



LAW UPDATES ON VAT

Dear Sir/Madam,

Find here below latest updates on VAT/ CST. We hope you find them useful. Your valuable suggestions are welcome. For any queries please contact the undersigned through e-mail or phone.

SUPREME COURT OF INDIA

Entries in schedule – Mobile phone charger – Rate of tax – Mobile phone charger sold in a composite pack / solo pack alongwith cellphone – Tax @ 4% applicable on sale of cellphone as per schedule B – Same rate of tax paid on sale of composite packs considering charger to be a part of cellphone – Tax imposed holding chargers to be an accessory to cellphones taxable @ 12.5% - High Court held charger to be a part of composite package of cellphone – Appeal by revenue before Supreme Court - Tax @ 12.5% paid on such chargers when sold separately – Charger not a part of cellphone as the latter does not require it at time of operation – Also, cellphone battery is chargeable from other means like laptop implying it to be just accessory – Hence, chargers are ‘independent product’ capable of being sold separately and not composite part of cell phone – Tax @ 12.5% applicable.

Taxable person had being selling cellphones with battery chargers in composite pack and had paid tax @ 4% on its sale. The assessing authority held that the charger was an accessory chargeable to tax @ 12.5%, Tribunal affirmed the order of Assessing Authority but deleted penalty us/53. However, the Hon’ble High Court held that the charger was also a part of cellphone and chargeable to tax @ 4% as per schedule B, Entry 60. The revenue appealed before the Apex Court. The respondents admitted that though initially the charger was sold alongwith the cell phone within the composite pack taxable @4%, any subsequent sale of such charger sold separately was taxable @12.5%. It was also noticed that if a charger was a part of cellphone then cellphone could not have been operated without using the battery charger. In reality, it is not required at the time of operation. Cellphone can be charged directly from the other means also like laptop without using the battery charger, which implies that it is only an accessory to the mobile phone. On its website, the company has put the mobile battery charger in the category of an accessory. Merely making a composite packing of cellphone charger will not make it composite good for the purpose of interpretation of the entry. It is termed as an independent product capable of being sold separately without selling the cellphone. Hence, sale of charger is taxable @12.5%. Appeal by revenue allowed.

[The State of Punjab and others vs. Nokia India Pvt. Ltd](#)

CIVIL APPEAL Nos 11486-11487 of 2014 (Supreme Court)

PUNJAB & HARYANA HIGH COURT

Limitation – Assessment – Framing of – Amendment of sec 11 of PGST Act – Effect of – Assessment year 1989-90 - Assessment framed u/s 11 of PGST Act on 29.08.2003 – Demand raised on account of purchase tax – Meanwhile vide amendment in Section 11(3) w.e.f. 3.3.98, period for framing assessment prescribed as three years from filing of returns – Assessment Orders set aside by Tribunal being time barred – Appeal by State on the ground that period prescribed vide amendment not applicable to assessment periods prior to amendment – Held by court that for years upto 1997-98, assessment order is to be passed latest by 30.04.2001 - Revenue appeal dismissed.

An assessment order was passed for the year 1997-98 raising demand on account of non deposit of purchase tax. The assessment order was passed on 29.08.2003. In year 1998 an ordinance was passed as per which limitation period of 3 years u/s 11 of PGST Act was prescribed for framing of assessment from date of filing of returns w.e.f. 03.03.1998. It was appealed by the State that since the ordinance was promulgated in 1998 the same would not be applicable to the assessment year in question and period prior to 03.03.1998. Following the judgment passed in the case of Des Raj Bhim Sain it is held that law of limitation is a procedural law and operates retrospectively unless it is provided differently in the amending statute.

The amendment would govern all assessment pending relating to periods before the amendment came into operation. Therefore, for assessment years following upto 1997-98 no assessment order could be validly passed after 30.04.2001.

[The State of Punjab and others vs. M/s The Patialia Cooperative Sugar Mills Ltd](#)

VATAP No. 110 of 2013 (P&H High Court)

[State of Punjab and others vs. M/s Fazilka Cooperative Sugar Mills Ltd](#)

VATAP No. 32 of 2014

Reassessment – Raid conducted on transport company by Department – Documents related to appellant firm found and cross verified from check post register – Ingenuine bills found having been issued – Prior notice served before reassessment framed – Failure on part of assessee to produce books of accounts and replying to show cause notice resulted in adverse order – Sufficient opportunity provided before framing reassessment – Definite information based on documentary evidence impounded pointed towards tax evasion – Appeal dismissed.

The appellant had filed quarterly returns. Assessment order was passed accepting returned version. Raid was conducted on transport company and some documents relating to the appellant company were found and cross verified from the register maintained at the sale tax check post barrier Faridabad. It was found that some bills no. were issued in the name of local dealers whereas as per barrier record these have been despatched to Delhi from the same bill. Though, notices were issued from framing of reassessment, the appellant failed to reply to them or produce books of account. No application for cross examining the party involved was ever made by it. Based on available information the order was passed against the appellant by the department. It is held by the Hon'ble High Court that as per the findings recorded by the Tribunal, the assessee was given sufficient opportunity to present his case. Failure to produce books of accounts or to reply to show cause notice and documentary evidence pointed towards tax evasion. Appeal dismissed.

[M/s Toshiba Industries \(I\) Faridabad vs. State of Haryana and others](#)

VATAP No. 116 of 2013(P&H High Court)

Natural justice – Violation of – Assessment order – No notice issued to assessee for framing assessment - Assessment framed and tax demand notice served on assessee – Writ filed praying quashing of order on grounds of lack of opportunity – Department conceding that no notice issued - Writ allowed – Order set aside – Department to give adequate opportunity to petitioner.

The petitioner had been assessed and a tax demand notice was served. No notice for framing the assessment had been issued. A writ of certiorari was filed praying quashing of the impugned orders as adequate opportunity of being heard was not afforded to the petitioner. Allowing the writ, the order was set aside and the respondents given liberty to pass fresh order after granting adequate opportunity to the petitioner directing the latter to cooperate and produce relevant documents. Writ petition allowed.

[M/s Vision India Realotrs Pvt. Ltd vs. State of Punjab and others](#)

CWP No. 24291 of 2014(P&H High Court)

Revision – Limitation – Period to be calculated from date of deemed assessment – Annual returns for the year 2003-04 filed on 19.11.2004 – Assessment deemed to have been framed vide order dated 30.11.2004 as per Rule 27(3) of HVAT Rules, 2003 – Formal order passed on 25.11.2005 without any notice u/s 15(2) of the Act – Revisional proceedings initiated – Order passed on 13.06.2008 – Held, in absence of notice required u/s 15(2) of the Act, assessment order passed on 25.11.2005 considered invalid – Period for framing assessment ought to be calculated from the date of deemed assessment i.e. 19.11.2004 and not from the date of formal (invalid) order – Therefore, order being passed after 2007 set aside being beyond limitation period.

In this case annual returns were filed for the year 2003-04 on 19.11.2004. These were acknowledged and assessment deemed to have been framed on 30.11.2004 as per Rule 27(3). On 25.11.2005 a formal order was passed as deemed assessment though no notice was issued as required u/s 15. Thereafter, revision was taken up and order was passed on 13.06.2008. An appeal was filed on grounds of revisional order being barred by limitation. It is held that order passed on 25.11.2005 as formal order was non-est as no notice was issued. Therefore, the period of limitation is to be reckoned from the date of acknowledgement of deemed assessment i.e. 19.11.2004. Hence, revision order should have been passed by 2007. Being barred by limitation revisional order is set aside.

[M/s H.R. Steel P. Ltd vs. State of Haryana and others](#)

VATAP No. 132 of 2013(P&H High Court)

Appeal No. 713 of 2013 (Pb.Tbnl)

Limitation – Assessment – Framing of – Scope of section 29(4-A) of PVAT Act, 2005 - Returns filed for the year 2005-06 – Three years of limitation period expired on 20.11.2009 – Assessment framed u/s 29 of the Act on 25/11/2010 - Order set aside by Tribunal as assessment barred by limitation in view of sec 29(4-A) of the Act - Extension of limitation period granted by commissioner u/s 29(4) of PVAT Act – Held sec 29 (4-A) is *non obstante* clause – Extension granted rendered invalid as sec 29 (4-A) is an overriding section – Assessment held time barred – Appeal dismissed.

Where the quarterly and annual returns for the year 2005-06 were filed in time, assessment was framed u/s 29 of PVAT Act, 2005 on 25.11.2010 raising an additional demand of tax. However, Ld. Tribunal set aside the assessment order on the ground of limitation in view of section 29(4-A) of the Act. The revenue appealed further on the ground that the assessment order was passed within the limitation as the commissioner had extended the period for framing of assessment exercising power in accordance with section 29(4) of the Act. Following the judgment passed in the case of State of Punjab vs. Des Raj Bhim Sain (2012) 43 PHT 1 (P&H), it is held that section 29(4-A) is a non obstante clause and overrides section 29(4) of the Act, thereby, rendering any extension granted as invalid. Therefore, the commissioner did not have the power to extend the period of limitation for framing of assessment for the year 2005-06 beyond 2009. Revenue appeal dismissed.

[The State of Punjab and others vs. M/s Bhagwanpura Sugar Mills](#)

VATAP No. 109 of 2013 (P&H High Court)

WITH REGARDS



AANCHAL GOYAL
(ADVOCATE)

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224, Sector 35-A, Chandigarh – 160022
Telefax : +91-172 – 5016400, 2614017, 2608532 | Email : info@sgalaw.in