(2014) 08 P&H CK 0061

In the Punjab And Haryana At Chandigarh

Case No : V.A.T. Appeal Nos. 132 and 162 of 2013 (O&M)

H.R. Steels P. Limited — APPELLANT

Vs

State of Haryana — RESPONDENT

Date of Decision : 19-08-2014

Acts Referred:

Haryana Value Added Tax Act, 2003 — Section 14, 15, 15(1), 34, 35

Citation : (2015) 77 VST 192

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

Bench : Division Bench

Advocate : Rajiv Agnihotri, Advocates for the Appellant; Mamta Singla Talwar, Additional Advocate-General, Advocates for the Respondent

Judgement

Ajay Kumar Mittal, J.—This order shall dispose of VATAP Nos. 132 and 162 of 2013, as according to the learned counsel for the parties, the facts and the issues involved are similar. However, the facts are being extracted from VATAP No. 132 of 2013. VATAP No. 132 of 2013 has been preferred by the assessee under section 36 of the Haryana Value Added Tax Act, 2003 (in short, "the HVAT Act") against the orders dated June 13, 2008, March 5, 2009 and May 8, 2013, annexures A3, A5 and A7, respectively passed by the authorities below for the assessment year 2003-04, claiming following substantial questions of law:

"(i) Whether, in the facts and circumstances of the case, the Haryana Tax Tribunal was not wrong in not allowing the appeal on preliminary objection raised by the appellant that the revisional proceedings are barred by limitation?

(ii) Whether, in the facts and circumstances of the case, the Haryana Tax Tribunal was not wrong in not appreciating the provision of section 15(1) of the Haryana Value Added Tax Act, 2003 read with rules 27(3) of the Rules?

(iii) Whether, in the facts and circumstances of the case, the Tribunal was not wrong in not appreciating provisions of review in section 35 of the Act and in passing a mechanical order?"

2. A few facts relevant for the decision of the controversy involved, as narrated in VATAP No. 132 of 2013 may be noticed. The appellant is a company registered under the Companies Act, 1956. It is also registered under the HVAT Act as well as the Central Sales Tax Act, 1956 (CST Act). It is engaged in the manufacturing and trading of iron and steel. The annual return was filed on November 19, 2004. Assessment for the assessment year 2003-04 was framed as deemed assessment vide order dated November 30, 2004 with the filing of the annual return in form R2 in view of rule 27(3) of the Haryana Value Added Tax Rules, 2003 (in short, "the HVAT Rules"). A formal order was passed on November 25, 2005, annexure A1 under section 15(1) of the Act as deemed assessment. Thus the assessment was framed in accordance with the returns filed by the dealer and as per turnover disclosed, as deemed assessment with the filing of annual return. Thereafter, the revisional authority took up the matter suo motu and issued notice dated January 30, 2007, annexure A2, alleging certain irregularities and improprieties. The assessee filed submissions but the revisional authority passed order dated June 13, 2008, annexure A3, against the appellant and communicated the same to the appellant on July 1, 2008. Aggrieved by the order, the appellant filed an appeal before the Tribunal. The appellant raised preliminary objection regarding limitation and jurisdiction of the revisional authority to pass order beyond the provisions of law on the subject. The Tribunal vide order dated March 17, 2009, annexure A5, rejected the preliminary objection. The appellant filed review petition before the Tribunal which was also rejected vide order dated May 8, 2013, annexure A7. Hence the instant appeals by the assessees.

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

4. The issue that arises for consideration is whether the revisional authority had initiated action under section 34 of the HVAT Act within the period of limitation of three years.

5. The learned counsel for the appellant submitted that the annual return in the present case was filed on November 19, 2004 relating to the assessment year 2003-04. It was urged that the assessment order, annexure A1, passed on November 25, 2005 was non est as no notice under sub-section (2) of section 15 of the HVAT Act was issued and in such a situation, the filing of the return was the assessment order in terms of section 15(1) of the HVAT Act. The period of three years for invoking revisional jurisdiction reckoned from November 19, 2004, i.e., the date of filing of return and deemed assessment, would render the revisional proceedings barred by limitation.

6. On the other hand, learned counsel for the State supported the order passed by the Tribunal.

7. It would be apt to refer to relevant statutory provisions, i.e., sections 15 and 34 of the HVAT Act and rule 27 of the HVAT Rules:

"S. 15. Assessment of registered dealer.--(1) The returns furnished by a dealer shall be duly acknowledged in the manner prescribed, and where all the returns relating to an assessment year have been filed and are complete in material particulars, the dealer shall, subject to the provisions of sub-section (2), be deemed to have been assessed for that year:

Provided that where the returns are not complete in material particulars, the dealer shall be given an opportunity to complete them.

Explanation.--A return is complete in material particulars if it contains the information required to be furnished therein, is correct arithmetically, accompanied with the statutory lists, documents and proof of payment of tax due according to the return in full and is duly signed by the dealer.

(2) Subject to the rules which the State Government may frame for selection of cases for scrutiny in respect of dealers required to file returns under sub-section (2) of section 14, the assessing authority shall, in respect of each selected case, serve on the dealer concerned the prescribed notice in the prescribed manner requiring him, on a date and at a place specified therein, either to attend in person or to produce or to cause to be produced any evidence on which such dealer may rely in support of the returns filed by him relating to the period under assessment (hereinafter referred to in this section as ''assessment period''):

Provided that the assessment period covered by a notice referred to in the foregoing provision shall not exceed one year and such notice shall be served on the dealer before the expiry of one year from, the last date prescribed for filing the last return relating to the assessment period or, the actual date when any return relating to the assessment period has been filed last, whichever is later.

(3) to (7) . . .

S. 34. Revision.--(1) The Commissioner may, on his own motion, call for the record of any case pending before, or disposed of by, any taxing authority for the purposes of satisfying himself as to the legality or to the propriety of any proceeding or of any order made therein which is prejudicial to the interests of the State and may, after giving the persons concerned a reasonable opportunity of being heard, pass such order in relation thereto as he may think fit:

Provided that no order passed by a taxing authority shall be revised on an issue which on appeal or in any other proceeding from such order is pending before, or has been settled by, an appellate authority or the High Court or the Supreme Court, as the case may be:

Provided further that no order shall be revised after the expiry of a period of three years from the date of the supply of the copy of such order to the assessee except where the order is revised as a result of retrospective change in law or on the basis of a decision of the Tribunal in a similar case or on the basis of law declared by the High Court or the Supreme Court.

(2) . . .

R. 27. Selection of cases for scrutiny and deemed assessment.--(1) The following categories of cases may be taken up for scrutiny,

(i) gross turnover exceeding five hundred lakh rupees in a year;

(ii) claim of input tax exceeding ten lakh rupees in a year;

(iii) claim of refund exceeding three lakh rupees in a year;

(iv) claim of sales made in the course of inter-State trade and commerce or in the course of export of goods out of the territory of India or in the course of import of goods into the territory of India exceeding twenty five lakh rupees in a year;

(v) cases of industrial units availing any tax concession under clause (d) of sub-section (2) of section 61 till such units are subject to the relevant provisions in the 1975 Rules;

(vi) fall in gross turnover or payment of tax compared to last year;

(vii) claim of sale, purchase or consignment of goods not matching with the accounts of the other party to the transaction;

(viii) exception cases in which ratio between purchases and sales or between input tax and output tax or between stocks and sales is way out of the general trend in the trade or industry;

(ix) cases based on definite intelligence about evasion of tax;

(x) cases selected at random;

(xi) cases of any particular trade or trades which the Commissioner may select; and

(xii) cases in which the dealer fails to complete the return(s) in material particulars after being given an opportunity for the same.

(2) The Commissioner may, with the approval of the State Government, change the criteria laid down in sub-rule (1) for selection of cases for scrutiny. Any change made in the criteria shall be publicised by uploading on the website.

(3) Save the cases selected for scrutiny under sub-rule (1), all other cases shall be deemed to have been assessed to tax under sub-section (1) of section 15 and in respect of such cases acknowledgment of the annual return shall be deemed to be the copy of the assessment order:

Provided that in respect of cases covered under the proviso to sub-section (1) of section 15, the assessing authority shall, after the required documents have been furnished to him and/or arithmetical mistake, if any, has been corrected and tax due, if any, as a result thereof has been paid, pass an order recording his satisfaction about the completeness of the relevant returns in material particulars and supply a copy of such order to the dealer concerned.

(4) . . ."

8. Under sub-section (1) of section 15 of the HVAT Act, the returns filed by the dealer are duly acknowledged in the prescribed manner and subject to provisions of sub-section (2) shall be deemed to have been assessed for that year. Sub-section (2) of section 15 provides that the cases may be selected for scrutiny as per rules framed by the State Government and a notice shall be served in the prescribed manner for producing the record and the evidence in support of the returns. It further provides that assessment period covered by such notice shall not exceed one year and shall be served on the dealer before the expiry of one year from the last date prescribed for riling the last return relating to the assessment period or the actual date of filing of the last return, whichever is later.

9. Section 34 of the HVAT Act empowers the Commissioner to suo motu exercise revisional jurisdiction. He can call for the record of any pending case or disposed of to satisfy himself about the legality or proprietary of any proceedings or of any order made which is prejudicial to the interests of the Revenue. A reasonable opportunity of hearing is to be provided to the concerned person before passing the order. It has also been provided that the revisional jurisdiction can be exercised within three years from the date of supply of the copy of the order to the assessee. The period of limitation of three years shall not be applicable where the jurisdiction is being invoked as a result of retrospective amendment in law or on the basis of decision of the Tribunal, High Court or the Supreme Court. However, the revisional jurisdiction cannot be exercised on an issue where an appeal or any other proceedings are pending or settled by an appellate authority or the High Court or the Supreme Court.

10. Rule 27 of the HVAT Rules prescribes the categories of cases which may be taken up for scrutiny. The criteria for selection of cases for scrutiny can be changed by the Commissioner with the approval of the State Government and the same shall be published by uploading on the website in terms of sub-rule (2) of rule 27. Under sub-rule (3) of rule 27, where the case has not been selected for scrutiny under sub-rule (1), it shall be deemed to have been assessed to tax under sub-section (1) of section 15 of the HVAT Act and the copy of acknowledgment of the annual return, shall be deemed to be the copy of the assessment order. However, so far as returns covered by proviso to section 15(1) are concerned, the Assessing Officer shall pass an order recording his satisfaction about the completeness of the relevant returns and supply a copy of the order to the dealer. A combined reading of the aforesaid shows that wherever the return has been filed and which is complete in all respects, the acknowledgment issued to the assessee would be deemed to be an assessment order. It was not disputed by the learned State counsel that no notice under sub-section (2) of section 15 of the HVAT Act was issued for scrutiny of the return to the dealer. In such a situation, the State counsel was unable to explain and justify as to how the order on November 25, 2005 came to be passed and what was the nature of the same. Thus, it could not be termed to be a valid assessment order. Once the

acknowledgment is deemed to be assessment order as discernible from section 15(1) of the HVAT Act in the present case which is dated November 19, 2004, limitation for passing order under section 34 of the HVAT Act was up to November 30, 2007, i.e., three years from the last date of November 30, 2004 of filing the return for the assessment year 2003-04. The same having been passed on June 13, 2008 was clearly beyond limitation. The Tribunal was thus in error in holding that the order passed on June 13, 2008 was within limitation. The substantial questions of law are answered against the State and in favour of the assessee. The appeals stand allowed.

