
(2014) 05 P&H CK 0307

In the Punjab And Haryana At Chandigarh

Case No : VAT Appeal Nos. 15, 16 and 40 of 2013 (OandM)

Bharat Heavy Electricals Limited

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 06-05-2014

Acts Referred:

Central Sales Tax Act, 1956 — Section 6(2), 6(2)(a)
Haryana Value Added Tax Act, 2003 — Section 15(3), 34, 36

Citation : (2014) 76 VST 482

Hon'ble Judges : Jaspal Singh, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Sandeep Goyal, Advocate for the Appellant; Tanisha Peshawaria, Deputy Advocate-General, Advocate for the Respondent

Judgement

Ajay Kumar Mittal, J.—C.M. No. 2955 CII of 2013--The delay in filing the appeal is condoned. CM stands disposed of.

VAT AP No. 15 of 2013

This order shall dispose of VAT Appeal Nos. 15, 16 and 40 of 2013 as according to the learned counsel for the parties, the issue involved therein is identical. However, the facts are being extracted from ITA No. 15 of 2013.

2. VAT Appeal No. 15 of 2013 has been preferred by the assessee under section 36 of the Haryana Value Added Tax Act, 2003 (in short, "the Act") against the order dated June 14, 2012, annexure A-4 passed by the Haryana Tax Tribunal (in short, "the Tribunal") in Sales Tax Appeal No. 171 of 2011-12 for the assessment year 2003-04. Vide C.M. No. 8355 CII of 2014, the following amended substantial questions of law have been proposed to be raised:

"(i) Whether, on the facts and circumstances of the case, the notification issued prior to the introduction of the Haryana VAT Act could confer the valid jurisdiction on an officer to exercise the revisional power?

(ii) Whether the learned Commissioner in revision enjoys the supervisory jurisdiction to examine the order passed by the Assessing Officer to the extent as to whether the order passed by taxing authority is correct or not?"

CM stands allowed. The amended substantial questions of law are taken on record.

3. Briefly, the facts relevant for the decision of the controversy involved as available on the record of VATAP No. 15 of 2013 may be noticed. The assessee is a Government of India undertaking engaged in the business of manufacturing and sale of heavy machineries. It is one of the largest engineering and manufacturing companies in India in terms of turnover. It is also engaged in the design, engineering, manufacturing, construction, testing, commissioning and servicing of wide range of products and services for the core sections of economy, i.e., power, transmission, industry, transportation, renewable energy, oil and gas and defence. During the assessment year 2003-04, the assessee was engaged in the business of power house erection in the State of Haryana. It executed a contract for Haryana Power Generation Corporation Limited, Panipat. It filed its returns in accordance with law and assessment was framed under section 15(3) of the Act. The assessing authority passed the order dated March 12, 2007, annexure A1 and calculated excess tax of Rs. 6,11,83,911 which was required to be refunded to the appellant-company. At the time of passing this order, the assessing authority had specifically allowed the sales made against forms E1 and E2 and gave a categorical finding that the goods had been sold while those were in transit and were thus exempt under section 6(2)(a) of the Central Sales Tax Act, 1956 (in short, "the CST Act"). The said case was taken up for revision by the Joint Excise and Taxation Commissioner (Range)-cum-revisional authority, Faridabad (in short, "the JETC") who issued a notice dated February 6, 2009 to the appellant as to why exemption claim under section 6(2) of the CST Act be not disallowed. Vide order dated June 24, 2011, annexure A-2, the revisional authority reversed the exemption allowed under section 6(2) of the Act by the Assessing Authority. The expenses of labour and services were restricted to 25 per cent of the total turnover without giving any reason. Aggrieved by the order, the assessee filed appeal before the Tribunal challenging the order of the revisional authority on jurisdictional issues as well as on merits. Vide order dated June 14, 2012, annexure A4, the Tribunal remanded the matter to the revisional authority in view of the fact that the revisional authority had not recorded its satisfaction as to whether the order revised by him was prejudicial to the interest of the Revenue or not and as such the basic condition under section 34 of the Act was not fulfilled. Hence the instant appeals by the assessee.

4. We have heard learned counsel for the parties and perused the record.

5. The learned counsel for the assessee submitted that the Act came into operation on April 1, 2003 whereas notification was issued by the State Government on March 31, 2003 whereby under sub-section (2) of section 34 of the Act, power had been conferred on various authorities to exercise revisional

jurisdiction. According to the learned counsel, once the Act came into operation with effect from April 1, 2003, no valid notification could have been issued on March 31, 2003. Relying upon sub-sections (6) and (9) of section 36 of the Act, it was argued that though this point was not raised before the Tribunal but the same arises in the appeal and therefore the same can be urged before this court. Reliance was placed on order dated January 13, 2014 passed in H.M. Mehra Vs. State of Haryana, .

6. The primary issue that arises for consideration in this appeal is that whether the revisional power was properly conferred on the JETC or not.

7. The matter is no longer res integra. This court while delving into identical issue in VATAP No. 102 of 2013 (H.M. Mehra Vs. State of Haryana, after discussing certain provisions of the Act set aside the order passed by the Tribunal and referred the matter back to it to adjudicate the same after hearing counsel for the parties in respect of the issues raised in accordance with law. In view of the above, the order dated June 14, 2012, annexure A-4 passed by the Tribunal is set aside. The matter is remanded to the Tribunal to adjudicate the same after hearing learned counsel for the parties in respect of the issues raised in accordance with law. All the three appeals stand disposed of accordingly.