case of failure on the part of the assessee to file return or respond to a notice, the

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assessing authority may proceed to assess to the best of his judgment within five years after the expiry of such period which would mean initiation of proceedings. It was concluded that the proceedings have to be concluded with the passing of the order. It is not merely initiation of proceedings for revision. In these cases, the factual position being different, the same cannot be of any advantage to the learned counsel for the appellant-revenue.”

Learned counsel for the appellant states that the aforesaid judgment has been followed by the Haryana Tax Tribunal, Chandigarh in **M/s Indian Oil Corporation Ltd. vs. State of Haryana**, STA 245/2008-09 (decided on 03.08.2017) and by applying the ratio of the same, the appeal was allowed keeping in view that after coming into force the Haryana VAT Act, the limitation period for making assessment for the year 2002-2003 had to be completed within three years from the date of assessment order and if, the assessment order was passed beyond the period of three years, it was illegal and void.

In the present case, the assessment order for the year 2002-2003 has been passed on 19.03.2007 (Annexure A-1). As per the above said judgments, period of three years would expire in the year 2006. However, this order in itself was beyond the period of limitation. Apart from this fact, the revisional authority, while exercising its powers under the Haryana General Sales Tax Act, 1973, had issued notice for revising the assessment order. On the date of issuing this notice, the authorities under the Haryana VAT Act had no jurisdiction to revise the order, as no assessment proceedings were pending when the order of revision was passed/issued. Once, Haryana VAT Act had come into force, the authorities could not issue the said notice, as the jurisdiction to issue such notice has not been saved in the saving clause under Section 61 (2) of the Haryana Value Added Tax Act, 2003.

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Hence, by applying the ratio of the aforesaid judgments on the facts of the present case, the impugned orders are held to be without jurisdiction. Since the assessment order was passed under the Haryana General Sales Tax Act, no proceedings could be initiated after coming into force the Haryana VAT Act, as has been done in the present case. Apart from that, as per the judgment passed in **M/s Frigoglass India Private Limited's** case (supra), the proceedings for the assessment year 2002-2003 had to be completed within a period of three years. However, the assessment order itself has been passed on 19.03.2007 (Annexure A-1).

In view of the above discussion, the present appeals i.e. VATAP Nos.105 of 2018 and 210 of 2018 are allowed and the impugned orders dated 09.10.2017 and 26.05.2008 (Annexures A-4 and A-2) are set aside.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

17.01.2023

ajp

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