

State of Punjab & Ors.

v.

Trishala Alloys Pvt. Ltd.

(Civil Appeal No. 2212 of 2024)

17 February 2025

[Abhay S. Oka and Ujjal Bhuyan,* JJ.]

Issue for Consideration

Whether the State could amend the Punjab Value Added Tax Rules, 2005 to provide that the input tax credit (ITC) already earned on goods kept in stock could be availed at a reduced rate as the rate of tax on the goods stood reduced in the *interregnum* when there was no enabling provision in the parent statute *i.e.*, the Punjab Value Added Tax Act, 2005.

Headnotes[†]

Punjab Value Added Tax Act, 2005 (“Punjab VAT Act”) – First proviso to s.13(1) – Amended with effect from 01.04.2014 – Punjab Value Added Tax Rules, 2005 (“Punjab VAT Rules”) – Rule 21(8) introduced and Schedule E amended with effect from 01.02.2014 – As a result, the ITC already paid for goods kept as stock in trade could only be availed at a reduced rate – Held, no statutory sanction prior to 01.04.2014 to allow applicability of Rule 21(8) on the stock in trade already purchased at a higher rate of tax – Impugned judgment of High Court upheld – Appeals dismissed:

Held: Amendment dated 25.01.2024 which inserted sub-rule (8) in Rule 21 of VAT Rules whereby a taxable person’s entitlement to get ITC on concerned goods (iron and steel) was reduced based on reduction in input tax on such goods was unjustified in the absence of there being an enabling provision to do so in the VAT Act which was the parent statute – It was held that any change in the ITC scheme by amending VAT Rules could have been done only after 01.04.2024 when first proviso to Section 13(1) of VAT Act was amended, which dealt with ITC. [Paras 31-35]

* Author

State of Punjab & Ors. v. Trishala Alloys Pvt. Ltd.**Comparison between pre and post amendment scenario regarding first proviso to Section 13(1) of VAT Act prejudicial and unfair:**

Held: Court observed that pre-amendment, the first proviso entitled taxable persons to receive ITC in respect of goods which were for sale/use in manufacture etc., but post amendment, such persons were not entitled to receive ITC unless such goods were sold/used in the manufacture etc – Thus essentially, post amendment, the benefit of ITC became available from the date of further sale/use/ manufacture etc and therefore goods which were “stock in trade” would not attract the benefit of ITC – Additionally, as per sub-rule (8) of Rule 21 of VAT Rules, the ITC already earned *i.e.*, @4% was now available at the reduced rate *i.e.*, @2% w.e.f. 25.01.2014 on sale of such goods – Held, it would be prejudicial and unfair to a taxable person who had stock in trade as on 25.01.2014 or as on 01.02.2014 (when amended rule came into effect) by paying higher rate of tax on purchase of iron and steel goods but would later on be entitled to reduced ITC due to reduction in the rate of tax on such goods on a subsequent date – Rule 21(8) could come into effect only on and from 01.04.2024 *i.e.*, when amended the Punjab VAT Act, s.13(1) came into force. [Paras 36, 41, 41.1]

Right accrued to the assessee on date of purchase of goods immutable till such goods meet the objective of their purchase or continue to exists:

Held: Court relied on *Eicher Motors Limited Vs. Union of India*, (1999) 2 SCC 361 which concerned ITC and held that a right accrued to the assessee on the date when he pays the tax on the raw material or the input would continue until the facility available thereto gets worked out or until those goods existed. [Para 37]

Statutory amendments amounting to change in law to not have retrospective application:

Held: Court relied on *Sedco Forex International Drill INC.Vs. Commissioner of Income Tax, Dehradun*, (2005) 12 SCC 717 which stated the general principle of tax law that if any statutory amendment is clarificatory in nature, it could be read into the main provision from the date when such provision became effective

Supreme Court Reports

however if any such amendment amounts to a change in law, then it cannot be presumed to have retrospective application – Court also relied on *Commissioner of Central Excise, Patna Vs. New Swadeshi Sugar Mills* (2016) 1 SCC 614 which dealt with CENVAT Credit Rules, 2002 and held that CENVAT credit already earned by the assessee could not be changed by a statutory amendment that did away with it and such amendment would have only prospective effect. [Paras 38-39]

Reliance placed on *Jayam and Company Vs. Assistant Commissioner* (2016) 15 SCC 125 wherein the court that the said amendment being detrimental to the ITC entitlement of taxable persons would not have retrospective application. [Para 40]

Impact on reverse ITC obligation under Section 13(9):

Held: That if Petitioner’s contention were to be accepted, it would require reversing of ITC in terms of Section 13(9) at reduced rate of tax on the goods in question if such goods were not used for the purposes specified in Section 13(1) or which remained as “stock in trade” at the time of closure of business which effectively will lead to revenue loss to State exchequer. [Para 41.2]

Case Law Cited

Eicher Motors Limited v. Union of India [1999] 1 SCR 295 : (1999) 2 SCC 361; *Sedco Forex International Drill INC. v. CIT* [2005] Supp. 5 SCR 302 : (2005) 12 SCC 717; *Commissioner of Central Excise, Patna v. New Swadeshi Sugar Mills* (2016) 1 SCC 614; *Jayam and Company v. Assistant Commissioner* [2016] 6 SCR 787 : (2016) 15 SCC 125 – relied on.

List of Acts

Punjab Value Added Tax Act, 2005; Punjab Value Added Tax Rules, 2005.

List of Keywords

Input tax credit; Value added tax; Parent statute; Enabling provision; Delegated legislation; Prospective effect; Retrospective effect; Legislative competence; Punjab VAT Act 2005; Punjab VAT Rules 2005.

State of Punjab & Ors. v. Trishala Alloys Pvt. Ltd.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2212 of 2024
From the Judgment and Order dated 20.05.2015 of the High Court of Punjab & Haryana at Chandigarh in CWP No. 7951 of 2014
With
Civil Appeal Nos. 2213, 2214-2216, 2217, 2218 and 2219 of 2024

Appearances for Parties

Vivek Jain, D.A.G., Karan Sharma, Rajat Jain, Ms. Princy Sharma, Abhinav Jain, Mohit Siwach, Ms. Ranjeeta Rohatgi, Advs. for the Appellants.

Mohit D. Ram, Samdeep Goyal, Sandeep Goyal, Pawanshree Agrawal, Ms. Shubhangi Negi, Rishabh Chauhan, Atul Krishna, Ms. Monisha Handa, Rajul Shrivastav, Anubhav Sharma, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Ujjal Bhuyan, J.

This judgment and order will dispose of Civil Appeal Nos. 2212, 2213, 2214-2216, 2217, 2218 and 2219 of 2024.

2. Details of the Civil Appeals are as under:

Sl. No.	Civil Appeal No(s).	SLP (C) No(s).	Cause Title
1.	2212 of 2024	35263 of 2015	State of Punjab & Ors. Vs. Trishala Alloys Pvt. Ltd.
2.	2213 of 2024	35269 of 2015	State of Punjab Vs. Prime Steel Processors.
3.	2214-2216 of 2024	35265-35267 of 2015	State of Punjab Vs. JREW Engineering Ltd. Etc. Etc.
4.	2217 of 2024	35790 of 2015	State of Punjab Vs. District Taxation Bar Association (Sales Tax), Ludhiana.

Supreme Court Reports

5.	2218 of 2024	904 of 2016	State of Punjab Vs. LSR Forge Pvt. Ltd.
6.	2219 of 2024	2407 of 2016	State of Punjab vs Jalandhar Iron and Steel Merchants Association (Regd.).

3. Since parties have advanced their arguments in Civil Appeal No. 2212 of 2024 (*State of Punjab Vs. Trishala Alloys Pvt. Ltd.*), the same is taken as the lead appeal and for the sake of convenience, facts stated in the said appeal would be referred to hereunder.
4. This appeal by special leave is directed against the order dated 20.05.2015 passed by the High Court of Punjab and Haryana at Chandigarh (briefly 'the High Court' hereinafter) in CWP No. 7951/2014 (*Trishala Alloys Private Ltd. Vs. State of Punjab*) whereby the High Court has allowed the writ petition filed by the respondent by following its judgment and order of even date passed in CWP No. 5625/2014 (*Jalandhar Iron and Steel Merchants Association Vs. State of Punjab*).
5. State of Punjab has filed the related petition for special leave to appeal (civil) No. 35263/2016 assailing the order dated 20.05.2015.
6. Question for consideration is whether Rule 21(8) of the Punjab Value Added Tax Rules, 2005 (Punjab VAT Rules) could have been introduced during the period between 25.01.2014 to 01.04.2014 when there was no enabling provision in the parent statute i.e. the Punjab Value Added Tax Act, 2005 (Punjab VAT Act)? The above issue has arisen in the following factual backdrop.
7. Respondent is a manufacturer of iron and steel goods. For manufacturing such goods, it purchases raw material of iron and steel from within the State of Punjab as well as from outside the State of Punjab.
8. Punjab VAT Act came into force from 01.04.2005. As per the scheme of Punjab VAT Act, value added tax (VAT) paid or payable under the said Act by a taxable person on the purchase of taxable goods for resale or for use by him in the manufacture or processing or packing of taxable goods in the State of Punjab would be termed as input tax. The credit of input tax available to a taxable person under the Punjab VAT Act is referred to as input tax credit (ITC). There is a concept called reverse input tax credit which means the amount of

State of Punjab & Ors. v. Trishala Alloys Pvt. Ltd.

input tax credit which is required to be reversed by a taxable person on account of credit note for output tax received from the previous seller of goods on purchase in respect of which input tax credit (ITC) is claimed etc. Output tax in relation to a taxable person means the tax charged or chargeable or payable in respect of sale and/or purchase of goods, as the case may be, under the Punjab VAT Act.

9. A taxable person shall be entitled to input tax credit in such manner and subject to such conditions as may be prescribed in respect of input tax on taxable goods including on capital goods purchased by him from a taxable person within the State during the tax period. However, such goods must be for sale in the State of Punjab or in the course of inter-state trade, commerce or in the course of export or for use in the manufacture, processing or packing of taxable goods for sale within the State of Punjab or in the course of inter-state trade or commerce or in the course of export.
 - 9.1. Taxable person has been defined to mean a person who is registered for the purpose of paying value added tax under the Punjab VAT Act and tax period means the period for which a person is required to pay tax under the Punjab VAT Act or the rules framed thereunder.
10. Section 13(1) of the Punjab VAT Act read with the first proviso thereto, as it stood prior to amendment, provided that a taxable person shall be entitled to input tax credit in respect of input tax on taxable goods purchased by him from a taxable person within the State during the tax period if such goods are for further sale etc or for manufacture etc of taxable goods.
 - 10.1. After amendment with effect from 01.04.2014, the mandate of the provision undergoes a change in that input tax credit would be available only if the goods are sold or are used in manufacture etc.
11. In exercise of the powers conferred by sub-section (1) of Section 70 of the Punjab VAT Act, the Punjab VAT Rules have been framed.
 - 11.1. Rule 18 deals with conditions for input tax credit whereas input tax credit on capital goods is dealt with in Rule 19.
 - 11.2. Rule 21 is relevant. It provides for inadmissibility of input tax credit in certain cases, such as, no input tax credit shall be

Supreme Court Reports

admissible to a person for tax paid on purchase of goods if such goods are lost or destroyed or damaged beyond repair etc. Calculation of input tax credit is dealt with in Rule 22.

12. Government of Punjab in the Department of Excise and Taxation issued notification bearing No.G.S.R.5/P.A.8/ 2005/S.70/Amd. (53)/2014 dated 25.01.2014 making the Punjab Value Added Tax (First Amendment) Rules, 2014 ('First Amendment Rules' hereinafter) to further amend the Punjab VAT Rules. It is mentioned therein that the amendments would come into force with effect from 01.02.2014. As per the First Amendment Rules, after sub-rule (6) of Rule 21 of the Punjab VAT Rules, sub-rules (7) and (8) were added. Sub-rule (8) as inserted in Rule 21 *vide* the First Amendment Rules reads as under:

(8) where some goods as input or output are lying in the stock of a taxable person and where rate of tax on such goods is reduced from a particular date, then from that date, input tax credit shall be admissible to the taxable person on the sale of goods lying in stock or on using the goods as input for manufacturing taxable goods, at the reduced rate.

13. Government of Punjab in the Excise and Taxation Department issued a revised public notice/clarification drawing the attention of taxable persons, advocates, chartered accountants and cost accountants that the rate of tax on iron and steel goods stood reduced from 4.5 per cent to 2.5 per cent. It was mentioned therein that input tax credit (ITC) on stock held as on 31.01.2014 would be restricted to the new rate of tax plus surcharge. It was further clarified that the new tax regime would come into effect from 01.02.2014.
14. Punjab Government in the Department of Excise and Taxation also issued notification bearing No. S.O.9/P.A.8./2005/ S.8/2014 dated 25.01.2014 making amendment in Schedule 'E' appended to the Punjab VAT Act mentioning that the same was being done in exercise of the powers conferred by sub-section (3) of Section 8 of the Punjab VAT Act dispensing with the condition of previous notice. As per the amendment, serial No.21 was added to Schedule E whereby iron and steel goods as enumerated in Clause IV of Section 14 of the Central Sales Tax Act, 1956 except non-cenvat paid iron and steel scrap would attract tax at 2.5 per cent whereas non-cenvat paid iron and steel scrap would attract tax at 1 per cent.

State of Punjab & Ors. v. Trishala Alloys Pvt. Ltd.

15. Respondent filed CWP No. 7951 of 2014 before the High Court for a declaration that Rule 21 (8) of the Punjab VAT Rules as inserted *vide* the notification dated 25.01.2014 was *ultra vires* the Constitution and the Punjab VAT Act. Contention of the respondent was that credit for the tax already paid by the taxable person on goods kept as stock in trade would be reduced by virtue of Rule 21 (8) which is illegal and unconstitutional.
16. By the impugned judgment, High Court allowed the writ petition holding that on the date of introduction of sub-rule (8) in Rule 21 of the Punjab VAT Rules, the State did not possess any power traceable to the Punjab VAT Act to confine the rate of input tax credit to the reduced rate of tax on the stock in trade i.e. on those concluded transactions where the taxable person had already earned input tax credit at the previous higher rate of tax.
17. Aggrieved thereby, the State is in appeal.
18. Learned counsel for the appellant submits that the High Court was not at all justified in allowing the writ petition filed by the respondent holding that on the date of introduction of sub-rule (8) in Rule 21 of the Punjab VAT Rules, the State did not possess any power to confine availing of input tax credit (ITC) to the reduced rate of tax on the stock in trade i.e. in respect of transactions that stood concluded with the taxable person already earning input tax credit at the previous higher rate of tax. Judicial intervention in such a case was not warranted.
- 18.1. Referring to Section 2(o) of the Punjab VAT Act, he submits that input tax is the tax paid or payable in the course of business on the purchase of any goods made from a registered dealer of the State. It is a tax in relation to a taxable person which is paid or is payable by him on the purchase of taxable goods for resale or for further use by the taxable person in the manufacture or processing or packing of taxable goods in the State. Output tax which is the tax charged or chargeable or payable under the Punjab VAT Act extends the benefit of ITC subject to fulfilment of certain conditions. Learned counsel submits that High Court has completely misread Rule 21(8) of the Punjab VAT Rules holding that there would be retro-active application of the said Rule whereas no such intent is decipherable therefrom.

Supreme Court Reports

- 18.2. ITC is not a privilege but merely a facility to avoid the cascading effect of tax. State government introduced the scheme of ITC under Section 13 of the Punjab VAT Act to minimise the effect of VAT and to reduce the burden of tax on the ultimate consumer. Every dealer (taxable person) calculates the output tax liability and reduces the tax paid on purchases to reach the quantum of tax payable. Therefore, the state government has the power to impose tax at the stage of sale and in certain cases, no ITC may be available. A dealer would be entitled to ITC on the stock in trade held as on 31.01.2014 equal to the new rate of tax plus surcharge effective from 01.02.2014. The goods purchased prior to 31.01.2014 and not sold or utilised till 31.01.2014 would be eligible to ITC at the new rate enforced till further sale. Thus, he would not be entitled to credit at the same rate of tax which was applicable at the time of procurement.
- 18.3. High Court has failed to appreciate that amendment to the Punjab VAT Rules applies only to the rate of tax prevailing on the date of sale of the stock in trade and, therefore, does not affect the rights of a dealer or the ITC on the transaction which stood concluded.
- 18.4. Learned counsel has referred to the rule making provision in the Punjab VAT Act i.e. Section 70. He submits that as per sub-section (2) of Section 70, the rules under the Punjab VAT Act may be made either with prospective effect or with retrospective effect. However, he concedes that as per the proviso thereto, the rules shall be made with retrospective effect only if the same are required to be made in public interest.
- 18.5. He finally submits that State has a larger affirmative responsibility towards the society. Therefore, the impugned provision may be examined from that perspective also.
19. *Per contra*, learned counsel for the respondent submits that the High Court had rightly observed that on the date of introduction of sub-rule (8) in Rule 21, the State did not possess any power emanating from the Punjab VAT Act to confine the availing of input tax credit (ITC) to the reduced rate of tax on the stock in trade i.e. on the transaction which stood concluded with the dealer already earning input tax credit at the previous higher rate of tax. He submits that a perusal of the

State of Punjab & Ors. v. Trishala Alloys Pvt. Ltd.

amendment in the first proviso to Section 13(1) of the Punjab VAT Act would reveal that the said provision is not retrospective but applies to transactions after 01.04.2014. The amendment in the said Rule which came into effect prior to the amendment in the Punjab VAT Act could therefore not be enforced by the appellant before 01.04.2014 to take away a vested right already determined and accrued to the respondent without any statutory sanction.

- 19.1. Based on the above submission, learned counsel for the respondent contends that the limited issue in this appeal is whether Rule 21(8) of the Punjab VAT Rules could have been introduced and made applicable during the period between 25.01.2014 to 01.04.2014.
- 19.2. In that context learned counsel contends that on the date when Rule 21(8) of the Punjab VAT Rules was introduced i.e. on 25.01.2014 there was no enabling provision in the Punjab VAT Act that empowered the State to reduce the rate of input tax credit already earned by reference to the sale of goods lying in stock. The statutory position is clear in that input tax credit (ITC) would be earned on the date of purchase in accordance with Section 13 of the Punjab VAT Act as it stood on that date i.e. on the date of purchase. Amendment to the Punjab VAT Act empowering the State to notify such a rule came into effect only on 01.04.2014 when the first proviso to Section 13(1) of the Punjab VAT Act was amended. The words 'are for sale' appearing in the first proviso to Section 13(1) were deleted and substituted with the words 'are sold'. Similarly, the words 'for use in the manufacture' were replaced by the words 'are used in the manufacture'. Effect of this amendment was to limit the input tax credit earned on the goods already sold or used in manufacture. This amendment therefore enabled the State to reduce the input tax credit already earned on the stock in trade by reference to the reduced rate of taxation.
- 19.3. State of Punjab introduced Rule 21(8) in the Punjab VAT Rules *vide* the notification dated 25.01.2014, the effect of which was that though the respondent would have paid tax at the existing higher rate on the purchase of raw material used as input, it would not be in a position to recover the whole of it from the customers because of subsequent reduction in the rate of tax.

Supreme Court Reports

- 19.4. Learned counsel vehemently argued that the State did not have the legislative competence to reduce the input tax credit already earned by inserting sub-rule (8) in Rule 21 before making amendment in the corresponding enactment i.e. Section 13 of the Punjab VAT Act. Amendment in the Punjab VAT Act having come into effect from 01.04.2014, the amendment in Rule 21(8) of the Punjab VAT Rules could not have come into force prior thereto.
- 19.5. Learned counsel for the respondent submits that there is no error or infirmity in the view taken by the High Court. Appeal filed by the State lacks merit and, therefore, should be dismissed.
20. Submissions made by learned counsel for the parties have received the due consideration of the Court.
21. At the outset, let us refer to and analyse the relevant statutory provisions. Section 2 of the Punjab VAT Act is the definition section. Section 2(o) deals with *input tax*. It says that input tax in relation to a taxable person means the value added tax (VAT), paid or payable under the Punjab VAT Act, by a person on the purchase of taxable goods for resale or for use by the taxable person in the manufacture or processing or packing of taxable goods in the State. *Input tax credit* has been defined in Section 2(p) to mean the credit of input tax (ITC) available to a taxable person under the Punjab VAT Act. On the other hand, *output tax* as defined in Section 2(s) in relation to a taxable person means the tax charged or chargeable or payable in respect of sale and/or purchase of goods, as the case may be. *Reverse input tax credit* as per Section 2(ze) means the amount of input tax credit (ITC) which is required to be reversed by a taxable person on account of the four situations enumerated thereunder including one where credit note for output tax is received from the seller of goods on purchase in respect of which input tax credit is claimed. While *tax period* has been defined in Section 2(zm) to mean the period for which a person is required to pay tax under the Punjab VAT Act or under the Punjab VAT Rules, *taxable person* has been defined in Section 2(zn) to mean a person who is registered for the purpose of paying VAT under the Punjab VAT Act.
22. Section 13 of the Punjab VAT Act deals with input tax credit. Sub-section (1) of Section 13 of the Punjab VAT Act alongwith the first proviso thereto, as it stood prior to the amendment, reads as under:

State of Punjab & Ors. v. Trishala Alloys Pvt. Ltd.**S-13. Input tax credit.**

- (1) A taxable person shall be entitled to the input tax credit, in such manner and subject to such conditions, as may be prescribed, in respect of input tax on taxable goods, including capital goods, purchased by him from a taxable person within the State during the tax period:

Provided that such goods are for sale in the State or in the course of inter-state trade or commerce or in the course of export or for use in the manufacture, processing or packing of taxable goods for sale within the State or in the course of inter-state trade or commerce or in the course of export.

23. The aforesaid provision says that a taxable person shall be entitled to ITC in respect of input tax on taxable goods, including capital goods, purchased by him from a taxable person within the State during the tax period. As per the unamended first proviso, such goods should be for sale in the State or in the course of inter-state trade or commerce or in the course of export or for use in the manufacture, processing or packing of taxable goods for sale within the State or in the course of inter-state trade or commerce or in the course of export.
- 23.1. Sub-section (9) of Section 13 provides that a person shall reverse input tax credit availed by him on goods which could not be used for the purposes specified in sub-section (1) of Section 13 or which remained in stock at the time of closure of the business.
24. Section 70 is the rule making provision. While sub-section (1) empowers the state government to make rules for carrying out the purposes of the Punjab VAT Act, sub-section (2) on the other hand provides that rules made under the Punjab VAT Act may be either with prospective effect or with retrospective effect. As per the proviso to sub-section (2), the rules shall be with retrospective effect only if the same are required to be made in public interest.
25. While Rule 18 of the Punjab VAT Rules mentions the conditions for input tax credit, Rule 19 on the other hand deals with input tax credit on capital goods.

Supreme Court Reports

26. Rule 21 deals with inadmissibility of input tax credit in certain cases. At the relevant point of time, Rule 21 had six sub rules, sub-rule (7) having been omitted. Input tax credit would not be admissible to a person for the tax paid on purchase of goods if such goods are lost or destroyed or damaged beyond repair etc.
27. By notification dated 25.01.2014, Government of Punjab made the Punjab VAT (First Amendment) Rules, 2014 declaring that the amended provisions would come into force with effect from 01.02.2014. By the First Amendment Rules, Rule 21 of the Punjab VAT Rules was amended in the sense that after sub-rule (6), sub-rules (7) and (8) were added.
28. We have already extracted sub-rule (8) of Rule 21. It says that where some goods as input or output are lying in the stock of a taxable person and where the rate of tax on such goods is reduced from a particular date, then from that date, input tax credit shall be admissible to the taxable person on the sale of goods lying in stock or on using the said goods as input for manufacturing taxable goods etc at the reduced rate from that particular date.
29. What therefore the newly inserted provision of Rule 21(8) contemplates is that goods which were already purchased at a higher rate of tax and forming part of the stock in trade would be entitled to input tax credit of the taxable person on the further sale of such goods or use of such goods as input for manufacturing taxable goods etc at the reduced rate with effect from 01.02.2014.
30. It has come on record that by another notification dated 25.01.2014, Schedule E to the Punjab VAT Act was amended by insertion of serial No.21 reducing the rate of tax in respect of iron and steel goods.
31. Punjab VAT Act was amended the second time by the Punjab Value Added Tax (Second Amendment) Act, 2013 (Punjab Act No. 38 of 2013). Though as per Section 1(2) of the Second Amendment Act, the same was to come into force at once, the proviso thereto mentioned that amendment of sub-section (1) of Section 13 shall come into force on and with effect from the first day of April, 2014 i.e. from 01.04.2014. Section 5 of the Second Amendment Act deals with amendment to Section 13 of the Punjab VAT Act. As per the amendment, the first proviso to sub-section (1) of Section 13 was amended and post amendment, the said proviso reads as under:

State of Punjab & Ors. v. Trishala Alloys Pvt. Ltd.

Provided that the input tax shall not be available as input tax credit unless such goods are sold within the State or in the course of inter-state trade or commerce or in the course of export or are used in the manufacture, processing or packing of taxable goods for sale within the state or in the course of inter-state trade or commerce or in the course of export.

32. As already noticed above, this provision came into the statute book on and with effect from 01.04.2014. Before proceeding further, it would be apposite to examine the said provision as it existed prior to the amendment and compare the same post amendment. Prior to amendment, the first proviso mentioned that a taxable person would be entitled to input tax credit in respect of input tax on taxable goods purchased by him from a taxable person within the State during the tax period if such goods are for sale in the State or in the course of inter-state trade or commerce or in the course of export or for use in the manufacture, processing or packing of taxable goods for sale within the State or in the course of inter-state trade or commerce or in the course of export. Post amendment, the first proviso says that input tax shall not be available as input tax credit unless such goods are sold within the State or in the course of inter-state trade or commerce or in the course of export or are used in the manufacture, processing or packing of taxable goods for sale within the State or in the course of inter-state trade or commerce or in the course of export.
33. The difference in language in the said provision as it stood prior to amendment and post amendment is unmistakable. Prior to amendment, the first proviso permitted availing of input tax credit in respect of goods which are for sale etc. or are for use in manufacture etc. Post amendment, the requirement is that input tax would not be available as a credit unless the goods are sold within the State etc. or are used in the manufacture etc. of taxable goods. Post amendment, it is clear that no input tax would be available unless the goods are sold etc. or used in the manufacture etc. In other words, input tax credit would be available on and from the date of further sale or use in manufacture.
34. As we have already seen, by way of the first amendment to the Punjab VAT Rules, Rule 21(8) was inserted with effect from 01.02.2014 which made it abundantly clear that goods purchased earlier on which input

Supreme Court Reports

tax was paid and which were lying in the stock of a taxable person would be available for input tax credit on further sale of such goods or using of such goods as input for manufacturing taxable goods etc. at the reduced rate if the rate on such tax is reduced from a particular date. We have also seen that the rate of tax on iron and steel goods was reduced with effect from 01.02.2014.

35. The question that the High Court posed for consideration was whether on 25.01.2024 when the notification was issued inserting sub-rule (8) in Rule 21, the Punjab VAT Act empowered the State to notify such a rule. High Court analysed the provision of Rule 21(8) of the Punjab VAT Rules in the following manner:

A perusal of Rule 21(8) of the Rules reveals that with respect to goods lying in stock the input tax credit already earned shall be admissible at the reduced rate i.e. the rate of taxation prevalent on the date of their sale. As referred to above, the rate of taxation was reduced from 4% to 2% from 25.01.2014. The input tax credit already earned would, therefore, be available with respect to goods lying in stock at 2%. The petitioner-members, as is apparent from the facts, had paid tax @ 4% while purchasing the goods and had earned input tax credit @ 4%. The goods having been purchased for resale within the State of Punjab, the right to avail input tax credit @ 4% per annum stood crystalised as a determinate right subject to availing this right during the return period or by carrying it forward. The State, however, by enacting Rule 21(8) of the Rules, has reduced the admissible amount of input tax credit already earned from 4% to 2%. We cannot possibly dispute the legislative competence of the State in the exercise of its power of delegated legislation to enact such a rule but the question, as we have also noticed, is not the legislative competence of the State but is whether on 25.01.2014 there was any provision in the statute that empowered the State of Punjab to notify Rule 21(8) of the Rules to provide that goods that have already earned input tax credit would avail input tax credit at the reduced rate of taxation applicable on the date of sale thereby reducing input tax credit already earned on

State of Punjab & Ors. v. Trishala Alloys Pvt. Ltd.

goods lying in stock by reference to the reduced rate of tax prevalent on the date of their sale etc.

- 35.1. However, High Court noted that as on 25.01.2014, there was no provision in the statute that empowered the State to enact a rule to provide that input tax credit already earned on goods lying in stock could now be availed at the reduced rate as the rate of tax on the goods in question stood reduced in the *interregnum*. Such a power came to be conferred only after the first proviso to Section 13(1) was amended on and from 01.04.2014. It was in that context, High Court held as follows:

The amendment in the first proviso to Section 13 of the Act introducing the words “are sold” etc. came into effect on 01.04.2014. The State of Punjab was, therefore, empowered in the exercise of its power of delegated legislation to notify a rule linking the availing of input tax credit already earned to their sale on 01.04.2014. Rule 21(8) of the Rules which resonates the first proviso to Section 13 of the Act by linking the availing of input tax credit to goods sold and thereby to the reduced rate of taxation, came into effect on 25.01.2014 on which date there was no statutory provision enabling the State, in the exercise of its power of delegated legislation, to notify a rule that input tax credit would be “availed” on the sale of goods lying in stock or their manufacture etc. by reference to the reduced rate of taxation prevalent at the time of “sale/manufacture” etc. of goods that had already earned a determinate amount of input tax credit.

- 35.2. Allowing the writ petition High Court held that in the absence of any provision in the statute enabling the State of Punjab to notify Rule 21 (8) with effect from 25.01.2014, the said provision would come into effect only from 01.04.2014 i.e. the date of coming into force of the amended provision of Section 13(1) along with the first proviso thereto. High Court further observed that the said provision i.e. amended first proviso to Section 13(1) was not retrospective and held as under:

Supreme Court Reports

We, therefore, have no hesitation in holding that on the date of introduction of sub-rule (8) of Rule 21 of the Rules, the State did not possess any power, emanating from the Act, to confine the availing of input tax credit to the reduced rate of tax on the stock in trade i.e. transactions that had concluded with the dealer already earning input tax credit. A further perusal of the amendment in the first proviso to Section 13 of the Act reveals that it is not retrospective but applies to transactions after 25.01.2014. The amendment in the rule, which came into effect prior to the amendment of the Act could, therefore, not be enforced by the respondents before 01.04.2014 to take away a vested right already determined without statutory sanction.

We, therefore, allow the writ petitions and hold that in the absence of any provision in the statute enabling the State of Punjab to notify Rule 21(8) of the Rules w.e.f. 25.01.2014, the said provision would come into effect from 01.04.2014.

36. According to us, view taken by the High Court is logical and correct. A taxable person who had stock in trade as on 25.01.2014 or as on 01.02.2014 had already paid the tax while making the purchase of such goods. In this case, the purchase was made by paying higher rate of tax on iron and steel goods to be used as input for the purpose of manufacture etc. of taxable goods. The taxable person who is otherwise entitled to avail input tax credit on the goods already purchased and lying in stock would suffer serious prejudice and loss if his entitlement to input tax credit are reduced by virtue of lowering of the rate of tax on such goods on a subsequent date. High Court has noted that the enabling provision in the statute came into effect on and from 01.04.2014 and, therefore, Rule 21(8) of the Punjab VAT Rules which permits application of the reduced rate of tax cannot be given effect to transactions which already stood concluded prior thereto. It could only be applied to transactions on and from 01.04.2014.

State of Punjab & Ors. v. Trishala Alloys Pvt. Ltd.

37. In *Eicher Motors Limited Vs. Union of India*¹, a three-Judge Bench of this Court examined the challenge to the validity and application of the scheme as modified by way of introduction to Rule 57(F) of the Central Excise Rules, 1944 under which credit which was lying unutilised as on 16.03.1995 with the manufacturers stood lapsed in the manner set out therein. While examining the above issue, this Court held that if on the inputs, the assessee had already paid the taxes on the basis that when the goods are utilised in the manufacture of further products as inputs thereto then the tax on these goods gets adjusted which are sold subsequently. Thus, a right accrued to the assessee on the date when he paid the tax on the raw material or the input would continue until the facility available thereto gets worked out or until those goods existed. The impugned rule cannot be applied to the goods manufactured prior to the date it came into force i.e. 16.03.1995 on which duty had been paid and credit facility thereto has been availed of for the purpose of manufacture of further goods. This Court held as under:

6. We may look at the matter from another angle. If on the inputs, the assessee had already paid the taxes on the basis that when the goods are utilised in the manufacture of further products as inputs thereto then the tax on these goods gets adjusted which are finished subsequently. Thus a right accrued to the assessee on the date when they paid the tax on the raw materials or the inputs and that right would continue until the facility available thereto gets worked out or until those goods existed. Therefore, it becomes clear that Section 37 of the Act does not enable the authorities concerned to make a rule which is impugned herein and, therefore, we may have no hesitation to hold that the Rule cannot be applied to the goods manufactured prior to 16.03.1995 on which duty had been paid and credit facility thereto has been availed of for the purpose of manufacture of further goods.

38. *Sedco Forex International Drill INC.Vs. Commissioner of Income Tax, Dehradun*², is a case where this Court reiterated the well

1 (1999) 2 SCC 361

2 (2005) 12 SCC 717

Supreme Court Reports

settled principle of tax law that the law to be applied is that which is in force in the relevant assessment year unless otherwise provided expressly or by necessary implication. In so far an explanation to a statutory provision is concerned if it is clarificatory in nature then the explanation must be read into the main provision with effect from the time the main provision came into force. But if it changes the law, it is not to be presumed to be retrospective. Para 17 of the aforesaid decision reads as follows:

17. As was affirmed by this Court in *CIT Vs. Goslino Mario*³, a cardinal principle of the tax law is that the law to be applied is that which is in force in the relevant assessment year unless otherwise provided expressly or by necessary implication. (See also *Reliance Jute and Industries Ltd. Vs. CIT*⁴). An Explanation to a statutory provision may fulfil the purpose of clearing up an ambiguity in the main provision or an Explanation can add to and widen the scope of the main section (See *Sonia Bhatia Vs. State of U.P.*⁵). If it is in its nature clarificatory then the Explanation must be read into the main provision with effect from the time that the main provision came into force (See *Shyam Sunder Vs. Ram Kumar*⁶, *Brij Mohan Das Laxman Das Vs. CIT*⁷ and *CIT Vs. Podar Cement (P) Ltd.*⁸). But if it changes the law, it is not presumed to be retrospective, irrespective of the fact that the phrases used are “it is declared” or “for the removal of doubts”.

39. This Court in *Commissioner of Central Excise, Patna Vs. New Swadeshi Sugar Mills*⁹, agreed with the interpretation given by the Customs Excise and Service Tax Appellate Tribunal to Rule 6 of the CENVAT Credit Rules, 2002 by holding that CENVAT credit which was already earned by the assessee could not have been taken away if the rigors of Rule 6 would be having only prospective effect.

3 (2000) 10 SCC 165

4 (1980) 1 SCC 139

5 (1981) 2 SCC 585

6 (2001) 8 SCC 24

7 (1997) 1 SCC 352

8 (1997) 5 SCC 482

9 (2016) 1 SCC 614

State of Punjab & Ors. v. Trishala Alloys Pvt. Ltd.

40. Again in the case of *Jayam and Company Vs. Assistant Commissioner*¹⁰, this Court in the context of Section 19(20) of the Tamil Nadu Value Added Tax Act, 2006, which was inserted in the statute *vide* the amendment brought about by the Amendment Act of 2010, held that the said provision was made for the first time to the detriment of the dealers lowering the rate of input tax credit on resale. Such a provision therefore cannot have retrospective effect more so when vested right had accrued in favour of the dealers in respect of purchase and sale made prior to insertion of the aforesaid provision.
41. Applying the principles culled out from the above decisions to the facts of the present case, we find that respondent had earned input tax credit on purchase of iron and steel goods which it kept as its stock in trade to be used as inputs or raw materials in the manufacture etc. of taxable goods. State lowered the rate of tax with effect from 01.02.2014 on those goods. The related amendments in the rules i.e. Rule 21(8) of the Punjab VAT Rules were notified on 25.01.2014 to come into effect from 01.02.2014. There was however no corresponding provision in the parent statute i.e. Punjab VAT Act which permitted availing of input tax credit at the lower rate of tax on the existing stock in trade though the purchase of such input was already made at a higher rate of tax thereby reducing the quantum of credit. The enabling provision in the statute i.e. first proviso to Section 13(1) of the Punjab VAT Act came into force with effect from 01.04.2014.
- 41.1. The benefit of input tax credit is traceable to the statute. If the same has to be reduced, which will have an adverse civil consequence upon the beneficiary, it must have the requisite statutory sanction. In this case, the statutory sanction came on and from 01.04.2014 with the amendment of the first proviso to Section 13(1) of the Punjab VAT Act. Therefore, the High Court was justified in holding that prior to 01.04.2014, there was no statutory sanction to allow applicability of Rule 21(8) on the stock in trade i.e. on inputs already purchased for which transactions stood concluded at a higher rate of tax.
- 41.2. This issue can also be looked at from another angle. As we have seen, under sub-section (9) of section 13, a person is

Supreme Court Reports

under a mandate to reverse input tax credit availed by him on goods which could not be used for the purposes specified in sub-section (1) of Section 13 of the Punjab VAT Act or which remained in stock at the time of closure of business. If the interpretation sought to be given to Rule 21(8) of the Punjab VAT Rules by the State is accepted, the natural corollary would be that reversal of input tax credit would be at the lower rate of tax on the goods in question when those goods could not be used for the purposes specified in Section 13(1) or which remained as part of the stock in trade at the time of closure of business. Such an interpretation besides being fallacious, would also lead to revenue loss for the State exchequer.

42. Thus, having regard to the discussions made above we are of the unhesitant view that the interpretation given by the High Court to the applicability of Rule 21(8) of the Punjab VAT Rules read with the amended first proviso to sub-section (1) of Section 13 of the Punjab VAT Act is legally sound and warrants no interference. Consequently, we find no merit in the appeal which is accordingly dismissed.
43. Resultantly, and in view of the above, all the appeals are dismissed. However, there shall be no order as to cost.

Result of the case: Appeals dismissed.

[†]Headnotes prepared by: Niti Richhariya, Hony. Associate Editor
(*Verified by:* Shibani Ghosh, Adv.)