

VATAP-264-2018 (O&M)

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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**VATAP-264-2018 (O&M)
Date of decision : 18.07.2025**

Excise and Taxation Commissioner, HaryanaAppellant

Vs.

M/s Gobind Ram Narain Dass and anotherRespondents

**CORAM: HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Ms. Mamta Singla Talwar, Advocate,
for the appellant.

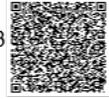
Mr. Sandeep Goyal, Advocate,
for the respondents.

SUDEEPTI SHARMA, J.

1. Present Appeal under Section 36 of the Haryana Value Added Tax Act, 2003, is preferred against order dated 03.07.2017 passed by learned Haryana Tax Tribunal in STA No.34 of 2014-15, which was filed by M/s Gobind Ram Narain Dass, Hisar-respondent No.1.

FACTS NOT IN DISPUTE

2. Brief facts of the case are that assessment of respondent No.1 for the financial year 1996-97 was framed by the Excise and Taxation Officer-cum-Assessing Authority, Hisar, vide order dated 29.03.2005 under the Haryana General Sales Tax Act, 1973 (for short, 'HGST Act'), whereby an additional demand of Rs.12,25,914/- was raised on account of levy of purchase tax on cotton purchased from within the State of Haryana without payment of tax on the strength of registration certificate. Respondent No.1

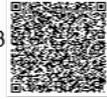


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deposited the said amount on 27.04.2005. Aggrieved against order dated 29.03.2005 passed by the Assessing Authority, respondent No.1 filed an appeal before the Joint Excise & Taxation Commissioner (Appeals), Rohtak, (for short, 'JETC'), which was dismissed vide order dated 29.11.2005 on the ground that respondent No.1 was not entitled to exemption from payment of purchase tax. Respondent No.1, being dissatisfied with order dated 29.11.2005 passed by JETC (Appeals), preferred an appeal before the Haryana Tax Tribunal, which was also dismissed vide order dated 20.02.2006, holding the same view as expressed by JETC (Appeals) in its order dated 29.11.2005 that the transactions in question did not fall under Section 5(3) or Section 3 of the Central Sales Tax Act, 1956 (for short, 'CST Act') and thus, could not be treated as inter-state sales calling for deduction under Section 27(1)(b)(A)(ii) of the HGST Act, as inter-state sales are deemed exports as defined under Section 3 of the CST Act covered by Section 3. Deemed exports cannot be viewed as inter-state sales.

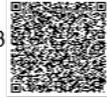
3. Thereafter, aggrieved of order dated 20.02.2006 passed by learned Haryana Tax Tribunal, respondent No.1 filed a Civil Writ Petition No.11017-2006 before this Court, which was dismissed vide judgment dated 02.04.2009 by learned Single Judge. Subsequently, Letters Patent Appeal No.470 of 2010 was preferred against the said judgment dated 02.04.2009, and the Division Bench of this Court, vide judgment dated 15.07.2010, allowed the appeal and quashed the order of Assessing Authority for levying purchase tax on cotton.



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4. Consequently, the refund of Rs.12,25,914/- was paid to respondent No.1 vide Refund Order No.59/VAT/2011-12 dated 04.07.2011. After receiving the refund amount of Rs.12,25,914/-, respondent No.1 filed an application dated 11.07.2011 before the Assessing Authority, Hansi, claiming interest under Section 20(8) of the Haryana Value Added Tax Act, 2003 (for short, 'HVAT Act') on the refund amount of Rs.12,25,914/- for the period from the date of payment upto the date when refund was received by him. However, this application was rejected by the Assessing Authority vide order dated 08.07.2013 on the ground that the interest was claimed under the provisions of the HVAT Act, 2003, whereas, the demand was raised under the HGST Act, 1973, and hence, the provisions of HVAT Act were not applicable in the present case. Thereafter, against the order dated 08.07.2013, respondent No.1 preferred an appeal before JETC (Appeals), who remanded the case to the Assessing Authority, vide order dated 05.02.2014, with the directions to calculate interest on delayed payment for 124 days as per Section 25(5) of the HGST Act, 1973, and refund the same. In compliance of order dated 05.02.2014 passed by JETC (Appeals), interest of Rs.69,900/- was paid to respondent No.1, vide Refund Voucher No.125/VAT/2014-15 dated 09.02.2015. Not satisfied with the refund amount, respondent No.1 again approached learned Haryana Tax Tribunal by way of filing an appeal against order dated 05.02.2014 claiming interest for the entire period from the date of deposit till the date of refund on the basis of Section 20(8) of the HVAT Act, 2003. Learned Haryana Tax Tribunal, vide its order dated 03.07.2017, allowed the appeal, set aside both orders



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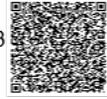
dated 08.07.2013 and 05.02.2014 passed by the Assessing Authority and JETC (Appeals), respectively, and held respondent No.1 entitled to interest on the entire refund amount from the date of deposit till the date of refund at the rate of 1% per month under Section 20(8) of the HVAT Act. Hence, the present appeal.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES

Appellant-State

5. Learned counsel for the appellant *inter alia* contends that since the demand of Rs.12,25,914/- was raised under the HGST Act and the refund was also allowed under the same Act, the interest on such refund must be payable in accordance with the provisions of Section 43(2) read with Rule 35(1)(b) of the HGST Act. She further contends that statutory provisions have to be applied in *toto* and not in a piecemeal manner i.e for demand and refund HGST Act and for interest HVAT Act. Furthermore, she contends that interest cannot be granted on the basis of equity under the tax enactment.

6. In support of her contentions, she relies upon the judgment passed by this Court in **Khazan Chand Nathi Ram Vs. State of Haryana, 2004 (136) STC, 261**, which was rendered at the time when there was transition from HGST Act, 1973 to HVAT Act, 2003, wherein this Court by referring to right to appeal observed that condition of pre-deposit for filing an appeal for the Assessment Year under the HGST Act, would be determined under the provisions of HGST Act and not under the HVAT Act. This Court observed that under the HGST Act *lis* can be said to commence



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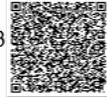
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when the returns are filed or are required to be filed and that the right to appeal is a substantive right governed by the provisions of law as it existed when the *lis* commenced.

7. She, therefore, contends that the proposition of law as laid down by this Court in *Khazan Chand Nathi Ram's* case (supra) would apply in the present case as well and that provisions relating to demand, refund and interest being substantive in nature, must be governed by the HGST Act even though the assessment order was passed after the HVAT Act came into force in the year 2003. She further contends that the assessment order for the Assessment Year 1996-97 was passed on 29.03.2005 under the HGST Act, 1973, despite the fact that the HVAT Act, 2003, came into force by that time. And that Section 61 of the HVAT Act contains the 'Repeal and Saving' provisions, the interpretation of which provides that for the assessment year under the HGST Act, provisions of the HGST Act have to be applied for substantive part and for procedural part such as limitation etc., the HVAT Act has to be applied. Therefore, assessment order for the assessment year in question i.e. 1996-97, though passed on 29.03.2005 i.e. after coming into force of HVAT Act was passed under HGST Act and the provisions of HGST Act were correctly applied for assessment. She therefore, contends that learned Tribunal has erred in not appreciating settled law and the statutory provisions of law and prays that the present appeal be allowed.

Respondent No.1

8. Per contra, learned counsel for respondent No.1 submits that additional demand in question was created after coming in force of the



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HVAT Act and after repeal of HGST Act with effect from 01.04.2003. Therefore, in view of Section 61(1) of the HVAT Act, assessment order dated 29.03.2005 shall be deemed to have been passed under the HVAT Act and not under the HGST Act. Consequently, provisions of the HVAT Act and not HGST Act would be applicable in the present case. He relies upon judgment passed by the Division Bench of this Court in **CWP-16213-2014** titled as **‘Haryana Vanaspati & General Mill Vs. The State of Haryana and another’** decided on 07.08.2015. He further contends that the **SLP(C) No.7574 of 2016** filed by the State of Haryana against the said judgment dated 07.08.2015 was also dismissed vide order dated 10.09.2024. He, therefore, prays that the present appeal be allowed.

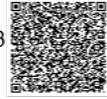
9. We have heard learned counsel for the parties and perused the file with their able assistance.

10. While admitting the present appeal, this Court vide order dated 20.05.2024 framed the following questions of law for consideration: -

“(d) Whether the Hon’ble Haryana Tax Tribunal is justified in allowing the interest on the delayed payment from the date of deposit and not from the date of order in contravention of the provisions of Section 43 and Rule 35(1)(b) of HGST Act, 1973.

(e) Whether the Hon’ble Haryana Tax Tribunal is justified in not appreciating the provisions of Section 43 of the HGST Act, 1973.”

11. A perusal of the assessment order dated 29.03.2005 shows that it is passed under the HGST Act, 1973. Admittedly, the assessment order in the present case for the Assessment Year 1996-97 was passed on 29.03.2005, whereby, additional tax demand of Rs.12,25,914/- was created. The said



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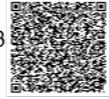
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amount was deposited by the respondent on 27.04.2005. Respondent challenged the tax demand of Rs.12,25,914 created vide order dated 29.03.2005, which was set aside by this Court in LPA-470-2010 arising out of CWP-11017-2006.

12. Respondent filed an application for refund of the said amount on 03.12.2010. The Assessing Authority issued refund order to the assessee on 05.07.2011. Thereafter, the respondent filed application for grant of interest on the above referred to amount from the date of deposit till the date of refund. Excise and Taxation Officer, Hansi, dismissed the said application vide order dated 08.07.2013.

13. First appeal filed by the respondent against the said order was partly allowed by the First Appellate Authority, Rohtak, vide order dated 05.02.2014 by holding as under:-

“..... that additional tax demand was created by Assessing Authority under the Haryana General Sales Tax Act, 1973 (in short, the HGST Act) and refund was also issued under the Act ibid and, therefore, provisions of Section 20(8) of the Haryana Value Added Tax Act, 2003 (in short, the HVAT Act) are not applicable. It was also held that as per Section 43(2) of the HGST Act read with Rule 35(1)(b) of the Haryana General Sales Tax Rules, 1975 (in short, the HGST Rules) refund had to be made within 90 days of receipt of the application for refund failing which interest shall be payable for the delay beyond the said period of 90 days. Accordingly, the first Appellate Authority directed payment of interest to the assessee-appellant for the delayed period of 124 days.”



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14. Feeling still aggrieved, the respondent filed second appeal before the learned Tribunal claiming interest on the amount of Rs.12,25,914/- for the entire period from the date of deposit by it till the date of refund was issued to it, as per Section 20(8) of the HVAT Act.

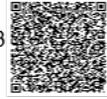
15. Relevant portion of order dated 03.07.2017 passed by learned Tribunal is reproduced as under: -

*“5. We have carefully considered the matter. It is undisputed that if provisions of the HGST Act and the HGST Rules are held to be applicable to the present case, then there is no error or infirmity in impugned order of the first Appellate Authority in allowing interest for the delayed period 124 days only in view Section 43(2) of the HGST Act read with rule 35(1) (b) of the HGST Rules. Conversely, if provisions of the HAVT Act are held to be applicable to this case, then in view of Section 20(8) of the Act *ibid*, the assessee-appellant is entitled to interest for the entire period from the date of deposit of the amount by it till the date of refund thereof to it. In this regard, there is also clarification issued by the State Government vide order dated 03.07.2006 under Section 56(3) of the HVAT Act on the application of M/s Caparo Maruti Ltd., Bawal, holding that in view Section 20(8) of the HVAT Act, interest is payable from the date the assessee made payment till the date of refund to the assessee. So the question to be determined is as to whether the HGST Act and the HGST Rules are applicable or the HVAT Act is applicable?*

6. Section 61 (1) of the HVAT Act is reproduced hereunder for ready reference:-

“61. Repeal and Saving

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



PROVIDED that such repeal shall not-

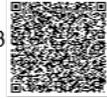
(a) affect the previous operation of the Act so repealed or anything duly done or suffered thereunder; or

(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 this Act as if this Act was 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.”

7. *In the instant case, assessment order 29.03.2005 creating additional demand in question was passed after coming into force of the HVAT Act and after repeal of the HGST Act w.e.f. 01.04.2003. Consequently, in view of Section 61 (1) of the HVAT Act, assessment order dated 29.03.2005 is deemed to have been passed under the Act *ibid* and not under the HGST Act. Consequently, provisions of the HVAT Act and not of the HGST Act are applicable to the present case. Therefore, in view of Section 20 (8) of the HVAT Act, assessee-appellant is entitled to interest on the amount in question for the entire period from the date of its deposit by the assessee till the date of its refund to it, as claimed by the assessee in the present appeal. This view is supported by clarificatory order dated 03.07.2006 issued by*



the State Government on the application of M/s Caparo Maruti Ltd., Bawal.

8. For the reasons aforesaid, this appeal is allowed. Impugned orders of both the Authorities below are set aside. The assessee-appellant is held entitled to interest on the amount of Rs.12,25,914/- from the date of its deposit by the assessee till the date of its refund to the assessee @ of 1% p.m. as per section 20 (8) of the HVAT Act. The Assessing Authority is directed to do the needful.”

16. Before proceeding further, it would be apposite to reproduce Section 61 (Repeal and Saving) of the HVAT Act, which is as under:-

“SECTION 61

(REPEAL AND SAVING)

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

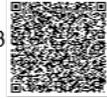
Provided that such repeal shall not-

(a) affect the previous operation of the Act so repealed or anything duly done or suffered thereunder; or

(b) affect any right, power, title, privilege, obligation or liability acquired, accrued or incurred under the said Act; or

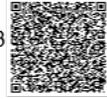
(c) affect any act done or any action taken (including any appointment, notification, notice, order, rule, form, regulation, certificate) in the exercise of any power conferred by or under the said Act;

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 this 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 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;*
- (b) any security in the form of cash deposit, bank guarantee, personal bond, surety bond or in any other form furnished on any day before the commencement of this Act for the payment of any tax or other dues under the said Act, shall remain in force and may be enforced after the commencement of this Act for the payment of any tax or other dues under this Act and for this purpose this Act shall be deemed to have come into force on the day such security was furnished;*



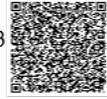
(c) declaration in form S.T.38 in force under the said Act and the rules made thereunder shall remain in force after the appointed day and shall be used mutatis mutandis for the purpose for which it was being used before the appointed day until the State Government directs, by notification, the discontinuance of its use after such date as may be specified in the notification;

(d) the provisions of Section 13B and Section 25A of the said Act and the rules (hereinafter referred to as the 'existing rules'), framed thereunder relating to tax concessions to industrial units shall remain in force subject to the following exceptions, restrictions and conditions, namely: -

(i) an industrial unit availing the benefit of exemption from payment of tax may, in the prescribed manner, change over to deferment of payment of tax for the remaining period and the remaining extent of benefit or for such period and such extent of benefit as may be prescribed but where an industrial unit does not choose to do so, exemption to it from payment of tax shall cease to take effect on and from the appointed day and further,-

(I) it shall be liable to maintain production at a level so that its annual turnover does not fall short of the average annual turnover during the period of exemption; and

(II) it shall not export out of State any goods produced by it, for a period of next five years or such shorter period for which it has availed of exemption from payment of tax and if it fails to do so, it shall be liable to pay to



the State Government, in the prescribed manner the amount of tax in respect of which it has availed of exemption from payment after reducing therefrom the tax paid by it before such failure;

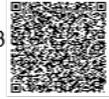
(ii) an industrial unit availing the benefit of capital subsidy may, in the prescribed manner, change over to deferment of payment of tax for the remaining period and the remaining extent of benefit but where an industrial unit does not choose to do so, the benefit of capital subsidy to it shall cease to take effect on and from the appointed day;

(iii) an industrial unit availing the benefit of deferment of payment of tax, whether by change over under the foregoing provisions or otherwise, may, in lieu of making payment of the deferred tax after five years, pay half of the amount of the deferred tax upfront along with the returns and on making payment in this manner, the tax due according to the returns shall be deemed to have been paid in full; and

(iv) the tax deferred in every other case shall be converted into interest free loan in the manner prescribed.

Explanation - For the purpose of this clause, "tax" includes the tax under the Act of 1973 and the Central Act;

(e) the tax chargeable under the Act of 1973 on the sale or purchase of duty entitlement passbook, effected on or before 31st March, 2003, shall be calculated at the rate of four per cent of the turnover of sale or purchase of

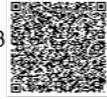


such goods, as the case may be, and shall be paid voluntarily without payment of interest on or before 31st March, 2004, where after interest at the rate of eighteen per cent per annum on the amount of tax due for the period of delay shall be charged :

Provided that where a dealer has charged tax at a rate more than four per cent, the tax shall be calculated and payable at such rate;

(f) the tax levied under section 6 read with section 17 of the Act of 1973 on the last purchase of paddy effected between 1st April, 1981 and 31st March, 2003 (both days inclusive), by a dealer liable to tax under the said Act, shall be valid notwithstanding anything to the contrary contained in any judgment, decree or order of any court or other authority, any levy, assessment, re-assessment or collection of any amount by way of tax made or purporting to have been made in respect of purchase of paddy effected in the said period and used in the manufacture of rice sold in the course of export of goods out of the territory of India within the meaning of section 5 of the Central Act and any action taken or thing done or purporting to have been taken or done in relation to such levy, assessment, re-assessment or collection, shall be deemed to be as valid and effective as if such levy, assessment, re-assessment or collection had been made or action taken or thing done under the said Act, and accordingly-

(i) all acts, proceedings or things done or action taken by the State Government or by any officer of the State Government or by any authority, in connection with the levy, assessment, re-assessment or collection of such tax

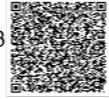


shall, for all purposes be deemed to be, and to have always been, done or taken in accordance with law;
(ii) no suit or other proceedings shall be maintained or continued in any court or before any authority for the refund of any such tax so collected; and
(iii) no court or authority shall enforce any decree or order directing the refund of any such tax so collected.”

17. Bare reading of Section 61 of the HVAT Act reproduced above shows that repeal has saved the action taken under the HGST Act, which included orders as well, and Section 61 of the HVAT Act specifically reads/provides that any such act done or any action taken in exercise of powers conferred by or under the HGST Act shall be deemed to have been done or taken in exercise of power conferred by or under this Act (HVAT Act) as if this Act was 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. Meaning thereby that Section 61 (Repeal and Saving) secured the revenue so that it can be recovered as per procedure laid down under the HVAT Act.

18. Now coming to the judgment referred to by the learned counsel for the appellant as well as respondent No.1.

19. Learned counsel for respondent No.1 has relied upon judgment dated 07.08.2015 passed by Division Bench of this Court in **CWP-16213-2014** titled as ‘**Haryana Vanaspati & General Mill Vs. The State of Haryana and another**’, which was subsequently upheld by Hon’ble the



Supreme Court vide order dated 10.09.2024 passed in **SLP(C) No.7574 of 2016**, wherein the **SLP(C) No.7574 of 2016** filed by the State of Haryana was dismissed.

20. The relevant portion of judgment dated 07.08.2015 passed in **CWP-16213-2014** titled as '**Haryana Vanaspati & General Mill Vs. The State of Haryana and another**' by the Division Bench this Court is reproduced as under: -

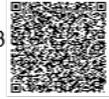
“1. The petitioner has sought a writ of mandamus directing the respondents to pay the interest on the tax collected by them allegedly without authority of law and a writ of certiorari quashing an order dated 22.05.2014 (Annexure P12) passed by the Haryana Tax Tribunal and all other orders passed by the other authorities in so far as the petitioner’s claim has not been allowed in full.

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5. The question, therefore, is whether the petitioner is entitled to interest from the dates on which the petitioner paid the amounts to the respondents as a condition precedent to the maintainability of the appeal. The respondents contend that the provisions of the HGST Act and the Rules made thereunder do not entitle an assessee to interest in such circumstances.

6 & 7 XXX XXX XXX

8. In view of Section 39(5), the petitioner was compelled to pay the tax assessed in order to have its appeal entertained. Sub section (1) of Section 39 provides that an appeal from every original order including an order under Section 40 passed under the HGST Act or the Rules shall lie to the authority stipulated in sub clauses (a), (b) and (c) thereof. Sub section (2) provides for a further appeal against the orders passed by

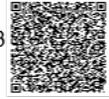


certain authorities to the Tribunal. It is important to note that Section 39 (5) of the HGST Act requires an assessee to pay the amount of the tax assessed and the penalty or interest, if any, recoverable in order to have an appeal under sub section (1) entertained. Sub section (5) of Section 39 provides that no appeal shall be entertained unless the appellate authority is satisfied that the amount of tax and the penalty or interest, if any, recoverable from the person has been paid. Thus, sub section (5) does not merely require the assessee filing the appeal to deposit the amount before the authority or the Tribunal, but to pay the amount of tax, penalty and interest in order to have his appeal entertained. The tax, penalty or interest, if paid, is, therefore, enjoyed by the revenue. The petitioner had admittedly paid the amounts to the authorities. The authorities have had the benefit thereof from the date of payment. If the appeal succeeds, the assessee is entitled to a refund of such an amount as may be directed by the Appellate Authority. Absent any statutory bar, there is no justification for denying a successful assessee interest upon the amount(s) to be refunded for the period during which the revenue had the benefit thereof. The revenue suffers no loss thereby for it has enjoyed the benefit of the money during this period. It has enjoyed the benefit of the money that it was never entitled to.

9. In equity, the petitioner's claim is established. The question is whether the claim is barred by any provision of law. We think not. The question also is whether interest is payable in law. It is, in view of the judgements of this Court, binding on us. We, therefore, need look no further while granting interest.

10 & 11 XXX XXX XXX

12. We are invited to exercise our extra-ordinary jurisdiction under Article 226 of the Constitution of India and not jurisdiction in any other proceeding such as in a Civil Suit or



even in arbitration proceedings. The judgements of this Court in similar matters have upheld the right of assesses to interest in such circumstances.

13 & 14 *XXX* *XXX* *XXX*

15. *XXX* *XXX* *XXX*

In this case, the petitioner restricted his claim for interest from the date of the assessment order under which he was entitled to the refund. The petitioner did not claim interest from the date of the deposit. The Division Bench granted interest for the period claimed, but did not hold that interest is not payable from the date of the deposit.

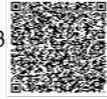
16 to 19 *XXX* *XXX* *XXX*

20. *That case was under the Central Excise Tariff Act, 1985. The present matter is under the HGST Act. This case, so far as the Central Sales Tax Act, 1956 is concerned, was only for an amount of Rs. 44/-. Further, the draft circular referred to in the order was not even relied upon. The order does not support the respondents' case.*

21. *In these circumstances, the petition is disposed of by modifying the impugned order by directing the respondents to pay interest at 12% per annum on the amounts deposited from the dates on which the deposits were made till payment.*

21. Relevant portion of order dated 10.09.2024 passed by Hon'ble the Supreme Court in SLP(C) No.7574 of 2016 is reproduced as under:-

“While exercising the extra ordinary jurisdiction under Article 226 of the Constitution of India, the High Court after recording a finding that there was unjust enrichment of the State Government, has passed an order for payment of interest to the respondent from the date on which the respondent deposited the amount of tax. The High Court has not decided

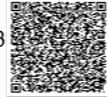


any issue in terms of the available statutory provisions. The High Court has exercised extra ordinary jurisdiction under Article 226 of the Constitution of India in the given facts of the case. Hence, no case for interference is made out. The Special Leave Petition is accordingly dismissed.”

22. A perusal of the above shows that the judgment referred to by Mr. Goyal (learned counsel for respondent No.1) is not applicable to the facts and circumstances of the present case since in above referred to judgment, this Court granted interest as per the provisions of Section 43, Rule 35 and Section 25 of HGST Act. Further, Hon'ble the Supreme Court has categorically observed, as reproduced above, that the High Court has not decided any issue in terms of the available statutory provisions rather, it has exercised extraordinary jurisdiction under Article 226 of the Constitution of India in light of the peculiar facts of that case.

23. In the present case we are not exercising extraordinary jurisdiction under Article 226 of the Constitution of India but are deciding the appeal. Therefore, judgment referred to by learned counsel for the respondent does not come to his aid.

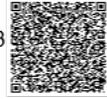
24. In the judgment passed by this Court in **Khazan Chand Nathi Ram's case (supra)**, as referred to by learned counsel for the appellant, this Court held that right of appeal is a substantive right that vests at the date of commencement of the lis and is governed by the law prevailing at that time. Section 39(5) of the HGST Act, requiring pre-deposit of tax, interest, and penalty, continues to apply even after the repeal of the Act, as the right is



saved under Section 4 of the Punjab General Clauses Act, 1898. Further that lis under taxation laws commences on the date when returns are filed or required to be filed. Cause of action arises from failure to furnish returns or rejection of returns by the Assessing Authority. Pre-deposit condition under Section 39(5) HGST Act for filing appeals remains enforceable despite repeal, as the right to appeal is preserved by the General Clauses Act. Right of appeal under taxation laws is substantive and accrues at the commencement of the lis. It is governed by the law prevailing at the date of initiation of proceedings, not by the law prevailing at the time of filing the appeal or decision. Subsequent enactments cannot alter vested rights unless expressly stated or implied.

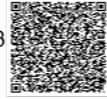
25. The relevant portion of judgment passed in **Khazan Chand Nathi Ram's case (supra)**, by this Court is reproduced as under:-

“2. The petitioner is a registered dealer under the Haryana General Sales Tax Act, 1973 (for short "the HGST Act") and is engaged in the business of purchase of paddy. For the assessment year 1998-99, the Assessing Authority framed the assessment under the HGST Act and raised an additional demand on account of purchase tax calculated under Section 6 of the HGST Act. The petitioner filed appeal along with an application under Section 39(5) of the HGST Act for entertaining the appeal without prior payment of tax on account of financial hardship on March 3, 2003. However, before the appeal filed by the petitioner could be entertained by the learned Appellate Authority, the HGST Act was repealed by virtue of Section 61(1) of the Haryana Value Added Tax Act, 2003 (for short "the HVAT Act"). It was then alleged that under



the HVAT Act, the appeal filed by the petitioner is required to be entertained without any condition of pre-deposit of tax assessed, therefore, the appeal filed by the petitioner is required to be heard and decided under Section 33 of the HVAT Act. No payment of tax can be insisted upon as a condition precedent for hearing of appeal but still the learned appellate authority vide order dated April 2, 2003 ordered the payment of tax assessed in six monthly instalments as a condition precedent for hearing of appeal. The said order of the learned appellate authority was challenged by the petitioner in appeal before the Haryana Tax Tribunal (for short “the Tribunal”). The learned Tribunal dismissed the appeal holding that there is no implied repeal of provisions of Section 39(5) of the HGST Act and the appeal is to be entertained only under the provisions of Section 39(5) of the HGST Act. It is the said order which is impugned in the present writ petition.

3. In the written statement, it has been pleaded that tax liability related to the period when erstwhile HGST Act was still in existence and has not been repealed. Reference was made to the decision of the Supreme Court in the case of Titaghur Paper Mills Co. Ltd. v. State of Orissa [1983] 53 STC 315 to state that where any right or liability arises under a particular Act, the remedy available under that Act has to be availed of. Reference was also made to the decision of the Supreme Court in the case of Manphul Singh Sharma v. Smt. Ahmedi Begum (1994) 5 JT 49 (SC) to state that when a repeal is accompanied by a fresh legislation on the same subject, the provisions of the new Act will have to be looked into to determine whether and how far the new Act projects or keeps alive the old rights and liabilities. It has been stated that the provisions of Sub-section (2) of Section 61 of the HVAT Act envisages the procedure regarding entertainment of pending appeals, applications, revisions or



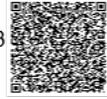
other proceedings made or preferred to any authority under the old Act and pending at the commencement of the HVAT Act. It has been pointed out that since the order of assessment has been made before coming into operation of the HVAT Act, therefore, the right of appeal is to be exercised in terms of the HGST Act. Reliance was also placed upon Section 4 of the Punjab General Clauses Act, 1898 (as applicable to the State of Haryana).

4 to 17 XXX XXX XXX

18. *Learned Advocate-General, Haryana, also relied upon the judgment of the Supreme Court in the case of Ramesh Singh v. Cinta Devi (1996) 3 PLR 507 wherein the honourable Supreme Court was considering the provisions of Section 173 of the Motor Vehicles Act, 1988. It has been held that right of appeal is a substantive right and is governed by the provisions of law as it existed when the lis commenced. Since at the time of commencement of lis, there was no condition of pre-deposit of Rs. 25,000 for the purpose of filing of appeal, there cannot be any insistence of pre-deposit of the said amount.*

19 to 35 XXX XXX XXX

36. *In civil proceedings, lis commences on the presentation of the plaint or in cases claiming compensation under the Motor Vehicles Act on filing claim application. The question is when lis can be said to commence under the taxation laws. Section 25 of the HGST Act enjoins a duty upon an assessee to file quarterly return and deposit tax thereon. If such returns are accepted, there is no lis. Consequently, there would be no occasion for the parties to file an appeal. However if such returns are not accepted, the cause of action which arise on the date when returns are required to be filed. The cause of action can be said to be arisen also when an assessee is called upon to furnish return on his failure to do so in terms of the provisions*



*of the old Act. In fact, that is the relevant date as in **Vitthalbhai Naranbhai Patel's case [1961] 12 STC 219 (SC); AIR 1967 SC 344.***

37. In view of the above discussion, we hold that right of appeal is a vested right as if exists on the date of commencement of lis. The lis can be said to commence under the HGST Act on the date when return is filed or is required to be filed. Therefore, the provisions of Section 39(5) of the HGST Act would continue to govern the right of appeal vested in the petitioner which is saved in terms of Section 4 of the Punjab General Clauses Act (as applicable to State of Haryana).”

26. Above referred to judgment passed by this Court supports the case of the appellant.

CONCLUDING ANALYSIS

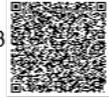
27. Before proceeding to conclude, it would be apposite to reproduce Section 6 of the General Clauses Act, 1897 along with the law laid down by Hon'ble the Supreme Court.

28. Section 6 of the General Clauses Act, 1897, is reproduced as under:-

6. Effect of repeal. — *Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—*

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

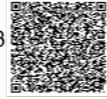


- (c) *affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or*
- (d) *affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or*
- (e) *affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;*

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.”

29. Hon’ble the Supreme Court in **State of Punjab Vs. Mohar Singh Pratap Singh, 1955(1) SCR 893** held as under:-

“7. Under Section 30 of the General Clauses Act, which corresponds to Section 27 of the Punjab Act, the provisions of the Act are applicable to Ordinances as well. Of course, the consequences laid down in Section 6 of the Act will apply only when a statute or regulation having the force of a statute is actually repealed. It has no application when a statute, which is of a temporary nature, automatically expires by efflux of time. The Ordinance in the present case was undoubtedly a temporary statute but it is admitted that the period during which it was to continue had not expired when the Repealing Act was passed. The repeal therefore was an effective one which would normally attract the operation of Section 6 of the General Clauses Act. The controversy thus narrows down to the short point as to whether the fact of the repeal of the Ordinance

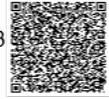


being followed by reenactment would make the provision of Section 6 of the General Clauses Act inapplicable to the present case.

8. The High Court, in support of the view that it took, placed great reliance upon certain observations of Sulaiman C.J. in ‘Danmal Parshotamdas v. Baburam Chhote Lal’, AIR 1936 Allahabad 3. The question raised in that case was whether a suit by an unregistered firm against a third party, after coming into force of Section 69 of the Partnership Act, would be barred by that section in spite of the saving clause contained in section 74(b) of the Act. The Chief Justice felt some doubts on the point and was inclined to hold that Section 74(b) would operate to save the suit although the right sought to be enforced by it had accrued prior to the commencement of the Act: but eventually he agreed with his colleague and held that Section 69 would bar the suit.

While discussing the provision of Section 74(2) of the Partnership Act, in course of his judgment, the learned Chief Justice referred by way of analogy to Section 6(e) of the General Clauses Act and observed as follows (at p.7): “It seems that section 6(e) would apply to those cases only where a previous law has been simply repealed and there is no fresh legislation to take its place. Where an old law has been merely repealed, then the repeal would not affect any previous right acquired nor would it even affect a suit instituted subsequently in respect of a right, previously so acquired. But where there is a new law which not only repeals the old law, but is substituted in place of the old law, section 6(e) of the General Clauses Act is not applicable, and we would have to fall back on the provisions of the new Act itself”.

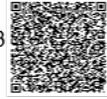
These observations could not undoubtedly rank higher than mere ‘obiter dictum’ for they were not at all necessary for



purposes of the case, though undoubtedly they are entitled to great respect. In agreement with this dictum of Sulaiman C.J., the High Court of Punjab, in its judgment in the present case, has observed that where there is a simple repeal and the Legislature has either not given its thought to the matter of prosecuting old offenders, or a provision dealing with that question has been inadvertently omitted, section 6 of the General Clauses Act will undoubtedly be attracted.

But no such inadvertence can be presumed where there has been a fresh legislation on the subject and if the new Act does not deal with the matter, it may be presumed that the Legislature did not deem it fit to keep alive the liability incurred under the old Act. In our opinion the approach of the High Court to the question is not quite correct. 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. We cannot therefore subscribe to the broad proposition that section 6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law and



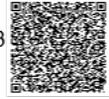
the mere absence of a saving clause is by itself not material. It is in the light of these principles that we now proceed to examine the facts of the present case.

9. The offence committed by the respondent consisted in filing a false claim. The claim was filed in accordance with the provision of section 4 of the Ordinance and under section 7 of the Ordinance, any false information in regard to a claim was a punishable offence. The High Court is certainly right in holding that section 11 of the Act does not make the claim filed under the Ordinance a claim under the Act so as to attract the operation of section 7.

Section 11 of the Act is in the following terms:

“The East Punjab Refugees (Registration of Land Claims) Ordinance No. VII of 1948 is hereby repealed and any rules made, notifications issued, anything done, any action taken in exercise of the powers conferred by or under the said Ordinance shall be deemed to have been made, issued, done or taken in exercise of the powers conferred by, or under this Act as if this Act had come into force on 3rd day of March, 1948.”

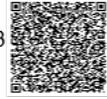
We agree with the High Court that the expression “anything done” occurring in the section does not mean or include an act done by a person in contravention of the provisions of the Ordinance. What the section contemplates and keeps alive are rules, notifications or other official acts done in exercise of the powers conferred by or under the Ordinance and these powers are mentioned in several sections of the Act. But although the lodging of the claim does not come within the purview of section 11 of the Act, we are of opinion that the proviso to section 4 of the Act clearly shows that a claim filed under the Ordinance would be treated as one filed under the Act with all the consequences attached thereto. Section 4 of the Act



provides for the registration of land claims. The first subsection lays down how the claim is to be filed. The proviso attached to it then says that “a refugee who has previously submitted a claim under Ordinance VII of 1948 to any other authority competent to register such claim shall not submit another claim in respect of the same land to the Registering Officer”. Such claim would be reckoned and registered as a claim under the Act and once it is so treated the incidents and corollaries attached to the filing of a claim, as laid down in the Act, must necessarily follow. The truth or falsity of the claim has to be investigated in the usual way and if it is found that the, information given by the claimant is false, he can certainly be punished in the manner laid down in sections 7 and 8 of the Act.

If we are to hold that the penal provisions contained in the Act cannot be attracted in case of a claim filed under the Ordinance, the results will be anomalous and even if on the strength of a false claim a refugee has succeeded in getting an allotment in his favour, such allotment could not be cancelled under section 8 of the Act. We think that the provisions of sections 4,7 and 8 make it apparent that it was not the intention of the Legislature that the rights and liabilities in respect of claims filed under the Ordinance shall be extinguished on the passing of the Act, and this is sufficient for holding that the present case would attract the operation of section 6 of the General Clauses Act.

It may be pointed out that section 11 of the Act is somewhat clumsily worded and it does not make use of expressions which are generally used in saving clauses appended to repealing statutes; but as has been said above the point for our consideration is whether the Act evinces an intention which is inconsistent with the continuance of rights and liabilities



accrued or incurred under the Ordinance and in our opinion this question has, to be answered in the negative.

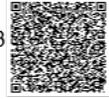
10. The Advocate-General of Punjab has drawn our attention to certain American authorities which hold that in case of simultaneous repeal and re-enactment, the re-enactment is to be considered as reaffirmation of the old law and the provisions of the repealed Act which are thus re-enacted continue in force uninterruptedly. It appears that judicial opinion in America on this point is not quite uniform and we do not consider it necessary to express any opinion upon it. The provisions of Section 6 of the General Clauses Act will, in our opinion, apply to a case of repeal even if there is simultaneous enactment unless a contrary intention can be gathered from the new enactment. The result is that the appeal is allowed and the judgment of the High Court set aside. The Advocate-General does not press for enhancement of sentence passed on the respondent. Consequently, it is unnecessary for the High Court to hear the reference made to it by the District Magistrate, Jullundur any further. The sentence already passed upon the respondent by the trying Magistrate shall stand and if the fine of Rs.120 has not already been, paid, it shall be paid now. In default, the respondent shall suffer rigorous imprisonment for one month.

Appeal allowed.”

30. Hon’ble the Supreme Court in **M/s Gammon India Ltd. Vs.**

Spl. Chief Secretary & Ors., 2006(3) SCC 354 held as under:-

“2. The principal question which falls for adjudication in these appeals is regarding the jurisdiction of the Assistant Commissioner of Commercial Taxes, Warangal Division, Andhra Pradesh in initiating and completing penalty



proceedings under the Andhra Pradesh General Sales Tax Act, 1957 (for short A.P.G.S. Tax Act) after its repeal.

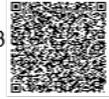
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11. *The appellant, aggrieved by the said order, also filed a writ petition which was heard by a Division Bench of the High Court. The Division Bench examined the question whether the Assistant Commissioner of Commercial Taxes was entitled to initiate and complete the penalty proceedings under the A.P.G.S. Tax Act subsequent to its repeal and introduction of the A.P.V.A. Tax Act with effect from 1.4.2005. The High Court while dismissing the writ petition held that the Assistant Commissioner was not prohibited from initiating and completing the said proceedings.*

12. *The Appellant, aggrieved by the said judgment, has filed Special Leave Petitions under Article 136 before this Court. For examining the jurisdiction of the Assiatant Commissioner of Commercial Taxes in initiating and completing the penalty proceedings under the A.P.G.S. Tax Act, it is necessary to note the relevant provisions of the Act.*

13. *Section 80 of the A.P.V.A. Tax Act reads as under :*

“80(1) The Andhra Pradesh General Sales Tax Act, 1957 is hereby repealed provided that such repeal shall not effect the previous operation of the said Act or section or any right, title, obligation or liability already acquired, accrued or incurred thereunder and subject thereto, anything done or any action taken (including any appointment, notification, notice, order, rule from, regulation, certificate, license or permit) in the exercise of any power conferred by said Act or Section shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act, as if this Act was in force on the date on which such thing was done or action



was taken and all arrears of tax and other amounts due at the commencement of this Act may be recovered as if they had accrued under this Act.

(2) Notwithstanding anything contained in sub-section (1), any application, appeal, revision or other proceedings made or preferred to any officer or authority under the said Act or section and pending at the commencement of the 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 was made or preferred.

(3) Upon such repeal of the Andhra Pradesh General Sales Tax Act, 1957 the provisions of Sections 8, 8-A, 9 and 18 of the Andhra Pradesh General Clauses act, 1891 shall apply.”

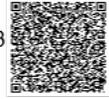
14. *Section 80(3) of the A.P.V.A. Tax Act provides for the application of Section 8 of the Andhra Pradesh General Clauses Act, 1891 on the repeal of the APGST Act, 1957. Section 8 of the A.P. General Clauses Act, 1891 deals with the effect of repealing the Act, reads as under :*

“Effect of Repealing an Act- Where any Act to which this Chapter applies, repeals any other enactment, then the repeal shall not :

(a) affect anything done or any offence committed, or any fine or penalty incurred or any proceedings begun before the commencement of the repealing act; or

(b) revive anything not in force or existing at the time at which the repeal takes effect; or

(c) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or



(d) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

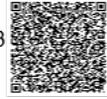
(e) affect any fine, penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(f) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, fine, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, any such fine, penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed.”

15. The Court observed that even in the absence of a provision similar to Section 80(3) of the A.P.V.A. Tax Act, Section 8 of the A.P.G.S. Tax Act, which is analogous to Section 6 of the General Clauses act, is not confined to mere repeal of a statute but extends to a repeal followed by fresh legislation, unless a different intention appears from the new enactment and that is for the Court to enquire whether the fresh legislation had preserved the rights and liabilities created under the old statute or whether their intentment was to obliterate them. This difficulty does not arise in the present case in as much as Section 80(3) of the A.P.V.A. Tax Act specifically makes Section 8 of the A.P. General Clauses Act, 1891 applicable on the repeal of the A.P.G.S.T. Act.

16 to 19 XXX XXX XXX

20. We have noticed relevant facts and rival contentions. Now, in order to ascertain the correct legal position it has become imperative to examine relevant provisions and decided cases, dealing with the ambit and scope of repeal and reenactment of a statute. Since the General Clauses Act, 1897 is



largely based on the English Interpretation Act, 1889, it is appropriate to deal with English and other relevant cases throwing light on issues involved in the case.

21. According to the law of England, as it stood before Interpretation Act of 1889, the effect of repealing a statute was to obliterate it as completely from the records of Parliament as if it had never been passed, except for the purpose of those actions, which were commenced, prescribed and concluded while it was an existing law.

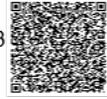
22. A repeal therefore, without any saving clause would destroy any proceeding whether or not yet begun or whether pending at the time of enactment of the Repealing Act and not already prosecuted to a final judgment so as to create a vested right.

23. The legal position which existed in England before Section 38(2) was inserted in the Interpretation Act of 1889 is reflected from the following two English cases.

*24. In **Kay vs. Goodwin reported in (1830) 6 Bing. 576** : English Reports (Volume 130) at page 1403, Tindal, Chief Justice observed that the effect of repealing a statute is to obliterate it as completely from the records of the Parliament as if it had never been passed; and it must be considered as a law that never existed except for the purpose of those actions which were commenced, prosecuted and concluded whilst it was an existing law.*

*25. Lord Tanterden in **Surtees vs. Ellison - (1829) 9 B & C. 750 : English Report (Volume 109)** at page 278 observed that when an Act of Parliament is repealed, it must be considered (except as to transactions past and closed) as if it had never existed.*

26. In England, to obviate such result a practice was developed to insert a saving clause in the repealing statute with



a view to preserve rights and liabilities already accrued or incurred under the repealed enactment. When it was found cumbersome to insert a saving clause in every statute, then in order to dispense with the necessity of having to insert a saving clause on each occasion, Section 38(2) was incorporated in the Interpretation Act of 1889. Section 6 of the Indian General Clauses Act is on the same lines as Section 38(2) of the Interpretation Act of 1889. Section 38(2) of the Interpretation Act, 1889 reads as under:

Effect of repeal in future Acts.

(1) xxx xxx xxx

(2) Where this Act or any Act passed after the commencement of this Act repeals any other enactment, then, unless the contrary intention appears, the repeal shall not

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

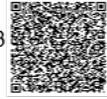
(b) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or

(c) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid;

and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any penalty,



forfeiture, or punishment may be imposed, as if the repealing Act had not been passed.”

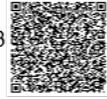
27. The legal position dramatically changed after incorporation of Section 38 (2) in the English Interpretation Act, 1889. The following case is illustrative of the change which took place after incorporation of the said provision.

*28. Lord Morris of Borth-y-Gest, while interpreting Section 10 of the Interpretation Ordinance of Hong Kong, which corresponds with Section 38 of the Interpretation Act of 1889 in an appeal from the Judgment of the Supreme Court of Hong Kong, in the matter of **Director of Public Works vs. Ho Po Sang reported in 1961 All England Law Reports Vol. 2 pg. 731**, observed as under:*

“It may be, therefore, that, under some repealed enactment, a right has been given but that, in respect of it, some investigation or legal proceeding is necessary. The right is then unaffected and preserved. It will be preserved even if a process of quantification is necessary. But there is a manifest distinction between an investigation in respect of a right and an investigation which is to decide whether some right should or should not be given. On a repeal, the former is preserved by the Interpretation Act. The latter is not.”

29. When we look to the American law, we find basic similarity in the scope and ambit of the provisions relating to repeal and reenactment of the statute. We deem it appropriate to refer some relevant American judgments.

*30. In **Bear Lake & River Waterworks & Irrigation Co. v. Garland, 164 US 1, 41 L Ed 327**, the U.S. Supreme Court has held that the reenactment of a statute which has been repealed by specific provision, or by implication from later*



legislation, invalidates the previous repeal and restores the statute to effective operation.

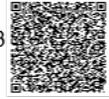
31. In that very case, the Court held that a so-called “simultaneous repeal and reenactment” is a misnomer, for there is no repeal by implication effectuated of the original act, and even though the “repeal” is declared by specific provision in the later enactment the courts will construe the unchanged provisions as being continuously in force.

*32. In **Commonwealth vs. Gross - 21 A.2d 238, 240, 145 Pa.Super. 92** it was observed that insofar as Workmen’s Compensation Act of 1939 is a reenactment of Workmen’s Compensation Act of 1937, it is “continuance” of such act, but insofar as act of 1939 is in conflict with act of 1937, it is a “repeal” of the act of 1937.*

*33. In **State vs. Bemis 45 Neb. 724, 64 N.W. 348**, the Court held that the rule seems to be settled in this state that the simultaneous repeal and reenactment of a statute in terms or in substance is a mere affirmance of the original act, and not a “repeal” in the strict or constitutional sense of the term.*

34. The Court further held in this case that as a rule of construction the simultaneous repeal and reenactment of the same statute in terms or in substance is a mere affirmance of the original act, and not a repeal in the strict and constitutional sense of the term. Where the reenactment is in the words of the old statute, and was evidently intended to continue the uninterrupted operation of such statute, the new act or amendment is a mere continuation of the former act, and not in a proper sense a repeal.

*35. In **State v. Gray, 40 Or App 799, 596 P2d 611(1979)** the Court held that when the legislature incorporates in one statute matter that is included in another, a subsequent repeal of the statute containing the incorporated matter does not*



necessarily affect the statute in which it has been incorporated, as the question is one of the legislative intent. In absence of evidence of a contrary intent, the legislature will be presumed to have intended the repeal not to affect the statute into which the matter is incorporated.

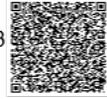
36. *In **George v. City of Asheville, 80 F2d 50 (CCA4 1936)** the Court observed that the reenactment of a statute is a continuation of the law as it existed prior to the reenactment as far as the original provisions are repeated without change in the reenactment. Consequently, an intermediate statute which has been superimposed upon the original enactment as a modification of its provisions is likewise not repealed by the reenactment of the original statute, but is construed to be in force to modify the reenacted statute as it modified the original enactment.*

37. *In **State v. Board of Appeals, 21, Wis 2d 516, 124 NW2d 809 (1963)** the Court held that the continuous operation of a statute was not interrupted by repeal and reenactment at same time in substantially the same language.*

38. *In the case of **Pentheny, Ltd. vs. Government of Virgin Islands Federal Reporter 2d Series Vol. 360 pg. 786**, the U.S. Court of Appeals has observed as under:*

“Simultaneous repeal and re-enactment of substantially the same statute, or part thereof, is a substitution and not a repeal, and the statute, or part thereof, thus substituted is construed as a continuation of the original provisions to the extent re-enacted and jurisdiction of administrative agency under such statute is not disturbed as to those provisions which were continued under the new statute.”

39. XXX XXX XXX



40. Analysis of the provisions and some decided cases of England and America reveal the existence of similar provisions and interpretation in the respective countries.

41. Section 6 of the General Clauses Act, 1897 is predominantly based on Section 38 of the English Interpretation Act, 1889. We have already reproduced Section 38 of the English Interpretation Act, 1889. In order to discern and evaluate the strong similarity between the Indian and English Law on this subject, we deem it appropriate to set out Section 6 of the Indian General Clauses Act, 1897.

“6. Effect of repeal.- Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

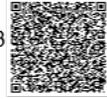
(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of such right, privilege, obligation, penalty, forfeiture or punishment as aforesaid.

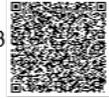
and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.”



42. Following decided Indian cases would reveal, that Indian courts have interpreted Section 6 of the said Act in the same manner as the similar provisions have been interpreted by the English and American courts.

*43. In **Basant Singh vs. Rampal Singh, AIR 1919 Oudh 217**, it has been held that where an Act repeals a previous Act and provides that all orders issued under the repealed Act shall, so far as may be, be deemed to have been issued under the new Act, or is repealed with proviso 'except as to things done under it' the provision is designed to safeguard the validity of orders, appointments, etc., issued under the repealed Act and not to give retrospective effect to the new Act.*

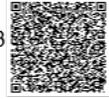
*44. A Seven Judge Bench of this Court by majority laid down in **Keshavan Madhava Menon vs. The State of Bombay, (1951) SCR 228**, that the Court was concerned with the legality of the prosecution of the appellant for contravention of the Indian Press (Emergency Powers) Act, 1931. The offence had been committed before the Constitution came into force and a prosecution launched earlier was pending after January 26, 1950. The enactment which created the offence was held to be void under Article 19(1)(a) read with Article 13 as being inconsistent with one of the Fundamental rights guaranteed by Part III of the Constitution. In the circumstances, the point that was debated before this Court was whether the prosecution could be continued after the enactment became void. In this case, the Court by a majority judgment held that the Constitution was prospective in its operation and that Article 13(1) would not affect the validity of these proceedings commenced under pre-Constitution laws which were valid up to the date of the Constitution coming into force, for to hold that the validity of these proceedings were affected would in effect be treating the Constitution as retrospective. Therefore, it was*



considered that there was no legal objection to the continuance of the prosecution.

45. *The controversy in issue was dealt with comprehensively with meticulous precision by a Constitution Bench of this Court in **State of Punjab vs. Mohar Singh (1955) 1 SCR 893**. Respondent Mohar Singh filed a claim as an evacuee under the East Punjab Refugees (Registration of Land Claims) Act, 1948. The claim was investigated into and it was found to be false; it was held to be an offence under the Act. At the trial, on his confession, the respondent was convicted and sentenced to imprisonment. On suo motu revision, the District Magistrate found the sentence to be inadequate and referred the case to the High Court. The High Court found that since the ordinance was repealed, he could not be convicted under Section 7 of the Act. This Court, on appeal, reversed the decision and upheld the conviction applying Section 6 of the General Clauses Act.*

46. *The principle which has been laid down in this case is that 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 purposes 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. We cannot therefore, subscribe to the broad proposition that Section 6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also*

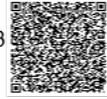


unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section.

47. *In the case of **Brihan Maharashtra Sugar Syndicate vs. Janardan AIR 1960 SC 794**, it was observed as under:*

“Section 6 of the General Clauses Act provides that where an Act is repealed, then, unless a different intention appears, the repeal shall not affect any right or liability acquired or incurred under the repealed enactment or any legal proceeding in respect of such right or liability and the legal proceeding may be continued as if the repealing Act had not been passed. There is no dispute that Section 153- C of the Act of 1913 gave certain rights to the shareholders of a company and put the company as also its directors and managing agents under certain liabilities. The application under that section was for enforcement of these rights and liabilities. Section 6 of the General Clauses Act would therefore preserve the rights and liabilities created by Section 153-C of the Act of 1913 and a continuance of the proceeding in respect thereof would be competent in spite of the repeal of the Act of 1913, unless of course a different intention could be gathered.”

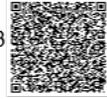
48. *A Constitution Bench of this Court in **State of Orissa vs. M.A. Tulloch and Co., (1963) 4 SCR 461**, also had an occasion to examine the controversy regarding repeal of the Act. The submission in this case was that the supersession of the Orissa Act by the Central Act was neither more nor less than a repeal. The reference was made to Section 6 of the General Clauses Act, 1897 which has been reproduced (supra). In the said case, the submission was that the interpretation of the Section was two-fold: (1) the word 'repeal' used in the opening paragraph was not confined to express repeal but that the word was comprehensive enough to include cases of implied*



repeals; (2) it was submitted that if the expression 'repeal' in Section 6(b) be deduced as being confined to express repeals, still the principle underlying Section 6 was of general application and capable of being attracted to cases of implied repeals also.

49. In M.A. Tulloch's case (supra), the Court aptly observed that we have to inquire the principle on which the saving clause in Section 6 is based. It is manifest that every later enactment which supersedes an earlier one or puts an end to an earlier state of the law is presumed to intend the continuance of rights accrued and liabilities incurred under the superseded enactment unless there were sufficient indications - express or implied - in the later enactment designed to completely obliterate the earlier state of the law.

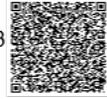
50. The next question is whether the application of that principle could or ought to be limited to cases where a particular form of words is used to indicate that the earlier law has been repealed. The entire theory underlying implied repeals is that there is no need for the later enactment to state in express terms that an earlier enactment has been repealed by using any particular set of words or form of drawing but that if the legislative intent to supersede the earlier law is manifested by the enactment of provisions as to effect such supersession, then there is in law a repeal notwithstanding the absence of the word 'repeal' in the later statute. Now, if the legislative intent to supersede the earlier law is the basis upon which the doctrine of implied repeal is founded, could there be any incongruity in attributing to the later legislation the same intent which Section 6 presumes where the word 'repeal' is expressly used. So far as statutory construction is concerned, it is one of the cardinal principles of the law that there is no distinction or difference between an express provision and a provision which is



necessarily implied, for it is only the form that differs in the two cases and there is no difference in intention or in substance. A repeal may be brought about by repugnant legislation, without even any reference to the Act intended to be repealed, for once legislative competence to effect a repeal is posited, it matters little whether this is done expressly or inferentially or by the enactment of repugnant legislation. If such is the basis upon which repeals and implied repeals are brought about it appears to us to be both logical as well as in accordance with the principles upon which the rule as to implied repeal rests to attribute to that legislature which effects a repeal by necessary implication the same intention as that which would attend the case of an express repeal. Where an intention to effect a repeal is attributed to legislature then the same would, in our opinion, attract the incident of the saving found in Section 6 for the rules of construction embodied in the General Clauses Act are, so to speak, the basic assumptions on which statutes are drafted.

51. The Court examined the ambit and scope of Section 6 of the General Clauses Act, 1897 in Tulloch's case. According to the ratio of the said judgment, the principal underlying Section 6 of the General Clauses Act, 1897 is that every later enactment which supersedes an earlier one or puts an end to an earlier state of the law is presumed to intend the continuance of rights accrued and liabilities incurred under the superseded enactment unless there were sufficient indications expressed or implied in the later enactment designed to completely obliterate the earlier state of the law.

52. In view of the interpretation what follows is absolutely clear that unless a different intention appears in the repealing Act, any legal proceeding can be instituted and continued in respect of any matter pending under the repealed Act as if that

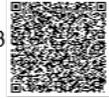


Act was in force at the time of repeal. In other words, whenever there is a repeal of an enactment the consequences laid down in Section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears in the repealing statute.

53. In case the repeal is followed by fresh legislation on the same subject the court has to look to the provisions of the new Act for the purpose of determining whether they indicate a different intention. The question is not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. The application of this principle is not limited to cases where a particular form of words is used to indicate that the earlier law has been repealed. As this Court has said, it is both logical as well as in accordance with the principle, upon which the rule as to implied repeal rests, to attribute to that legislature which effects a repeal by necessary implication the same intention as that which would attend the case of an express repeal. Where an intention to effect a repeal is attributed to a legislature then the same would attract the incident of saving found in Section 6.

*54. In the case of **Munshilal Beniram Jain Glass Works vs. S. P. Singh (1971) II S.C.J. July- December p. 307**, this Court held that under Section 6 would apply to a case of repeal even if there is a simultaneous enactment unless a contrary intention appears from the new enactment.*

*55. In **Qudrat Ullah vs. Municipal Board, Bareilly, (1974) 1 SCC 202**, the Court held that the general principle is that an enactment which is repealed is to be treated, except as to transactions passed and closed, as if it had never existed. However, the operation of this principle is subject to any savings which may be made, expressly or by implication, by the*

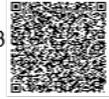


repealing enactment. If a contrary intention appears from the repealing Statute, that prevails.

56. *A three-Judge Bench of this Court in **India Tobacco Co. Ltd. vs. CTO, (1975) 3 SCC 512**, held that repeal is not a matter of mere form but is of substance, depending on the intention of the legislature. If the intention indicated either expressly or by necessary implication in the subsequent statute was to abrogate or wipe off the former enactment wholly or in part, then it would be a case of total or pro tanto repeal. If the intention was merely to modify the former enactment by engrafting an exception or granting an exemption, or by super-adding conditions, or by restricting, intercepting or suspending its operation, such modification would not amount to a repeal. Broadly speaking, the principal object of a repealing and amending Act is to 'excise dead matter, prune off superfluities and reject clearly inconsistent enactments'.*

57. *When there is a repeal and simultaneous reenactment, Section 6 of the General Clauses Act would apply to such a case unless contrary intention has been gathered from the repealing Act. Section 6 would be applicable in such cases unless the new legislation manifests intention inconsistent with or contrary to the application of the section. When the repeal is followed by a fresh legislation on the same subject, the Court would undoubtedly have to look to the provisions of the new Act only for the purpose of determining whether the new Act indicates different intention. The object of repeal and reenactment is to obliterate the Repealed Act and to get rid of certain obsolete matters.*

58. *In **Commissioner of Income Tax vs. Shah Sadiq and Sons AIR 1987 SC 1217**, this Court observed that a right which had accrued and had become vested, continued to be capable of being enforced notwithstanding the repeal of the*



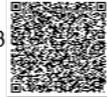
statute under which that right accrued unless the repealing statute took away such right expressly or by necessary implication. This is the effect of Section 6 of the General Clauses Act, 1897.

59. *In M/s Gurcharan Singh Baldev Singh v. Yashwant Singh and Ors. (1992) 1 SCC 428, the Court observed that the objective of Section 6(c) of the General Clauses Act, 1897 is to ensure protection of any right or privilege acquired under the repealed Act. The only exception to it is legislative intention to the contrary. That is, the repealing Act may expressly provide or it may impliedly provide against continuance of such right, obligation or liability.*

60 to 71 *XXX* *XXX* *XXX*

72. *In the instant cases, there is a simultaneous repeal and the reenactment and the A.P.V.A. Tax Act clearly saves the earlier provisions in toto. Consequently, rights and liabilities accrued or incurred under the A.P.G.S. Tax Act shall continue even after it is repealed.*

73. *On critical analysis and scrutiny of all relevant cases and opinions of learned authors, the conclusion becomes inescapable that whenever there is a repeal of an enactment and simultaneous reenactment, the reenactment is to be considered as reaffirmation of the old law and provisions of the repealed Act which are thus reenacted continue in force uninterruptedly unless, the reenacted enactment manifests an intention incompatible with or contrary to the provisions of the repealed Act. Such incompatibility will have to be ascertained from a consideration of the relevant provisions of the reenacted enactment and the mere absence of saving clause is, by itself, not material for consideration of all the relevant provisions of the new enactment. In other words, a clear legislative intention of the reenacted enactment has to be inferred and gathered*

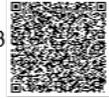


whether it intended to preserve all the rights and liabilities of a repealed statute intact or modify or to obliterate them altogether.

74. On the touchstone of the principles of law culled out from the judgments of various courts applied to the facts of these cases lead to a definite conclusion that the Assistant Commissioner (Commercial Taxes), Warangal Division was fully justified in initiating and completing the proceedings under the A.P.G.S. Tax Act even after it is repealed.”

31. The issue involved in the present appeal is that whether the payment of interest is to be paid as per provisions of HGST Act, 1973 or HVAT Act, 2003, when the assessment order is passed under the HGST Act, 1973 on 29.03.2005, i.e after the coming into force of HVAT Act, 2003.

32. Hon'ble the Supreme Court in *Mohar Singh Pratap Singh's* case (supra) and *M/s Gammon India Ltd.'s* case (supra) held that whenever there is repeal of an enactment and simultaneous re-enactment, re-enactment is to be considered/construed as re-affirmation of old/earlier law and provisions of repealed Act which are thus, re-enacted continue in force uninterruptedly unless, re-enacted enactment manifests an intention incompatible with or contrary to the provisions of repealed Act. Further it was held that such incompatibility will have to be ascertained from a consideration of relevant provisions of the reenacted enactment and mere absence of saving clause is, by itself, not material for consideration of all the relevant portions of new enactment.



33. In the present case, Section 61 (Repeal and Saving) of HVAT Act, 2003, repeals HGST Act, 1973, by saving the previous operation of the Act so repealed or anything duly done or suffered thereunder and further saves any right, title, privilege, obligation or liability acquired, accrued or incurred under the repealed Act. Further it saves 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 repealed Act. Section 61 (Repeal and Saving) of HVAT Act thus clearly shows/reflects the legislative intention to preserve the continuity of legal consequences flowing from acts or omission under the repealed HGST Act. the intention of the legislation.

34. In view of Section 6 of the General Clauses Act, 1897 and law laid down by Hon'ble the Supreme Court as referred to above, the substantial questions of law are answered in favour of the appellant and against the respondent.

35. Consequently, present appeal is allowed. Impugned order dated 03.07.2017 passed by the Haryana Tax Tribunal in STA No.34 of 2014-15 is hereby set aside.

36. Pending application(s), if any, also stand disposed of.

(LISA GILL)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

18.07.2025

Virender

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