
(2014) 02 P&H CK 0204

In the Punjab And Haryana At Chandigarh

Case No : VATAP Nos. 110 to 113, 117 to 120, 127 and 147 to 151 of 2013 (O and M)

State of Punjab

APPELLANT

Vs

Patiala Cooperative Sugar Mills Limited

RESPONDENT

Date of Decision : 26-02-2014

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 10, 11, 11(1), 11(3), 20
Punjab Value Added Tax Act, 2005 — Section 68

Citation : (2014) 76 VST 217

Hon'ble Judges : Anita Chaudhry, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Radhika Suri, Additional Advocate-General, Advocate for the Appellant; G.R. Sethi, M.R. Sharma and S.K. Mukhi, Advocate for the Respondent

Judgement

Ajay Kumar Mittal, J.—The delay in filing VATAP Nos. 110 to 113, 117 to 120 and 127 of 2013 is condoned. This order shall dispose of a bunch of 14 appeals; i.e., VATAP Nos. 110 to 113, 117 to 120, 147 to 151 and 127 of 2013, as learned counsel for the parties are agreed that the issue involved in "all these appeals is identical. However, the facts are being extracted from VATAP No. 110 of 2013.

2. VATAP No. 110 of 2013 has been preferred by the State under section 68 of the Punjab Value Added Tax Act, 2005 (in short, "the Act") against the order dated March 11, 2013, annexure A5 passed by the Value Added Tax Tribunal, Punjab (in short, "the Tribunal"), claiming following substantial questions of law:

"(i) Whether the order passed by the learned Tribunal is sustainable in law?

(ii) Whether, the order passed by the learned Tribunal by relying upon the judgment of this honourable court in the case of Shubh Timb Steels Limited Vs. The State of Punjab, is sustainable in law when in the present case, the respondent had intentionally withheld the legitimate purchase tax due to be deposited along with the returns?

(iii) Whether the learned Tribunal had rightly allowed the appeal of the respondent when the amendment dated April 20, 1998 is applicable with effect from the date of notification, i.e., prospectively and not retrospectively?

(iv) Whether the dealer is entitled to relief of legitimate tax payable by the respondent voluntarily along with the returns, but avoided its payment willfully, solely on the ground of limitation?

(v) Whether the respondent is entitled to pocket the purchase tax withheld intentionally but while selling their finished products and by-products the said element was kept in mind and added the same in the sale price of particular item produced out of sugarcane which had ultimately been encashed by the respondent?"

3. Briefly, the facts necessary for adjudication of the controversy involved as narrated in VATAP No. 110 of 2013 are that the respondent-dealer is engaged in manufacturing of sugar, molasses, press mud, etc. It has been authorized to purchase various goods for use in the manufacture of these goods. The sugarcane is the main raw material. It filed its quarterly returns for the year 1989-90 in accordance with the provisions of section 10 of the Punjab General Sales Tax Act, 1948 (in short, "the PGST Act") read with rule 20 of the Punjab General Sales Tax Rules, 1949 (in short, "the PGST Rules") but did not deposit the purchase tax leviable on the purchase of sugarcane along with the returns. Accordingly, notice under section 11 of the PGST Act was issued to the respondent by the Assessing Authority. The file was transferred to the Assistant Excise and Taxation Commissioner (Insp.) (AETC) by the Excise and, Taxation Commissioner, Punjab vide order dated December 12, 2002. The respondent appeared along with its books of account. As per the returns, the respondent had shown the purchase of sugarcane to the tune of Rs. 5,77,18,035 on which purchase tax payable at the rate of 8.8 percent, comes to Rs. 50,79,187, which was payable by the respondent along with the returns. Since the respondent did not deposit the purchase tax along with the returns, it was determined by way of framing assessment for the year 1989-90 by the AETC under section 11 of the PGST Act vide order dated August 29, 2003 creating an additional demand of Rs. 51,75,730 including the demand of Rs. 50,79,187 on account of purchase tax leviable on the purchase of sugarcane. The assessment order along with demand notice was sent to the respondent to deposit the amount within 30 days from the date of the order. The respondent instead of depositing the amount filed appeal under section 20 of the Act before the Deputy Excise and Taxation Commissioner (DETC), which was dismissed vide order dated May 20, 2005, annexure A3. The respondent filed second appeal before the Tribunal which was accepted vide order dated March 11, 2013, annexure A5, on the ground of limitation holding that after the expiry of five years, the assessing authority did not have the jurisdiction to frame the assessment. Hence the instant appeals by the State.

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

5. The learned counsel for the appellants submitted that the issue which arises for consideration in these appeals is whether the assessment which has been framed beyond the period of three years from March 3, 1998 when Ordinance No. 1 of 1998 had been promulgated by the State of Punjab whereby limitation period of three years had been prescribed by it for framing of assessment, the same would not be applicable relating to the assessment year and period prior to March 3, 1998. Learned counsel further argued that the longer period of limitation is an accrued right and it cannot be taken away by any amendment which is procedural in nature. Reference was made to judgments in *The Indian Aluminium Cables Ltd. and Another Vs. The Excise and Taxation Officer and Another*, *T. Kaliamurthi and Another Vs. Five Gori Thaikal Wakf and Others*, *Thirumalai Chemicals Limited Vs. Union of India (UOI) and Others*, and CWP No. 16890 of 1995, *Sadhu Singh Hamdard Trust Vs. Assistant Commissioner of Income Tax and Another*, decided on July 4, 2013.

6. The learned counsel for the assessee on the other hand submitted that once the period of limitation for framing of assessment of three years was prescribed by Ordinance No. 1 of 1998 dated March 3, 1998, which was replaced by Punjab Act 12 of 1998 published on April 20, 1998, any assessment framed for assessment years prior thereto after the expiry of three years from the last date prescribed for furnishing the last return in respect of such period, i.e., April 30, 1998 would be barred by time after April 30, 2001. Reliance was placed on judgments in *Addl. Commissioner (Legal) and Another Vs. M/s. Jyoti Traders and Another*, *Black Stone Rubber Industrial Pvt. Ltd. v. State of Rajasthan [2001] 124 STC 130 (Raj.)* and *Ballarpur Industries Limited v. State of Punjab [2010] 35 PHT 5 (P & H)*.

7. The primary issue that arises for consideration in these appeals is whether in view of amendment of section 11 of the Punjab General Sales Tax Act, 1948 (in short, "the 1948 Act") by Ordinance of 1998 issued and effective from March 3, 1998 which was replaced by Punjab Act 12 of 1998 published on April 20, 1998 whereby limitation of three years for completion of the assessment has been prescribed, any assessment order for assessment years up to 1997-98 can be passed after April 30, 2001.

8. In order to appreciate the controversy in its true perspective, it would be apposite to refer to the unamended provisions of section 11(1), (2) and (3) of the 1948 Act and the amended provisions whereby amendment has been made in the provisions by Ordinance of 1998 issued on March 3, 1998 which was replaced by Punjab Act 12 of 1998 published on April 20, 1998.

Section 11(1), (2) and (3) (unamended)

"(1) If the Assessing Authority is satisfied without requiring the presence of dealer or the production by him of any evidence that the returns furnished in respect of any period are correct and complete, he shall assess the amount of tax due from the dealer on the basis of such returns.

(2) If the Assessing Authority is not satisfied without requiring the presence of dealer who furnished the returns or production of evidence that the returns furnished in respect of any period are correct and complete, he shall serve on such dealer a notice in the prescribed manner requiring him, on a date and at 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 such returns.

(3) On the day specified in the notice or as soon afterwards as may be, the Assessing Authority shall, after hearing such evidence as the dealer may produce, and such other evidence as the Assessing Authority may require on specified points, assess the amount of tax due from the dealer."

Section 11(1), (2) & (3) (amended)

"(1) If the Assessing Authority is satisfied without requiring the presence of dealer or the production by him of any evidence that the returns furnished in respect of any period are correct and complete, he shall pass an order of assessment on the basis of such returns within a period of three years from the last date prescribed for furnishing the last return in respect of such period.

(2) If the Assessing Authority is not satisfied without requiring the presence of dealer who furnished the returns or productions of evidence that the returns furnished in respect of any period are correct and complete, he shall serve on such dealer a notice in the prescribed manner requiring him, on a date and at 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 such returns.

(3) On the day specified in the notice or as soon as afterwards as the Assessing Authority shall, after hearing such evidence as the dealer may produce, and such other evidence as the Assessing Authority may require on specified points, pass an order of assessment within a period of three years from the last date prescribed for furnishing the last return in respect of any period."

9. There is no dispute that prior to the amendment of provisions of section 11 of the PGST Act with effect from March 3, 1998 there was no limitation prescribed for assessing the amount of tax due from the dealer on the basis of returns where the Assessing Officer was satisfied that the returns furnished by the dealer were correct and complete. There was also no limitation provided for the assessing authority to assess the dealer under sub-section (3) of section 11 after issuance of statutory notice in the prescribed form under sub-section (2) of section, 11 of the Act and consideration of evidence produced by the dealer and the evidence which the assessing authority may require the dealer to produce if he was not satisfied with the returns filed by the dealer. However, the position was changed with effect from March 3, 1998 which provided that the assessing authority was required to pass an order of assessment, on the basis of returns filed within a period of three years from the last date prescribed for furnishing the last return in respect of such return for both assessment of tax due under sub-section (1) as well as sub-section (3) of section 11 of the PGST Act. Sub-

section (2) of section 11 of the Act remains unamended. Under sub-section (2), wherever the Assessing Officer is not satisfied that return furnished by the assessee is correct and complete and his presence would be required for production of evidence relying in support of such" return, shall serve a notice on such dealer requiring him to produce the relevant material on a date and place, specified therein to substantiate the return.

10. Rule 20 of the PGST Rules prescribes that every registered dealer shall furnish return in form VIII quarterly within thirty days from the expiry of the quarter where the tax due is" deposited in cash into the Government treasury or within twenty days from the expiry of each quarter where payment of tax due is by crossed cheque or bank draft. Under the proviso, a registered dealer exclusively dealing in goods liable to tax at the first stage of the sale and has paid the tax on the purchase of such goods within the State of Punjab shall furnish return in form VIII annually within thirty days of the expiry of each year. Further/it has been provided that where a registered dealer has turnover below rupees two lacs in a year shall furnish return in form ST VIII (in pink colour) annually within thirty days of the expiry of each year. Rule 20 reads thus:

"Every registered dealer shall furnish returns in form ST VIII quarterly within a period of thirty days from the expiry of each quarter, if the amount of tax due as per returns is deposited in cash into, the Government Treasury, or, the Reserve Bank of India; and within a period of twenty days from the expiry of each quarter, if the amount of tax due is only paid through crossed cheque or bank draft, as the case may be, drawn on a local Scheduled Bank in favour of Assessing Authority at the District Excise and Taxation office:

Provided that a registered dealer dealing exclusively in goods liable to tax at the first stage of sale and who has paid tax on the purchase of such goods within the State of Punjab shall furnish returns in form ST VIII annually within thirty days of the expiry of each year:

Provided further that a registered dealer whose gross turnover does not exceed two lacs rupees in a year shall furnish return in form ST VIII (in pink colour) annually within thirty days of the expiry of each year. Authority may, for reasons to be recorded in writing, fix monthly returns for a dealer who would otherwise be required to furnish returns quarterly under these rules and such order shall remain in force for a period of one year whereafter the Assessing Authority shall review the case of each such dealer:

Provided that the Commissioner may, with the prior approval of the Government in each case, fix monthly returns for a group or class of dealers."

11. It is well-settled that law, of limitation is a procedural law and operates retrospectively unless, it has been provided differently in the, amending statute. In other words, unless there is a contrary intention manifested by express or necessary implication of the legislation itself, procedural law is generally retrospective. Procedural Jaw is not a substantive right and its object is not to

create any right but to prescribe periods within which legal proceedings be initiated or completed for enforcement of rights existing under substantive law. Statutes of limitation are thus retrospective insofar as they apply to all legal proceedings brought after their operation for enforcing cause of action accrued earlier. The apex court in *Thirumalai Chemicals Limited Vs. Union of India (UOI) and Others*, , dealing with law of limitation has succinctly laid down as under (page 391 in 163 Comp Cas.):

"19. Law of limitation is generally regarded as procedural and its object is not to create any right but to prescribe periods within which legal proceedings be instituted for enforcement of rights which exist under substantive law. On expiry of the period of limitation, the right to sue comes to an end and if a particular right of action had become time-barred under the earlier statute of limitation the right is not revived by the provision of the latest statute. Statutes of limitation are thus retrospective insofar as they apply to all legal proceedings brought after their operation for enforcing the cause of action accrued earlier, but they are prospective in the sense that they neither have the effect of reviving the right of action which is already barred on the date of their coming into operation, nor do they have effect of extinguishing a right of action subsisting on that date. Bennion on Statutory Interpretation, Fifth Edition (2008), page 321 while dealing with retrospective operation of procedural provisions has stated that provisions laying down limitation periods fall into a special category and opined that although prima facie procedural, they are capable of effectively depriving persons of accrued rights and therefore they need be approached with caution."

12. Thus, the effect of the amendment by Ordinance dated March 3, 1998 which was replaced by Punjab Act 12 of 1998 published on April 20, 1998 would be that the amended provisions prescribing limitation would operate retrospectively and would govern all assessments pending relating to periods before the amendment came into operation.

13. Further, once a period of limitation prescribed by law expires, the right to sue or pass an order comes to an end. Resultantly, a vested or an accrued right arises in favour of a party. On expiry of the period of limitation the right to sue comes to an end and if a particular right of action had become time-barred under the earlier statute of limitation the right is not revived by the provision of the latest statute. The statutes of limitation are prospective in the sense that they neither have the effect of reviving the right of action which is already barred on the date of their coming into operation, nor do they have effect of extinguishing a right of action subsisting on that date. The legal position has been enunciated by the apex court in *T. Kaliyamurthi and Another Vs. Five Gori Thaikal Wakf and Others*, as under:

"It is well settled that no statute shall be construed to have a retrospective operation until its language is such that would require such conclusion. The exception to this rule is enactments dealing with procedure. This would mean that the law of limitation, being a procedural law, is retrospective in operation in

the sense that it will also apply to proceedings pending at the time of the enactment as also to proceedings commenced thereafter, notwithstanding that the cause of action may have arisen before the new provisions came into force. However, it must be noted that there is an important exception to this rule also. Where the right of suit is barred under the law of limitation in force before the new provision came into operation and a vested right has accrued to another, the new provision cannot revive the barred right or take away the accrued vested right."

14. Further, the apex court in *Vinod Gurudas Raikar Vs. National Insurance Co. Ltd. and others*, observed as under (pages 614 and 615 in 75 Comp Cas):

"... So far the period of limitation for commencing a legal proceeding is concerned, it is adjectival in nature, and has to be governed by the new Act subject to two conditions. If, under the repealing Act the remedy suddenly stands barred as a result of a shorter period of limitation, the same cannot be held to govern the case, for otherwise, the result will be to deprive to the suitor of an accrued right. The second exception is where the new enactment leaves the claimant with such a short period for commencing the legal proceedings so as to make it impractical for him to avail of the remedy. . ."

15. As noticed before, there was no limitation prescribed under section 11 of the PGST Act for passing an assessment order before the amendment. Therefore, the period of three years prescribed for passing an assessment order would be counted for all those assessment years as per the amended provision effective from March 3, 1998. In other words, in respect of assessment years falling up to 1997-98, no assessment order could be validly passed after April 30, 2001.

16. Identical issue in respect of assessment years prior to amendment of section 11(3) of the PGST Act with effect from March 3, 1998 came up for consideration before this court in *Ballarpur Industries Limited's case* [2010] 35 PHT 5 (P & H), wherein it was held as under:

"29. There is no dispute that prior to the amendment of provisions of section 11 of the PGST Act with effect from March 3, 1998 there was no limitation provided amount of tax due from the dealer on the basis of returns where the Assessing Officer was satisfied with the returns furnished by the dealer. There was also no limitation provided for the assessing authority to assess the dealer under sub-section (3) of section 11 if he was not satisfied with the returns by issuance of statutory notice in the prescribed form under sub-section (2) of section 11 of the Act and consideration of evidence produced, if any. However, the position" was materially altered with effect from March 3, 1998 which provided that the assessing authority was required to pass an order of assessment on the basis of returns within a period of three years from the last date prescribed for furnishing the last return in respect of such return for both assessment of tax due under sub-section (1) as well as sub-section (3) of section 11 of the PGST Act.

30. It is also not disputed that the notices in form ST XIV for the assessment

years 1995-96 and 1996-97 were issued on April 26, 2001 and April 21, 2001, respectively. The assessment orders under section 11(3) assessing demand of tax for a sum of Rs. 18,18,318 and Rs. 10,51,851 for the respective assessment years were passed on July 27, 2001. Therefore, it is not disputed that even if the three years" period of limitation was to be computed with effect from March 3, 1998, the assessment orders for both the assessment years were beyond the period of limitation as per the amended provisions of section 11(3) of the Act. It is also not disputed that the learned Tribunal has on consideration, of, the provisions of the PGST Act and ratio of judgments of cited case law has upheld the contention of the petitioner-dealer that the amended period of limitation provided under sub-section (3) being a piece of procedural law would be applicable to the pending cases like the present case. Learned Tribunal has also held that the assessments made by the Assessing Authority are not legally sustainable. It is also the admitted case of the State that the aforesaid findings of the Tribunal have not been challenged by the Sale Tax Department/Revenue. Thus, we do not consider it necessary to go into the question as to whether the amended provisions of sub-sections (1) and (3) of section 11 providing a period of limitation would apply to the pending assessments for the years prior to March 3, 1998 or not as even if the amended provisions are made applicable prospectively and limitation of three years is assumed to commence with effect from March 3, 1998, admittedly, the assessment orders dated July 27, 2001 are clearly beyond the period of limitation of three years and thus not sustainable in the eyes of law. Hence there is no ascertainment/determination of the amount of tax due for the said two assessment years either by the assessee petitioner-company under sub-section (4) of section 10 or by the, assessing authority under section 11 of the PGST Act.

31. Therefore, in view of the above discussion, we are of the considered opinion that the findings recorded by the learned Tribunal vide its impugned order (annexure P15) that there exists no justification for giving any relief to the petitioner-company even after taking into account the limitation concept on the ground that the petitioner-company cannot be absolved of their liability to pay purchase tax as per their returns by filing misleading statements, cannot be countenanced and thus are set aside. As a sequel thereto, impugned order dated January 30, 2005 (annexure P15) qua the demand of tax for the assessment years 1995-96 and 1996-97 is set aside."

17. Referring to the judgments relied upon by learned counsel for the State, suffice it to notice that there are no two opinions with regard to the legal principles enunciated therein but the factual matrix involved being different, the same do not help the proposition as canvassed by the State.

18. We now proceed to examine the facts involved in the present case. The assessment year involved herein is 1989-90. The assessment under section 11(3) of the PGST Act was framed on August 29, 2003 which is clearly beyond the period of limitation of three years from the date of amendment and thus not

sustainable in the eyes of law.

19. In view of the above, the issue is decided against the appellant and in favour of the assessee. The substantial questions of law stand answered accordingly. Accordingly, finding no merit in these appeals, the same are hereby dismissed.