2017 INSC 936

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 10792-10794 OF 2011

THE STATE OF HARYANA AND OTHERS ....APPELLANT(S)

VERSUS

HINDUSTAN CONSTRUCTION
COMPANY LTD. ....RESPONDENT(S)

WITH

CIVIL APPEAL NO(s).10795 OF 2011
CIVIL APPEAL NO(s).10808 OF 2011
CIVIL APPEAL NO(s).10805 OF 2011
CIVIL APPEAL NO(s).10807 OF 2011
CIVIL APPEAL NO(s).10804 OF 2011
CIVIL APPEAL NO(s).10796 OF 2011
CIVIL APPEAL NO(s).10801-10802 OF 2011
CIVIL APPEAL NO(s).10815-10816 OF 2011
CIVIL APPEAL NO(s).10806 OF 2011
CIVIL APPEAL NO(s).10810 OF 2011
CIVIL APPEAL NO(s).10803 OF 2011
CIVIL APPEAL NO(s).10799 OF 2011
CIVIL APPEAL NO(s).10812 OF 2011
CIVIL APPEAL NO(s).10798 OF 2011
CIVIL APPEAL NO(s).10797 OF 2011
CIVIL APPEAL NO(s).10800 OF 2011
CIVIL APPEAL NO(s).10820 OF 2011
CIVIL APPEAL NO(s).10811 OF 2011
CIVIL APPEAL NO(s).10813 OF 2011
CIVIL APPEAL NO(s).10814 OF 2011
CIVIL APPEAL NO(s).10809 OF 2011
CIVIL APPEAL NO(s).10817-10818 OF 2011
CIVIL APPEAL NO(s).10824 OF 2011

CIVIL APPEAL NO(s).10830 OF 2011
CIVIL APPEAL NO(s).10829 OF 2011
CIVIL APPEAL NO(s).10828 OF 2011
CIVIL APPEAL NO(s).10826-10827 OF 2011
CIVIL APPEAL NO(s).10825 OF 2011
CIVIL APPEAL NO(s).10821-10823 OF 2011
CIVIL APPEAL NO(s).10831 OF 2011
CIVIL APPEAL NO(s).10837 OF 2011
CIVIL APPEAL NO(s).10833 OF 2011
CIVIL APPEAL NO(s).10832 OF 2011
CIVIL APPEAL NO(s).10834-10835 OF 2011
CIVIL APPEAL NO(s).10840-10841 OF 2011
CIVIL APPEAL NO(s).10838-10839 OF 2011

JUDGMENT

NAVIN SINHA, J.

The common question of law arising for consideration in this batch of appeals is whether the exercise of revisional power under Section 40 of the Haryana General Sales Tax Act, 1973 (hereinafter referred to as 'the Act of 1973') after its repeal on 1.4.2003, by the Haryana Value Added Tax, 2003 (hereinafter referred to as 'the Act of 2003'), is sustainable. The appeals have, therefore, been heard together and are being disposed by a common order.

2. The facts, for better appreciation, shall be culled out from Civil Appeal Nos.10792-10794 of 2011. The sales tax assessment of the respondent, for the assessment year 1998-99, was completed and refund ordered on 12.05.2000, under the Act of 1973. Subsequently, the former Act was repealed by the Act of 2003 on 01.04.2003. A show cause notice was issued to the respondent on 07.06.2004 regarding the refund ordered earlier, in exercise of suo-moto revisional powers under Section 40 of the Act of 1973. By order dated 12.07.2004, the respondent was held liable for recovery of Rs. 65,35,632/-.

3. The order for recovery having been challenged by the respondent before the High Court, it was held that resort to Section 40 of the Act of 1973, after coming into force of the new Act on 01.04.2003 was unsustainable, as the repeal and saving clause in Section 61 of the Act of 2003, saved only pending proceedings under the former. Since there were no proceedings pending against the respondent under the repealed Act, on the relevant date, the proceedings thereunder

could not be sustained or justified by reference to Section 4 of the Punjab General Clauses Act, 1898.

4. Sh. Manish Paliwal, learned counsel appearing on behalf of the State of Haryana, submitted that the refund having been wrongly obtained, resort to suo-moto revision under Section 40 of the Act of 1973, exercised within the limitation of five years, was justified. The wrong benefit of refund clearly fell within the meaning of the expression privilege, obligation or liability acquired or incurred under the repealed Act, and was therefore saved by Section 4 of the Punjab General Clauses Act, 1898. Relying on ***Raymond Ltd. and Anr. vs. State of Chhattisgarh & Ors.,*** (2007) 3 SCC 79, it was contended that the revisional power conferred on the revenue in a fiscal legislation should not be construed as a stand-alone provision, but as a provision intended to enable the revisional authority to ensure that the assessment had been carried out in accordance with law. The power vested in the revisional authority to correct an error in assessment has a direct nexus with the order of assessment giving finality to the order of the

assessing authority. There is a corresponding obligation and responsibility on the assessee also, and when it is found that the assessment was otherwise then in accordance with law, the power of the revisional authority cannot be restricted in revenue and fiscal matters.

5. Reliance was further placed on ***Swastik Oil Mills Ltd vs. H.B. Munshi, Deputy Commissioner of Sales Tax, Bombay,*** 1968 (2) SCR 492, and ***Gammon India Ltd. vs. Special Chief Secretary and Ors.,*** (2006) 3 SCC 354, in support of the submission that resort to Section 40 of the Act of 1973 was saved by reason of Section 4 of the Punjab General Clauses Act, 1898.

6. Sh. P.H. Parekh, learned Senior Counsel appearing on behalf of the respondent, urged that the impugned order called for no interference. The repeal and saving clause in Section 61 of the Act of 2003 exclusively saved pending proceedings only. The application of the Punjab General Clauses Act,

1898, therefore, stood excluded by the expression of a different intention in the repealing Act. The legislature subsequently amended Section 61 of the Act of 2003, suitably on 02.04.2010.

7. At the outset, it is appropriate to set out the unamended and amended provisions of Section 61 of the Act of 2003 to facilitate better appreciation of issues.

Section 61 of 2003 Act (Before Amendment)	**Section 61 of 2003 Act (After Amendment)**
(1) The Haryana General Sales Tax Act, 1973 (20 of 1973), is hereby repealed :	"(1) The Haryana General Sales Tax Act, 1973 (20 of 1973), is hereby repealed. **Provided that such repeal shall not-** **(a) affect the previous operation of the Act so repealed or anything duly done or suffered thereunder; or** **(b) affect any right, title, privilege, obligation or liability acquired, accrued or incurred under the said Act; or** **(c) affect any act done or any action taken (including any appointment, notification, notice, order, rule, form regulation, certificate) in the**

	exercise of any power conferred by or under the said Act, **and any such act done or any action taken in the exercise of the powers conferred by or under the said Act shall be deemed to have been done or taken in the exercise of the powers conferred by or under the said Act as if this Act were in force on the date on which such act was done or action taken; and all arrears of tax and other amount due at the commencement of this Act may be recovered as if the same had accrued under this Act.**"
(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 were made or preferred;	(2) Notwithstanding anything contained in sub-section (1), - [(a) any application, appeal, revision or other proceedings made or preferred to any officer or 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 the said Act had been in force on the date on which such application, appeal, revision or other proceedings were made or preferred. **Notwithstanding anything to the contrary contained in any judgment, decree or order of any court or other authority, where**

	no review, revision or corrective action could be initiated or finalized in respect of any assessment, order, proceeding under the said Act prior to or after 1st April, 2003, because of judgment or decree of any court or Tribunal and the said assessment or order passed under the said Act had attained finality, the limitation of five years as specified under Section 40 of the said Act shall be deemed to be eight years;"

8. We have considered the respective submissions. A simple repeal of an Act leaves no room for expression of a contrary opinion. However, if the repeal is followed by a fresh enactment on the same subject, the applicability of the General Clauses Act would undoubtedly require an examination of the language in the new enactment to see if it expresses a different intention from the earlier Act. The enquiry would necessitate an examination if the old rights and liabilities are kept alive or whether the new Act manifests an intention to do away with or destroy them. If the new Act

manifests a different intention, the application of the General Clauses Act will stand excluded.

9. There were no proceedings pending against the respondent under the Act of 1973 when the new Act came into force on 01.04.2003. The suo-moto revisional power under Section 40 of the former Act was exercised on 07.06.2004. The repeal and saving clause in Section 61 of the Act of 2003, saved only pending proceedings under the repealed Act. The intendment clearly was that matters which stood closed under the Act of 1973 had to be given a quietus and could not be reopened.

10. The assessment under the Act of 1973 having been completed and refund ordered, the exercise of suo-moto revisional powers under Section 40 of the same after repeal was clearly unsustainable in view of the contrary intention expressed under Section 61 of the Act of 2003, saving only pending proceedings. Section 4 of the Punjab General Clauses

Act, 1858 will have no application in view of the contrary intendment expressed in Section 61 of the repealing Act. Had a contrary intention not been expressed, the issues arising for consideration would have been entirely different. The observations in ***State of Punjab vs. Mohar Singh Pratap Singh,*** (1955) 1 SCR 893, as extracted below are considered relevant:-

> "8…….Whenever there is a repeal of an enactment, the consequences laid down in Section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject we would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them….."

The observations in **Gammon India Ltd.** (supra) at paragraph 73 are to the same effect.

11. The legislature, in its wisdom having noticed the limitation and constraints under Section 61 of the Act of 2003, made necessary amendments to the same by Act No. 3 of 2010 on 02.04.2010. Any interpretation saving the revisional power under Section 40 of the Act of 1973, without any proceedings pending on the relevant date, by resort to Section 4 of the Punjab General Clause Act, 1858 would render the amendment redundant, and an exercise in futility, something which the legislature never intended to do. Such an incongruous interpretation leading to absurdity has to be avoided.

12. In Civil Appeal 10840-10841 of 2011, an additional ground has been urged that the power of review under Section 41 of the Act of 1973 was exercised on 12.8.2003, by the Deputy Excise and Taxation Officer, to review an order of assessment dated 4.3.2002. Section 35 of the new Act vested the power of review in the Tribunal exclusively.

13. The legislative provisions being different in the precedents cited on behalf of the appellants, the same have no relevance to the issue in controversy. The order of the High Court calls for no interference.

14. The appeals, for reasons discussed, lack merit and are dismissed.

.....J.
(Ranjan Gogoi)

.....J.
(Navin Sinha)

New Delhi,
September 15, 2017