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NOTIFICATION

NEWS OF YOUR INTEREST

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SUPREME COURT OF INDIA

CIVIL APPEAL NO. 2957 OF 2007

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VOLTAS LTD.
Vs.
STATE OF GUJARAT

H.L. DATTU, C.J.I., ARUN MISHRA AND AMITAVA ROY, JJ.

8th April, 2015

HF ▶ Assessee

ENTRIES IN SCHEDULE – WORKS CONTRACT – COMPOSITION OF TAX – FABRICATION AND INSTALLATION OF WATER CHILLING PLANT – ENTRY 2 PROVIDED FOR RATE OF COMPOSITION FOR " INSTALLATION OF AIR CONDITIONERS AND A.C. COOLERS" AND ENTRY 5 FOR "FABRICATION AND INSTALLATION OF PLANT & MACHINERY" – THE CONTRACT AS A WHOLE WAS NOT ONLY INSTALLATION AS IT WAS TAILOR MADE TO MEET REQUIREMENTS OF CUSTOMERS – DESIGNED TO MEET CERTAIN PARAMETERS – CONTRACT IS FOR FABRICATION AND INSTALLATION OF CHILLING PLANT – TAXABLE UNDER ENTRY 5 @ 5%.

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INTERPRETATION OF STATUTES – COURT TO LOOK WHAT IS CLEARLY SAID AND THERE IS NO ROOM FOR ANY INTENDMENT – THERE IS NO EQUITY ABOUT A TAX – NO PRESUMPTION AS TO TAX – NO PART OF A LEGISLATION IS REDUNDANT – NO WORD USED IN NOTIFICATION TO BE BRUSHED ASIDE – FULL EFFECT TO BE GIVEN TO EVERY WORD.

CLASSIFICATION OF GOODS – BURDEN OF PROOF IS ON THE TAXING AUTHORITY TO SHOW THAT A PARTICULAR CLASS OF GOODS OR ITEM IN QUESTION IS TAXABLE IN THE MANNER CLAIMED BY THEM – MERE ASSERTION IS OF NO AVAIL

Assessee received an order from M/s Anupam for fabrication and installation of water chilling plant at its factory at Vapi. The order was with certain specifications which were required to be adhered to with the assertion that sufficient precautions be taken to ensure that chilled water at 5°C to 6°C is available for the manufacturing process. The contract also required the

assessee to provide the customer with the lay-out detail, foundation drawing and other necessary information required for the erection of the plant.

Gujarat Sales Tax provided for composition of tax under Section 55A which required issuance of Notification fixing different rates of composition for different works contract. Entry 2 of the said Notification dated 18.10.1993 provided for a rate of composition as 15% for "INSTALLATION OF AIR-CONDITIONERS AND AC COOLERS" but Entry 5 had provided for composition rate as 5% for "FABRICATION AND INSTALLATION OF PLANT AND MACHINERY".

The assessee moved an application u/s 62 to seek clarification with regard to applicability of appropriate rate of tax under composition. The contention of the assessee was rejected and it was held by Revenue authority that works contract was covered by Entry No. 2 levying tax @ 15%. Assessee approached the Tribunal against said order. In the meanwhile assessment of the assessee was also finalized applying the composition rate of 15% for the works contract involved. After failing in first appeal, the said matter was also taken up before the Tribunal. Both the appeals filed before the Tribunal were dismissed against which writ and Reference were filed before High Court. High court had answered the question against the assessee sustaining the determination made by revenue authorities holding that the appellant's works contract is for installation of air-conditioning plant and it did fall under Entry 2 of Notification and hence taxable @ 15%. On appeal before the Supreme Court.

Held: The work order in clear terms did enjoin that the design parameters pertaining to tonnage of refrigeration, final temperature of the water to be made available for the process of manufacturing pigments and the quantity of the chilled water essential therefore were indispensable and were in addition to the other specifications as offered by the appellant. The rigour of the insistence for the adherence to the design parameters is patent also from the request of the customer requiring the appellant to provide it with the layout detail, foundation drawing and other necessary information essential for the erection of the water chilling plant. ***The exercise as a whole as contemplated by the work order thus was neither intended nor can be reduced to mere installation of the finally emerging apparatus.*** *The work order noticeably did not refer to any readymade or instantly available devices, meeting the requirements of the customer so much so to be only installed at its factory. Instead, the work order had been apparently tailor-made to the requirements from which no departure was intended or comprehended. It is in this perspective that the word "fabrication" appearing in Entry No. 5 of the Notification assumes a decision significance. The word "fabrication" had not been applied in the works contract for installation of air-conditioners and A.C. Coolers contained in Entry No. 2 of the Notification. Having regard to the inseparable interdependence between the description of a works contract and the corresponding composition rate of tax, none of the inherent components of the works to be executed can either be ignored or disregarded for identifying the correct composition rate of the levy under the Act. Any other approach could tantamount to doing violence not only to the legislative purpose conveyed by Section 55A but also the language of its yield i.e. the Notification seeking to promote the statutory end. Viewed in that context, mere omission of the expressions "air-conditioners" and "A.C. Coolers" in Entry No. 5 would not be of any definitive consequence. The words plant and machinery applied to include air-conditioners and A.C. Coolers, if the works contract involved require fabrication as well as installation thereof.*

Meaning of Fabrication

"Fabrication" is a process which would involve a layout for the ultimate device to be installed, preceded by a design of the parameters prescribed, configuration of the resultant components and integration thereof to structure the ultimate mechanism or product. Installation thereof would be a subsequent step to finally position the plant to complete the works contract.

Interpretation of Statues

While interpreting a taxing statute one has to look merely at what is clearly said and there is no room for any intendment. There is no equity about a tax and there is no presumption as to a tax.

It is trite as well that in case of reasonable doubt, the construction most beneficial to the subject is to be adopted. The meaning and intention of a statute must be collected from the plain and unambiguous expression used therein rather than from any notion that may be entertained by a court which may appear to be it just and expedient.

No construction to a legislation ought to be provided so as to render a part of it otiose or redundant. It is a cardinal principle of interpretation not to brush aside a word used in a statute or in a Notification issued under statute and full effect must be given to every word of an instrument.

Burden of Proof

Qua the issue of classification of goods, the burden of proof is on the taxing authority to demonstrate that a particular class of goods or item in question is taxable in the manner claimed by them and that mere assertion in that regard is of no avail.

Conclusion

Accordingly, the inescapable conclusion is that the appellant's works contract for fabrication and installation of water chilling plant at the factory of M/s Anupam would fall under Entry 5 of the Schedule to the Notification dated 18.10.1993 issued u/s 55A of the Act and would be taxable @ 5%. Civil Appeal is allowed.

Cases relied upon:

Cape Brandy Syndicate v. Inland Revenue Commnrs. (1921) 1 KB 64 at p.71
Sussex Peerage case (1844) 11 C1 & Fin 85 : 8 ER 1034(HL)
Tuticorin vs. T.S.Devinatha Nadar & Ors. (1968)68 ITR 252
Commissioner of Income Tax-III vs. Calcutta Knitwears, Ludhiana (2014) 6 SCC 444
Commissioner of Income Tax (Central)-I, New Delhi vs. Vatika Township Pvt. Ltd. 2015 (1) SCC 1
U.O.I. & Ors. vs. Garware Nylones Ltd.etc. (1996) 10 SCC 413
HPL Chemicals Ltd. vs. Commissioner of Central Excise, Chandigarh (2006) 5 SCC 208
Maharashtra University of Health Sciences & Ors. vs. Satchikitsa Prasarak Mandal & Ors. (2010)3 SCC 786
The South Central Railway Employees Co- operative Credit Society Employees Union, Secundrabad vs. The Registrar of Co-operative Societies & Ors. reported in (1998) 2 SCC 580

Case distinguished:

Sanden Vikas (India) Ltd. V. Collector of Central Excise, New Delhi (2003) 4 SCC 699

Present: For Appellant(s): Mr. Arvind P. Datar, Sr. Adv.
Mr. Pratap Venugopal, Adv.
Ms. Surekha Raman, Adv.
Ms. Supriya Jain, Adv.
For M/s. K. J. John & Co.

For Respondent(s): Ms. Madhvi Diwan, Adv.
Ms. Jesal, Adv.
Ms. Puja Singh, Adv.
For Ms. Hemantika Wahi,Adv.

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AMITAVA ROY, J.

1. The oft encountered debate on the extent of tax liability based on the classification of the determinants of a levy in law seeks judicial scrutiny in the attendant factual conspectus. The appellant being aggrieved by the determination made by the High Court of Gujarat on the issue common to a reference under Section 69 of the Sales Tax Act, 1969 (for short hereinafter referred as to as the "Act") being Sales Tax Reference No.1/2004 and its appeal, i.e. Special Civil Application No. 12508/2002, against it, seeks redress against the judgment and order dated 4.09.2006 to that effect.

2. We have heard the learned counsel for the parties.

3. The indispensable skeletal facts introduce the appellant, M/s. Voltas Ltd. as a company incorporated under the Companies Act, 1956 engaged amongst others in the business of execution of jobs design, supply and installation of air-conditioning plants construed to be indivisible works contracts. It is a registered dealer under the Act. By a communication dated 22.10.1993 of M/s. Anupam Colours and Chemicals Industries, Bombay, an order was placed with it for water chilling plant at its factory at Vapi. The basic design parameters were enumerated in the work order as hereunder:

"1.Tonnage of Refrigeration .. 11 TR
2. Final temperature or chilled water to be made available for our process... 5 to 6C
3.Quantity of chilled water process in about 10 hours. .. 12,000 liters (5 to 6 C) required for our liters"

Other specifications pertaining to the water chilling plant were advised to be in conformity with the assessee's offer, as referred to therein. The work order insisted on the requirement of chilled water to be used directly for its process of manufacturing pigments with the assertion that sufficient precautions be taken to ensure that chilled water at 5 to 6 degree centigrade is available for such process. The letter emphasized as well that the assessee would provide the customer with the lay-out details, foundation drawing and other necessary information required for the erection of the plant. The essential segments of the works contracts involved, as would be eventually relevant for the adjudicative exercise underway, were thus specified with distinct details in the work order.

4. The Act which is a legislation to consolidate and amend the law relating to the levy of tax on the sale or purchase of goods in the State of Gujarat has set out in Part-A of Schedule II-A thereof, the rates of the impost on the sale of goods involved in the execution of the works contracts, the relevant excerpt whereof is quoted as under:

Sr.No.	Description of works contract	Entry No. in Schedule-IIA of the Act	Regular rate of tax
1.	Installation of air-conditioners and A.C. coolers and for repairs thereof.	67	18%
2.	Furniture and fixtures partitions including contracts for interior decoration and repairs thereof	104	8%
3.	Fabrication and installation of lifts or elevators or escalators and for repairs thereof	120	8%
4.	Fabrication and installation of plant and machinery and repairs thereof	39	8%

5.	Construction of bodies on chassis of Motor Vehicles including three wheelers and for repairs thereof	128(5)	4%
6.	Ship building including construction of barges, Ferries Tugs Trawlers or Dredgers and for repairs thereof	186	4%

5. Section 55-A of the Act dwells on the scheme of composition of tax whereunder a dealer as referred to therein and in the circumstances and subject to such conditions as may be prescribed, is left with the option to pay in lieu of the amount of tax leviable from him under Section 7 or 8 in respect of any period, a lump sum by way of composition at the rate/rates, as may be fixed by the State Government by notification in the Official Gazette, having regard to the incidence of tax on the nature of the goods involved in the execution of total value of the works contract. Apt it would be to quote Section 55A as well for ready reference:

"SECTION 55A. COMPOSITION OF TAX.

(1) The Commissioner may, in such circumstances and subject to such conditions as may be prescribed, permit every dealer referred to in sub-clause (f) of clause (10) of section 2 to pay at his option in lieu of the amount of tax (including additional tax) leviable from him under section 7,(or 8) in respect of any period, a lump sum by way of composition at the rate or rates as may be fixed by the State Government by Notification in the Official Gazette having regard to the incidence of tax on the nature of the goods involved in the execution of total value of the works contract.

(2) The provisions of sections [13,51 and 55] shall not apply to a dealer who opts for composition of tax under sub-section (1).]"

Pursuant to this provision, and as empowered thereby, the Government of Gujarat vide the notification dated 18.10.1993 (for short hereinafter referred to as the Notification) did fix the rate of composition payable by such dealer (s) in lieu of the amount of tax otherwise leviable under the Act and as contemplated in the said statutory provision. As the stand-off centers around the rate of composition so fixed, essential it would be to set out the table of relevant entries to be immediately adverted to:

Sr.No.	Description of works contract	Rate of Composition
1.	Works contract for civil works like construction of buildings, bridges or roads, and for repairs thereof	2%
2.	Installation of air-conditioners and A.C. Coolers	15%
3.	Furniture and fixtures, Partitions including contracts for interior decoration	5%
4.	Fabrication and installation of lifts or elevators or escalators	10%
5.	Fabrication and installation of plant and machinery	5%

6.	Construction of bodies on chassis of motor vehicles including three wheelers	3%
7.	Ship building, including construction of barges, ferries tugs, trawlers or dredgers	2%
8.	Works contracts other than those mentioned above	12%

6. The recorded facts demonstrate that the appellant being under the impression qua the works contract ordered vide letter dated 22.10.1983 of M/s. Anupam Colour and Chemicals that it would attract the rate of composition prescribed against Entry No.5 hereinabove i.e. fabrication and installation of plant and machinery and not 15% against Entry No.2 i.e. installation of air-conditioners and AC coolers or 12% against Entry No.8 i.e. works contracts other than those mentioned, filed an application before the Deputy Commissioner of Sales Tax (Legal), Gujarat under Section 62 of the Act and insisted that the works contract involved came within the purview of Entry No.5 attracting the composition rate of tax at 5% only. The said revenue authority by its order dated 16.10.1996 however rejected the plea of the appellant and instead held that the works contract was covered by Entry No.2 as the assessee had to air-condition the plant to be erected by it. The margin of difference in the composition rates compared to the rates of tax for the identical works contract as catalogued in the Schedule to the Act did also weigh with the revenue authority in arriving at this conclusion.

7. The appellant-assessee being dissatisfied did appeal against this finding before the Gujarat Sales Tax Tribunal, Ahmedabad (for short hereinafter referred to as the "Tribunal") which was registered as Appeal No. 16/1996. In course of the regular assessment for the Assessment Year 1993-94, the concerned Sales Tax Officer, pursuant to the decision rendered by the Deputy Commissioner of Sales Tax on 16.10.1996, assessed the appellant by applying the composite rate of 15% for the works contract involved.

8. The appellant thus preferred an appeal against this assessment order before the Assistant Commissioner of Sales Tax, Ahmedabad and having failed before this forum did take the issue before the Tribunal in Second Appeal No.97/2001. These two appeals were also dismissed by the Tribunal vide its judgment and order dated 2.12.2002 whereafter the appellant invoked the writ jurisdiction of Gujarat High Court registered as Special Civil Application No. 12508/2002 which to reiterate, have been, by the impugned decision, disposed of along with Sales Tax Reference No.1/2004 laid by the Tribunal before it under Section 69 of the Act referring the following question of law:

> *"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the appellant's works contract for fabrication and installation of air-conditioning plants falls under Entry 2 and, therefore, taxable at the rate of 15% and not under Entry 5 under which it is taxable at the rate of 5% of the Schedule to the notification dated 18.10.93 issued under Section 55A of the Gujarat Sales Act, 1969?"*

9. The High Court has answered the question referred in the affirmative thus sustaining the determination made by the revenue authorities/fora and the learned Tribunal declaring that the appellant's works contract for fabrication and for installation of air-conditioning plant did fall under Entry 2 of the Notification and was taxable at the composition rate of 15%.

10. As the decision of the High Court assailed herein would disclose, in its view, the air-conditioning systems are classified according to their construction and operating characteristics and that it would be incorrect to differentiate between a central air-conditioning

system and a room air- conditioner on the basis that the installation of air-conditioning plant requires preparation of plant whereas no such exercise is to be undertaken in case of installation of window air-conditioner etc. This is more so as the basic components applied in the manufacture of a air-conditioning plant, room air-conditioner or split air-conditioner are almost similar with difference in size and are not drastically different. The appellant's plea that in central air-conditioning system, fabrication has to be undertaken requiring preparation of plant etc. and that thus the central air-conditioning system has to be treated differently from a room air- conditioner or window air-conditioner etc. was not accepted because, according to the High Court, even in a room air-conditioner or window air- conditioner or split air-conditioner or AC cooler, elevation and lay out of the area requiring conditioning, has to be taken into consideration. The appellant's contention that Entry 5 dealt with all kinds of fabrication and installation of all kinds of plant and machinery and that there was no reason to exclude the installation of air-conditioning plant therefrom was negatived. The High Court was of the view that the composition scheme ought to be regarded as an exemption reprieve and thus needed to be construed strictly. Reliance was placed on the decision of this Court in ***Sanden Vikas (India) Ltd. V. Collector of Central Excise, New Delhi (2003) 4 SCC 699*** which held with reference to a particular entry in an exemption notification under the Central Excise Tariff Act, 1985 that the air- conditioner kit of a car did fall within the meaning of air-conditioners. It rejected the proposition that in common parlance air-conditioner, room air-conditioner, window air-conditioner, A.C. cooler, air-conditioning plant etc. were differently known and thus installation of air-conditioning plant would fall within Entry No.5.

11. Mr. Datar, the learned senior counsel for the appellant has assertively urged that having regard to the inalienable and essential constituents of the works contract as per the work order, fabrication as well as the installation of the water chilling plant were distinctly different items of works and thus the appellant was taxable at the composition rate of 5% against Entry No.5 of the Notification. Referring to the work order dated 22.10.1993 in particular, the learned senior counsel has maintained that the water chilling plant of the customer was to be configured in conformity with the design parameters referred to therein and not on readymade specifications on the election or discretion of the appellant-assessee. According to Mr. Datar the design parameters prescribed by the customer, to cater to its requirement amongst others of the temperature of the chilled water and the volume thereof to be used for its process of manufacturing pigment did assuredly involve design and fabrication of the essential composition of the system which by no means could be equated with the installation thereof simplicitor as the end device. That the customer was persistently particular on the adherence to its prescribed design parameters as is apparent from the work order, demonstrates that the works contract, in any view of the matter, cannot be drawn within the contours of Entry 2 of the Notification, he urged.

12. As against this, Ms. Madhvi Diwan, the learned counsel for the Revenue has argued that as the supply of the water chilling plant as per the works contract involved for all practicable purposes does not envisage any process of fabrication, the appellant is liable to be taxed at the composition rate of 15%. According to her, the basic and functional components of the water chilling plant being identical to that of an air- conditioning plant, the appellant's plea of application of 5% composite rate prescribed against Entry No.5 of the Notification is wholly misplaced and thus no interference with the impugned judgment and order is called for. Reliance was placed on the decision of this Court in Sanden Vikas (India) supra.

13. The rival assertions have received our due consideration. The competing entries requiring scrutiny to ascertain the correct composition rate of tax payable vis--vis the works contract involved are engrafted admittedly in the Notification issued by the Government of Gujarat in exercise of powers conferred by Section 55A of the Act. Logically thus, the

interpretation necessitated by the rival orientations ought to be in furtherance of the underlying objective of the said provision. A plain perusal thereof would attest that thereby, in the circumstances to be prescribed, a dealer can be left at his option to pay in lieu of the amount of tax payable, a lump sum by way of composition, at the rate or rates as may be fixed by the State Government having regard to the incidence of tax on the nature of the goods involved in the execution of total value of the works contract. Unmistakably, therefore, the State Government while fixing the composition rate of tax has to be mindful of the nature of the works contract executed and by no means can be oblivious thereof. Further, a composition rate of tax is in lieu of the amount of levy otherwise payable by the dealer under the Act. The scheme of composition as envisaged by Section 55A therefore in our comprehension does not admit of any synonymity with that of exemption as contemplated in law. This pre-supposition of the High Court as one of the contributing factors in concluding that the works contract in question did fall within the framework of Entry No.2 of the Notification is apparently erroneous.

14. As adverted to hereinabove, the work order in clear terms did enjoin that the design parameters pertaining to tonnage of refrigeration, final temperature of the water to be made available for the process of manufacturing pigments and the quantity of the chilled water essential therefor were indispensable and were in addition to the other specifications as offered by the appellant. The rigour of the insistence for the adherence to the design parameters is patent also from the request of the customer requiring the appellant to provide it with the lay out detail, foundation drawing and other necessary information essential for the erection of the water chilling plant. The exercise as a whole as contemplated by the work order thus was neither intended nor can be reduced to mere installation of the finally emerging apparatus. The work order noticeably did not refer to any readymade or instantly available devices, meeting the requirements of the customer so much so to be only installed at its factory. Instead, the work order had been apparently tailor-made to the requirements from which no departure was intended or comprehended. It is in this perspective that the word "fabrication" appearing in Entry No.5 of the Notification assumes a decisive significance.

15. The legislative intendment entrenched in Section 55A of the Act to maintain a direct correlation between the composition rates of tax as the Notification would reveal and the description of the corresponding works contract is patent. Understandably, the word "fabrication" had not been applied in the works contract for installation of air-conditioners and A.C. coolers contained in Entry No.2 of the Notification. The author of the said Notification, however, did consciously include the expression "fabrication" while describing the works contract enumerated in Entry 5 thereof. Having regard to the inseparable interdependence between the description of a works contract and the corresponding composition rate of tax, none of the inherent components of the works to be executed can either be ignored or disregarded for identifying the correct composition rate of the levy under the Act. Any other approach could tantamount to doing violence not only to the legislative purpose conveyed by Section 55A but also the language of its yield i.e. the Notification seeking to promote the statutory end. Viewed in that context, mere omission of the expressions "air-conditioners" and "A.C. coolers" in Entry No.5 would not be of any definitive consequence. The words plant and machinery applied in Entry 5 are otherwise compendious enough to include air-conditioners and A.C. coolers, if the works contract involved require fabrication as well as installation thereof.

16. The word "fabrication" as defined in the Aiyan's Advanced Law Lexicon (Vol.II), 3rd Edition 2005 is "to manufacture".

17. The Oxford Dictionary defines the word "fabrication" to mean to construct or manufacture an industrial product.

18. The word "manufacture" as per the Aiyan's Advanced Law Lexicon (Vol.II) in its plainest form and shorn of other details is the process of transforming or fashioning of raw materials into a change of form for use. The process of fabrication therefore conceptually would involve a lay out for the ultimate device to be installed, preceded by a design of the parameters prescribed, configuration of the resultant components, and integration thereof to structure the ultimate mechanism or product. Installation thereof would be a subsequent step to finally position the plant to complete the works contract. As fabrication in terms of the work order in the instant case is a distinctly independent yet integral segment of the works contract contributing to the final physical form of the water chilling plant with the characteristics intended, it cannot be construed to be, synonymous to the installation thereof.

19. The High Court, as the impugned judgment would exhibit, had confined itself wholly to the components of various air-conditioning devices available and the range of the use thereof and in our estimate had missed the significant aspect of "fabrication" integrally involved in the works contract to supply the water chilling plant with the design parameters stipulated by the customer. The High Court did adopt a general approach vis-a-vis the air-conditioning devices commercially available in different forms dehors the singular factual aspects of the work order constituting the works contract. The High Court, thus, in our view, by overlooking the component of fabrication in the works contract opined that the same was within the purview of Entry No.2 and not Entry No.5. The description of the works contract, to reiterate, being of determinative bearing for ascertaining the composition rate of tax, we are of the unhesitant opinion, in the face of the design parameters insisted upon in the work order and consequential process of fabrication involved to cater thereto, that the works contract involved squarely falls within the ambit of Entry No.5 of the Notification. The margin of difference in rates of tax as prescribed by the Act compared to those mentioned in the Notification ipso facto does not detract from this conclusion. This consideration per se cannot override the decisive characteristics of the works contract otherwise unequivocally spelt out by the work order.

20. The primary canon of interpretation of a taxing statute hallowed by time is underlined by the classic statement of ROWLATT,J. in ***Cape Brandy Syndicate v. Inland Revenue Commnrs. (1921) 1 KB 64 at p.71*** as extracted hereunder:

> *"In a Taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."*

It is trite as well that in a case of reasonable doubt, the construction most beneficial to the subject is to be adopted. The underlying principle is that the meaning and intention of a statute must be collected from the plain and unambiguous expression used therein rather than from any notion that may be entertained by a Court which may appear to be it just and expedient. Even prior in point of time, TINDAL, CJ in ***Sussex Peerage case (1844) 11 C1 & Fin 85 : 8 ER 1034(HL)*** had propounded thus:

> *"If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the law-giver."*

These views have with time resonated in various judicial pronouncements with unambiguous approval of this Court as well amongst others in Income Tax Officer, ***Tuticorin***

vs. T.S.Devinatha Nadar & Ors. (1968)68 ITR 252 and very recently in ***Commissioner of Income Tax-III vs. Calcutta Knitwears, Ludhiana (2014) 6 SCC 444*** and ***Commissioner of Income Tax (Central)-I, New Delhi vs. Vatika Township Pvt. Ltd. 2015 (1) SCC 1***. A plethora of decisions in this regard, available though, we do not wish to burden the instant narration therewith.

21. Qua the issue of classification of goods to determine the chargeability thereof and the rates of levy applicable, it is no longer res- integra that the burden of proof is on the taxing authority to demonstrate that a particular class of goods or item in question is taxable in the manner claimed by them and that mere assertion in that regard is of no avail as has been enunciated by this Court in ***U.O.I. & Ors. vs. Garware Nylones Ltd.etc. (1996) 10 SCC 413*** and relied upon with approval in ***HPL Chemicals Ltd. vs. Commissioner of Central Excise, Chandigarh (2006) 5 SCC 208.***

22. Equally, fundamental is the principle of statutory interpretation that no construction to a legislation ought to be provided so as to render a part of it otiose or redundant as held inter alia by this Court in ***Maharashtra University of Health Sciences & Ors. vs. Satchikitsa Prasarak Mandal & Ors. (2010)3 SCC 786***.

23. That it is the cardinal principle of interpretation not to brush aside a word used in a statute or in a Notification issued under a statute and that full effect must be given to the every word of an instrument had been underscored by this Court in ***The South Central Railway Employees Co- operative Credit Society Employees Union, Secundrabad vs. The Registrar of Co-operative Societies & Ors. reported in (1998) 2 SCC 580***. The Notification in the instant case being apparently statutory in nature is akin to subordinate legislation to actualize and advance the legislative intent engrafted in Section 55A. It not only owes its existence to the Act but would also be amenable to the cardinal principles of interpretation adverted to herein above.

24. In the overall legal and factual perspectives as obtained herein, any endeavour to drag the works contract involved within the framework of Entry No.2 would be repugnant to the basic principles of interpretation of statutes and subordinate legislations like the statutory Notification under Section 55A of the Act. To exclude the work of fabrication from the works contract as per the work order would render it (works contract) truncated to a form not intended by the customer. This would strike as well at the root of the mandate of correlation of a works contract and the corresponding composition rate of tax as envisaged by Section 55A of the Act and the Notification issued thereunder.

25. The decision of this Court in Sanden Vikas (India) Ltd.(supra) is of no avail to the revenue vis--vis the issue falling for scrutiny herein.

26. In the face of the determinations made herein above, the inescapable conclusion is that the appellant's works contract for fabrication and installation of water chilling plant at the factory of Anupam Colours and Chemicals at Vapi would fall under Entry 5 of the Schedule to the Notification dated 18.10.1993 issued under Section 55A of the Act and would be taxable at the rate of 5% as prescribed thereby. The impugned decision dated 4.9.2006 of the High Court of Gujarat at Ahmedabad in Sales Tax Reference No.1/2004 and Special Civil Appeal No.12508/2002 and other determinations as are contrary to the views expressed herein are hereby set aside.

27. The Civil Appeal is allowed.

SGA
LAW OFFICES

SUPREME COURT OF INDIA

CIVIL APPEAL NO. 4542 OF 2007

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PRADIP NANJEE GALA
Vs.
SALES TAX OFFICER & ORS.

H.L. DATTU, CHIEF JUSTICE, ARUN MISHRA AND S.A. BOBDE, JJ.

29th April, 2015

HF ▶ Revenue

RECOVERY OF TAX – LIABILITY OF THE PARTNER – SETTLEMENT OF DUES – TAX DUE AGAINST PARTNERSHIP FIRM – APPELLANT BEING A PARTNER SOUGHT SETTLEMENT OF DUES AS PAYABLE BY HIM ON THE BASIS OF PARTNERSHIP DEED – COMMISSIONER ISSUED A LETTER QUANTIFYING THE AMOUNT DUE ON THE BASIS OF PARTNERSHIP DEED – APPELLANT SOUGHT ABSOLVEMENT FROM THE LIABILITY OF THE PARTNERSHIP FIRM – SECTION 45 PROVIDES FOR REMISSION OF LIABILITY SUBJECT TO THE CONDITIONS PRESCRIBED - NO POWER WITH THE MINISTER OR THE COMMISSIONER TO GRANT REMISSION – CONDITIONS OF SEC.45 AND RULES ALSO NOT FULFILLED – PARTNER JOINTLY AND SEVERALLY LIABLE TO MAKE PAYMENT OF DUES OF THE PARTNERSHIP FIRM. APPEAL DISMISSED WITH COSTS OF RS.5 LAKHS.

A partnership firm was assessed to tax for Samvat 2004 and Samvat 2005 raising additional demand of tax under the Bombay Sales Tax Act and Central Sales Tax Act 1956. During pendency of appeal a partner of the firm sent a letter to the State Minister for Finance seeking settlement of Sales Tax dues payable by him as a partnership of the assessee firm. The said offer had been accepted and in the light of the same the Commissioner of Sales Tax had issued a letter quantifying the amount due on the basis of Partnership Deed. The Tribunal, however, dismissed the appeal refusing to adjudicate upon the settlement of the dues between the State and the assessee and to the question whether a partner is relieved of his obligation under the Act. The Petitioner being a partner approached the High Court by way of a Writ Petition requesting that he be absolved of all the dues against the assessee firm. The writ petition was dismissed holding that Section 18 of the Act provides for joint and several liability of a partnership and, therefore, a partner cannot be absolved of his liability . Further, the power of Commissioner u/s 45 does not contemplate any settlement of the nature claimed in the Writ Petition and, therefore, no shelter can be taken under that for discharge of duty under the Act. On appeal before the Supreme Court held :

Section 18 of the Act specifically provides for the joint and several liability of the partners of the firm towards payment of tax under the Act. Further, Section 45 provides for remission under certain circumstances as prescribed under the rules and none of the Rules can be invoked in the present case. The remission of tax amount exceeding Rs.2,000 can only be made after obtaining sanction of the State Govt and neither the State Minister of Finance, or the Commissioner has any power to allow remission of tax in the present set of circumstances. Further, there cannot be any settlement with any individual partner regarding the liability in

respect of the dues of an assessing firm. Further, no benefit can be taken from the language of the Act which mandates the exercising of powers only in the circumstances prescribed by the Rules. The provisions of law in a taxing statute are to be interpreted strictly and there is no scope for reading equity into tax laws. Accordingly, the settlement, if any, reached between the appellant and the State Govt for part payment of tax liability by the partner would not fall within the four corners of the Act & Rules. The appeal is dismissed with costs of Rs.5 lakhs.

Cases relied upon:

Cape Brandy Syndicate v.IRC, [(1921) 1 K.B. 64, 71]
CIT v. V. MR. P. Firm Muar, (1965) 1 SCR 815
CIT v. Shahzada Nand & Sons, (1966) 3 SCR 379;
Murarilal Mahabir Prasad v. B.R. Vad, (1975) 2 SCC 736;
CIT v. Nawab Mir Barkat Ali Khan Bahadur, (1975) 4 SCC 360;
State of M.P. v. Rakesh Kohli, (2012) 6 SCC 312;
Vodafone International Holdings BV v. Union of India, (2012) 6 SCC 613;
CIT v. Calcutta Knitwears, (2014) 6 SCC 444;
CTO v. Binani Cements Ltd.,(2014) 8 SCC 319.

Present: For Appellant(s): Mr. S. Ganesh, Sr. Adv.
Mr. S. Ravi Shankar,Adv.
Mr. S. Yamunah Nachiar, Adv.

For Respondent(s): Mr. Rahul Chitnis, Adv.
Mr. Aniruddha P. Mayee,Adv.

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H.L. DATTU, CJI

1. This appeal is directed against the judgment and order passed by the High Court of Judicature at Bombay in Writ Petition No. 2226 of 1989, dated 03.02.2006, whereby and whereunder, the High Court has held that the appellant is liable for payment of tax under Bombay Sales Tax Act, 1959 (for short, "the Act") and dismissed the writ petition.

2. The question raised before us is whether the respondent-Revenue could resile from a settlement entered into with the assessee on the basis of which the appellant has already paid and settled his dues under the Act.

3. Since the protracted proceedings in the instant case have spawned over three decades, we would only notice the most relevant facts necessary for disposal of the appeal.

4. Facts in brief are as follows: The appellant had joined as a partner in the assessee-Firm. His status as the partner of the said Firm, not being of any consequence to the question that arises for our consideration, does not require to be noticed by us. The relevant assessment years are Samvat 2034 (12.11.1977 to 31.10.1978) and Samvat 2035 (01.11.1978 to 24.06.1979). The Assessing Authority had carried out the assessments and confirmed the demand for Rs.13,33,091/- under the Act and Rs.85,878/- under the Central Sales Tax Act, 1956 (for short, "the CST Act") for Samvat 2034; and Rs.28,18,202/- under the Act and Rs.44,577/- under the CST Act for Samvat 2035. The appellant had preferred appeals against the aforesaid assessments before the first appellate authority, which were dismissed by order dated 30.09.1981.

5. Being aggrieved by the aforesaid orders, the appellant had approached the Maharashtra Sales Tax Tribunal (for short, "the Tribunal"). During the pendency of the said appeals, the appellant had addressed a letter to the State Minister for Finance dated 23.11.1983,

seeking settlement of sales tax dues payable by him as a partner of the assessee-Firm. It is the case of the appellant that the then State Minister for Finance accepted the offer of settlement and accordingly, in the light of the said settlement, the Commissioner of Sales Tax had issued a letter on 16.01.1984 quantifying the amount due and payable by the assessee-Firm for the relevant assessment years on the basis of the partnership deed. Before the Tribunal, the respondents have denied the existence of such settlement and further submitted that there has been no decision quantifying the individual liability of the appellant and absolving him from the liability to pay for the dues of the assessee-Firm for said assessment years. Since, the question before the Tribunal was restricted to determination and payment of liability by the appellant qua the assessee-Firm, the Tribunal had refused to adjudicate upon both: (a) whether there exists any settlement between the parties regarding the tax liability and (b) whether the appellant was relieved of his obligation under the Act.

6. Aggrieved by the aforesaid, the appellant approached the Writ Court. The assessee had contended that he had approached the State Minister for Finance seeking settlement of his individual dues, which was accepted as well as implemented by the order of the Commissioner dated 16.01.1984 and, therefore, the appellant is absolved of all the liabilities confirmed against the assessee-Firm for the relevant assessment years. The Revenue has adopted a stand that under the Act, apart from the power of remission of tax payable by the dealer under Section 45 of Act, there exists no other provision which would empower the authorities to settle the liability of an individual partner. Further, that Section 18 of the Act specifically provides that in respect of the dues of the firm, the liability of a partner is joint and several and, therefore, neither the State Minister for Finance nor the Commissioner could have legally entered into any settlement regarding the liability of individual partner in respect of the dues of the assessee-Firm.

7. The High Court, after due consideration of the submissions made by both the parties and meticulous examination of the case records as well as the relevant provisions of law, has observed that the case of the appellant does not require them to examine the validity of the liability confirmed against the assessee-Firm and thus, examined the question as to whether the settlement entered into between the Commissioner and the appellant herein is permissible under the Act. The High Court has concluded that under Section 18 of the Act the partners of the Firm are jointly and severally liable to pay the tax dues of the assessee-Firm and no provision under the Act contemplates a settlement between a partner of the assessee-Firm and the Commissioner to determine individual liability. The High Court has further noticed that Section 45 of the Act which speaks of power of remission of the Commissioner also does not contemplate any settlement of the nature claimed herein and therefore, could not be invoked to shelter the appellant from discharging his liability under the Act. Hence, the Writ Court has thought it fit to fix the entire liability of payment of sales tax on the assessee and upheld the order passed by the Revenue by the judgment and order dated 03.02.2006.

8. It is the aforesaid judgment and order passed by the Writ Court, which is questioned by the assessee before us in this appeal.

9. Shri S. Ganesh, learned counsel for the appellant-assessee would submit that the appellant could not be held liable to settle tax liability of the assessee-Firm under the Act, because he has already paid his dues as a partner of the assessee-Firm under the settlement entered into between him and the State Minister for Finance. He would further refer to the order of the Commissioner dated 16.01.1984 in support of the determination of his individual dues by the respondent-Revenue and therefore submit that since the appellant has

discharged his share of the liability, he ought to be absolved of all the liabilities confirmed against the assessee-Firm for the relevant assessment years under the Act.

10. Per contra, the Revenue would support the impugned judgment and order passed by the High Court.

11. Before we proceed to examine the merits of submissions advanced by learned counsel appearing for the parties to the lis, relevant provisions of the Act and Rules require to be noticed by us.

12. Section 18 of the Act provides for the liability of a firm to pay tax and contemplates joint and several liability of the partners of the firm towards the payment of such tax liability under the Act. Section 45 of the Act provides for remission of tax payable by a dealer under the Act. It reads:

> *"The Commissioner may, in such circumstances and subject to such conditions as may be prescribed, remit the whole or any part of the tax payable, in respect of any period, by any dealer:*
>
> *PROVIDED that if the amount to be remitted exceeds two thousand rupees, the remission of the excess shall not be made without the previous sanction of the State Government."* (emphasis supplied)

13. It would further be relevant to notice the appropriate circumstances and conditions which are prescribed by the appropriate authority adherence to which is required under Section 45 of the Act for the Commissioner to exercise his power of remission. Rules 43A, 44 and 44A speak of remission as provided for under the Act. Rule 43A provides for the remission of purchase tax payable in respect of purchases of goods specified in Schedule E of the Rules. Rule 44 speaks of certain cases where an authorised dealer or commission agent who has become liable to pay purchase tax under section 14 of the Act could claim remission. Section 44A speaks of remission of purchase tax payable by authorised dealer in certain cases.

14. The plain reading of Section 45 of the Act would indicate that the legislature has vested the power of remission of tax only with the Commissioner and subjected the exercise of said power in accordance with such circumstances and conditions as prescribed by the State Government under the Bombay Sales Tax Rules, 1959 (for short, "the Rules"). The proviso to the provision specifies that the remission of tax amount if exceeds Rs.2000/- ought to be made by the Commissioner after obtaining sanction of the State Government. The Section neither speaks of any power to enter into a settlement for such purposes by the State Minister of Finance nor prescribes exercise of powers by the Commissioner in light of any such settlement.

15. Section 18 of the Act specifically provides that the liability of a partner in respect of the dues payable by the firm is joint and several. But for Section 45 of the Act which permits remission of the tax payable by the dealer, that is, the assessee-Firm, there is no provision under the Act empowering the State Government or the Commissioner to enter into a settlement with an individual partner regarding his liability in respect of the dues payable by the assessee-Firm. Further, the Rules relevant to the exercise of power of remission by the Commissioner under the Act viz., Rules 43A, 44 and 44A also do not provide any condition with respect to remission of sales tax under the Act by entering into any settlement, more so a settlement for the payment of individual liability of partners under the partnership deed. Therefore, in our considered opinion, in the absence of any specific provision contained in the Act or the Rules, there could be no settlement with an individual partner so as to discharge him from his obligation to pay the sales tax dues payable by the assessee-Firm.

16. Further, in our view, the submission advanced by Shri Ganesh that the conditions prescribed under the statute at hand ought to be read considering the facts and circumstances of the instant case to provide beneficial meaning to the statute, also does not hold any waters. The statute herein clearly and expressly provides for the limitation on exercise of powers of remission by the Commissioner and mandates them to be exercised only "in such circumstances and subject to such conditions as may be prescribed." Section 2(21) of the Act provides that "prescribed" under the Act would mean as prescribed under the Rules and herein, the Rules being silent on any settlement of the nature allegedly entered into between the appellant and the State Government, the external circumstances including a settlement cannot be considered by the Commissioner while exercising power of remission of tax under the Act.

17. It is trite that the letter of law has to be accorded utmost respect and strictly adhered to especially while interpreting a taxing statute. There ought not exist any scope for impregnating the interpretation by reading equity into taxing statutes. The classic statement of Rowlatt, J., in ***Cape Brandy Syndicate v.IRC, [(1921) 1 K.B. 64, 71]*** still holds the field. It reads as under:

> *"In a Taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."*

18. Further, the three Judge Bench of this Court in ***CIT v. V. MR. P. Firm Muar, (1965) 1 SCR 815*** has authoritatively observed that:

> *"13. ...Equity is out of place in tax law; a particular income is either exigible to tax under the taxing statute or it is not..."*

[See: ***CIT v. Shahzada Nand & Sons, (1966) 3 SCR 379; Murarilal Mahabir Prasad v. B.R. Vad, (1975) 2 SCC 736; CIT v. Nawab Mir Barkat Ali Khan Bahadur, (1975) 4 SCC 360; State of M.P. v. Rakesh Kohli, (2012) 6 SCC 312; Vodafone International Holdings BV v. Union of India, (2012) 6 SCC 613; CIT v. Calcutta Knitwears, (2014) 6 SCC 444; CTO v. Binani Cements Ltd.,(2014) 8 SCC 319.***]

19. The convoluted mesh of facts and the extremely protracted proceedings which span over three decades, at the instance of appellant, indicate that the basis of case made out by the appellant does not exist in either the statute law or, in fact, any law applicable to the present proceedings. The settlement, if any, reached between the appellant and the State Government for part payment of tax liability by the partner of an assessee-Firm would not fall under the four corners of the Act or the Rules as has been claimed by the appellant since the beginning of the proceedings under the Act.

20. Therefore, in light of the aforesaid, we are of the considered opinion that the High Court has rightly examined the issues before it and the judgment and order passed by it does not suffer from any error, whatsoever, and thus, the civil appeal being devoid of any merit requires to be dismissed. The judgment and order passed by the High Court is confirmed.

21. In the result, the appeal is dismissed with costs of Rs.5,00,000/-.

PUNJAB & HARYANA HIGH COURT

CWP NO. 12141 OF 2015

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PRAHLAD METAL COMPANY
Vs.
STATE OF PUNJAB AND OTHERS

RAJESH BINDAL AND G.S. SANDHAWALIA, JJ

11th June, 2015

HF ▶ Assessee

PENALTY – CHECK POST - ATTEMPT TO EVADE TAX – RELEASE OF GOODS – GOODS OF PETITIONER DETAINED U/S 51 – BANK GUARANTEE OFFERED FOR RELEASE OF GOODS – GOODS NOT RELEASED – ON WRIT BEFORE THE HIGH COURT THE STATE AGREED TO RELEASE THE GOODS – PETITION DISPOSED OF – COST IMPOSED SINCE THERE WAS NO JUSTIFICATION FOR DETENTION OF GOODS AFTER BANK GUARANTEE WAS FURNISHED – STATE TO PAY THE COST AND RECOVER IT FROM THE GUILTY OFFICER.

The goods of the petitioner were detained by the Respondent State. The Petitioner furnished the Bank Guarantee seeking release of goods on 26.2.2015 as prescribed u/s 51 of Punjab VAT Act 2005. However, the goods were not released and petitioner approached the High Court by way of Writ Petition. The High Court held :-

The State Counsel on instructions from the department has submitted that vehicle and the goods shall be released immediately since he has no justification for detention of goods after 26.2.2015 when the petitioner had furnished the Bank Guarantee. The petition is disposed of in terms of undertaking given by the State that vehicle and goods in question shall be released to the petitioner forthwith. Moreover, since there was no justification for detention of goods from 26.2.2015 onwards after furnishing of Bank Guarantee, the petitioner shall be entitled to cost of Rs.25,000/- which would be paid by the State within a period of one month by way of Bank Draft. The State shall be at liberty to recover the same from the guilty officers.

Present: Mr. Avneesh Jhingan, Advocate, for the petitioner.
Mr. Rajesh Bhardwaj, Additional Advocate General, Punjab.

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RAJESH BINDAL, J.

1. The petitioner has filed the present petition seeking a direction to the respondents to release the goods being carried in the trucks bearing Nos. PB-23J-7141 and NL01-G-9846, which were detained by respondent no. 2 on 12.5.2015. The petitioner claimed that the goods were purchased by him from M/s Satguru Enterprises, Mohali and were being carried to Delhi.

The drivers of the vehicles were carrying requisite documents. The seller of the goods was paid part of the sale consideration through RTGS bank transaction prior to even purchase of goods. Despite this fact, the goods were not released, even though on 26.5.2015, the petitioner had furnished two bank guarantees for a total sum of ₹ 6,13,839 i.e. 30% of the value of the goods shown in the bills being ₹ 10,23,631/- and ₹ 10,22,505/-, Annexures P-1 and P-2, respectively.

2. Learned counsel for the State, on instructions from S. S. Channi, AETC, Mobile Wing, Ludhiana, submitted that the bank guarantee having been furnished, the vehicles and the goods detained shall be released immediately. He has no justification for detention of the goods at least after 26.5.2015 when the petitioner had furnished the bank guarantee.

3. After hearing learned counsel for the parties, the present petition is disposed of in terms of undertaking given by learned counsel for the State that the vehicles and goods in question shall be released to the petitioner forthwith. However, considering the fact that there is no justification available for detention of goods from 26.5.2015 onwards after the petitioner had furnished the bank guarantees to the tune of 30% of the value of the goods shown in the invoices in terms of Section 51(6) of the Punjab VAT Act 2005, the petitioner shall be entitled to costs of ₹ 25,000/-. Firstly, the cost shall be paid by the State within a period of one month by way of bank draft, however, the State shall be at liberty to recover the same from the guilty officer(s).

PUNJAB & HARYANA HIGH COURT

STA NO. 34 OF 2014

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KAPSONS ELECTRO STAMPINGS
Vs.
COMMISSIONER OF CENTRAL EXCISE & ANOTHER

S.J.VAZIFDAR, ACTING CHIEF JUSTICE AND G.S. SANDHAWALIA J

29th May, 2015

HF ▶ Revenue

APPEAL – PRE-DEPOSIT – SERVICE TAX – RENTAL OF IMMOVABLE PROPERTY – APPELLANT ENTERED INTO A LEASE AGREEMENT FOR LEASING OUT LAND & BUILDING ALONGWITH PLANT & MACHINERY ETC. FOR A CONSOLIDATED SUM OF RS. 7,00,000/- PER MONTH – RS. 55,000/- WAS ALLEGEDLY FOR LAND & BUILDING AND BALANCE WAS FOR OTHER FACILITIES – ADJUDICATING AUTHORITY TREATED A SUM OF RS. 2.80 CRORE AS RENT AND RAISED THE DEMAND OF SERVICE TAX AMOUNTING TO RS. 31,86,820/- - APPEAL FILED BEFORE COMMISSIONER (APPEALS) WITH AN APPLICATION FOR WAIVER OF PRE-DEPOSIT – COMMISSIONER (APPEALS) ORDERED THE PAYMENT OF TAX – WAIVED OFF PENALTY AND INTEREST – ON APPEAL, TRIBUNAL MAINTAINED THE ORDER – ON FURTHER APPEAL BEFORE HIGH COURT – HELD: NO SUBSTANTIAL QUESTION OF LAW ARISES – COURT WOULD NOT INTERFERE IN THE DISCRETION EXERCISED BY THE APPELLATE AUTHORITY – COMMISSIONER (APPEALS) HAS ALREADY GRANTED WAIVER OF INTEREST AND PENALTY – APPEAL DISMISSED – TWO MONTHS TIME GRANTED TO DEPOSIT THE BALANCE AMOUNT.

The appellant had entered into a lease agreement for leasing out Plant and Machinery, Equipments, Jigs and Fixtures, Dies, Office Equipment, Furniture & Fittings to a unit @ Rs.7,00,000/- per month being the lease amount, out of which Rs.55,000/- was allegedly for Land & Buildings and the balance was for use of other facilities. The adjudicating authority treated a sum of Rs.2.80 crores as Rent and Service Tax liability was worked out at Rs.31,86,820/- by invoking the extended period of limitation along with equal amount of penalty and interest. The appellant filed an appeal before the Commissioner (Appeals) along with an application for waiver of penalty as provided u/s 35F. The Commissioner (Appeals), however, directed the appellant to pay the entire amount of Service Tax and waived off the requirement of pre-deposit of interest and penalty.

The argument that building was let out only for Rs.55,000 per month and the rest of the amount was only on account of rent for immovable Plant & Machinery which was movable and not covered under the Act, prima facie, cannot be accepted. The assessee has maintained Ledger Account and there is no break up for different Heads of Land and Buildings and Plant & Machinery. The Lease Agreement was also not registered under the Registration Act 1908. The Commissioner (Appeals) has already granted waiver regarding deposit of interest and penalty and observed that there was no un-due hardship. The Court would not enquire in the

discretion which has been exercised by the authorities under the Act in view of the facts and circumstances of the present case. Since High Court can interfere only if there is substantial question of law, the present appeal is not maintainable, as no substantial question of law arises for consideration of the High Court. The issues raised require consideration at the time of hearing of appeal.

Appeal dismissed. However, Assessee is granted time to deposit balance amount of pre deposit within two months from the date of order.

Present: Mr. Jagmohan Bansal, Advocate, for the appellant.
Mr. Sunish Bindlish, Advocate, for the respondents.

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G.S.SANDHAWALIA J.

1. The instant appeal, filed under Section 83 of the Finance Act, 1994 (for short the 'Finance Act') read with Section 35 G of the Central Excise Act, 1944 (for short, the 'Act'), is directed against the order dated 20.11.2014 (Annexure A-13), passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi (for short, the 'Tribunal'). Vide the said order, the Tribunal has refused to interfere in the order of the Commissioner (Appeals) dated 31.01.2013 (Annexure A-10) wherein pre-deposit on the entire amount was ordered, during the pendency of the first appeal.

2. The questions of law that arises for consideration is as under:

"a) Whether in the light of amended Section 35F order to deposit entire amount of adjudicated service tax is justified?

b) Whether order passed by the ld. Tribunal is perverse and contrary to facts and circumstances of the case?

c) Whether the impugned order is justified when the appellant has strong prima facie case on merits?"

3. The reasoning given by the Tribunal was that the rent note executed by the appellant showed that the building, plant and machinery along with other infrastructure had been rented out and therefore, fell within the renting of immoveable property and was, thus, exigible to service tax.

4. A perusal of the paperbook would show that a show cause notice dated 19.06.2009 was issued to deposit the service tax amounting to ₹10,28,160/- along with interest on account of the fact that during the audit conducted on M/s Kapsons Industries, Jalandhar, it was found that lease deed had been entered into on 01.04.1997 (extended on 29.03.2001) for leasing out plant and machinery, equipments, jigs and fixtures, dies, office equipments, furniture and fittings to the said unit ₹7,00,000/- per month being the lease amount, out of which, ₹55,000/- was allegedly for the land and building and the balance was for the use of other facilities. Accordingly, the appellant was asked to send the deposit particulars along with the documentary evidence and pay service tax upto 30.06.2009. On 10.08.2009, the appellant submitted the details of the lease/rent receipts from 01.04.2008 to 30.06.2009 and vide notice dated 30.05.2011 (Annexure A-6), it was asked to deposit the service tax of ₹46,04,320/- along with interest. The final audit report further raised various dues and violations which had been made by the appellant.

5. Accordingly, an order dated 15.12.2011 (Annexure A-9) was passed by the Adjudicating Authority, wherein a finding was recorded that a sum of ₹2,80,00,000/- had been

received as rent and the service tax liability was worked out at ₹31,86,820/- as the appellant had not got himself registered nor paid service tax and there was violation of Section 68, 69, 70, 73(1) of the Finance Act read with Rule 7(4) of the Service Tax Rules, 1994. Accordingly, the extended period under Section 73(1) of the Act was invoked and it was held that it was also liable to pay interest on the evaded service tax, apart from the demand of ₹31,86,820/- along with penalty of ₹200/- per day, during which, such failure continued, apart from the penalty of ₹5000/- and an equivalent penalty also under Section 78. 6. The appellant filed an appeal before the Commissioner (Appeals) and filed an application praying for waiver of the penalty as prescribed under Section 35F of the Act. The plea taken that the service tax was not liable to be paid since the rent amount had been divided into two heads, one of land and building and the other for plant and machinery, was rejected as the same had never been disclosed during the audit. The plea that the demand was time barred was also rejected as the fact had never been disclosed to the Department on its own and was only detected by the audit team. In the absence of any undue hardship, the Commissioner (Appeals), directed the appellant to pay the entire amount of service tax confirmed against it and waived off in full the requirement of pre-deposit of interest and penalties imposed under the impugned order. The said amount was to be deposited within 15 days. The appellant, thereafter, challenged the said order by filing CWP No.4800 of 2013, which was disposed of with the observations that an appeal should be filed before the Tribunal. Resultantly, the impugned order has been passed whereby the Tribunal has declined to interfere in the discretion exercised by the Commissioner (Appeals). 7. Counsel for the appellant has vehemently submitted that the order impugned whereby there was reference to the valuation of the plant and machinery on one side and the value of the land and building on the other, has been taken on a exaggerated basis whereas the approved valuer's report only showed an amount of ₹72,26,186/-. It was, accordingly, submitted that the rent was not in ratio to the value of the assets of plant and machinery and that the Commissioner (Appeals) was not justified by denying the relief regarding the pre-deposit.

8. Counsel for the revenue, on the other hand, supported the order and submitted that the discretion exercised was not lightly to be interfered with and under the provisions of the Act, the service was taxable and only on account of the audit of M/s Kapsons Industries, the factum of the violation had been detected and in such circumstances, no question of law arises which would require consideration by this Court.

9. The unamended provisions of Section 35F of the Act provide that the Appellate Tribunal should take into account the factum of undue hardship of the appellant and may dispense with such deposit, subject to the conditions it may deem fit, to impose, so that the interest of the Revenue can be safeguarded. The said provisions read as under:

> *"SECTION 35F. Deposit, pending appeal, of duty demanded or penalty levied. - Where in any appeal under this Chapter, the decision or order appealed against relates to any duty demanded in respect of goods which are not under the control of Central Excise authorities or any penalty levied under this Act, the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the adjudicating authority the duty demanded or the penalty levied :*
>
> *Provided that where in any particular case, the Commissioner (Appeals) or the Appellate Tribunal is of opinion that the deposit of duty demanded or penalty levied would cause undue hardship to such person, the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal, may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue."*

10. In the present case, as noticed, the renting of immoveable property had been brought in to the service net w.e.f. 01.06.2007 vide notification dated 22.05.2007. The

explanation to Section 65(90a) of the Finance Act provide that renting of immoveable property includes use of immoveable property, factories, office buildings, warehouses plus for use in the course or furtherance of business or commerce. Sub-section (105)(zzzz) also provides that taxable service means providing of any service by renting of immoveable property The argument that as per the amended lease deed dated 29.03.2011, the building was only let out for ₹55,000/- per month and the rest of the amount was only on account of the rent of the immoveable plant and machinery, which was moveable and not covered under the Act, *prima facie,* cannot be accepted. The Adjudicating Authority has noticed that a consolidated ledger account is being maintained and that there is no breakup for the different heads of land and building and the plant machinery and the agreement dated 29.03.2011 was not registered under the Registration Act, 1908. The Commissioner (Appeals) has, *prima facie,* considered the stand of the appellant and granted the benefit of waiver regarding the pre-deposit of interest and penalties imposed and noticed that there was no undue hardship.

11. The amended rent deed whereby the rent was fixed at ₹7,00,000/- per month, which was divided into two accounts, for land and building to the tune of ₹55,000/- and ₹6,45,000/- for the use and other facilities, does not show any details as to which of the plant and machinery had been leased out for the huge rental of ₹6,45,000/- per month. Relevant portion of the agreement reads as under:

> *"In consideration of the sum of Rs. 10.00 Lacs (Rupees Ten Lacs only) paid as interest free deposit by the Lessee to the Lessor (receipt whereof the Lessor hereby acknowledge) and in consideration of the Lease Rent hereby reserved and pursuant to the covenants agreed to between the parties and hereinafter after mentioned "The Lessor" hereby conveys, grants and dismiss by way of lease, the plant & machinery, equipments, jigs & fixtures, Dies, office equipments, furniture and fittings and other infrastructural facilities as particularly described in the schedule attached hereto together with all attachments, whatever belonging to and hereto together with all attachments, whatsoever belonging to and hereto enjoyed by the Lessor unto 'The Lease' from, the first day of April, 1997 for a period of ten years during which period 'The Lessee' shall pay the sum of Rs. 7,00,000 (Rupees Seven Lacs only) per month as divided into Rs. 55,000.00 (Rupees fifty five thousand only) per month for the use of land & building and the balance of Rs. 6,45,000.00 (Rupees six lacs forty five thousand only) per month for the use of all other facilities as rent w.e.f. 1st April, 2001 in advance on or before the 10th of the month aforementioned in each year at the office or the premises as 'The Lessor' may require or fix in this behalf from time to time."*

12. Counsel for the appellant has admitted that the property is spread over one acre of land in Jalandhar and in such circumstances, the submission that it was not covered under the definition of immoveable property and does not come within the ambit of service tax, cannot be accepted. This Court would not interfere in the discretion which has been exercised by the authorities under the Act, in view of the facts and circumstances of the present case. The authorities were able to detect the amount of evasion of tax on the basis of the audit conducted on a sister concern and the extended period of limitation had been invoked. Under Section 35G of the Act, this Court would only interfere if there is a substantial question of law involved and the appeal is only to be heard on the questions so formulated. Admittedly, the adjudicating order was passed on 15.12.2011, well before the amendment came on 06.08.2014 and even the order of the Commissioner (Appeals) was passed on 31.01.2013, well before the amendment and therefore, question No.1 does not arise in the facts of the case.

13. Keeping in view the above discussion, this Court is of the opinion that the substantial questions of law which have been raised by the appellant, do not arise for consideration of this Court in an appeal against an order of predeposit. The issues raised

require consideration at the hearing of the appeal. Moreover, needless to clarify that the observations herein and in the impugned order would not affect the parties at the hearing of the appeal.

14. In such circumstances, this Court is not inclined to interfere with the discretion which has been exercised and where the benefit of pre-deposit has been restricted to a reasonable amount, in favour of the appellant. However, since an interim order had been passed in favour of the appellant on 24.12.2014 that the appellant would deposit a sum of ₹8 lacs towards service tax, which is stated to have been deposited, liberty is granted to the appellant to deposit the balance outstanding amount within a period of 2 months, from the date of this order.

15. The appeal is, accordingly, dismissed.

PUNJAB & HARYANA HIGH COURT

CEA NO 93 of 2014

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MARUTI SUZUKI INDIA LTD.
Vs.
COMMISSIONER OF CENTRAL EXCISE

S.J.VAZIFDAR, ACTING CHIEF JUSTICE AND G.S. SANDHAWALIA J

15th May, 2015

HF ▶ Revenue

APPEAL - PRE DEPOSIT – CENTRAL EXCISE ACT – SECTION 35F – TRANSACTION VALUE – DEALERSHIP MARGINS BEING GIVEN OVER AND ABOVE THE ASSESSABLE VALUE OF TAXES DECLARED IN THE INVOICES – ADDITIONAL DEMAND OF RS.240.57 CRORES RAISED ALONG WITH PENALTY AND INTEREST – EXTENDED PERIOD OF LIMITATION ALSO INVOKED – TRIBUNAL DIRECTED TO DEPOSIT RS.150 CRORES AS CONDITION FOR HEARING OF APPEAL – ON APPEAL HIGH COURT HELD – NO SUBSTANTIAL QUESTION OF LAW ARISES – PRIMA FACIE OPINION OF THE TRIBUNAL JUSTIFIED – ASSESSEE ENTITLED TO RAISE ALL CONTENTIONS ON MERIT AT THE TIME OF REGULAR HEARING – AMOUNT ALREADY REDUCED FROM RS. 240 CRORES TO RS.150 CRORES – APPEAL DISMISSED – THREE MOTHS TIME GIVEN TO DEPOSIT THE AMOUNT.

The appellant, a Car manufacturer, had been assessed to Central Excise Duty by the Commissioner, Central Excise and additional central excise duty of Rs.240.57 crores was found payable along with equal amount of penalty and interest.

On appeal before the Tribunal along with an application for hearing of appeal without pre deposit, the appellant took a stand that there was no fraud and no willful statement and accordingly the demand was time barred. It was pleaded that the amount of dealers' margin which had been offered as a part of promotional discount was not includible in the assessable value. Accordingly prayer was made for waiver of pre-deposit as it would cause undue hardship to the appellant. The Tribunal had rejected the contentions of the assessee holding prima facie against the appellant and observed that the definition u/s 4(3)(d) of the Act would include the amount given as a promotional discount in the assessable value. The reliance placed upon decision of Hon'ble Bombay High Court in Tata Motors vs Union of India – 2012 (296) ELT 161 (Bom.) by appellants was not taken into consideration on the ground that the assessee would be provided opportunity to argue the same during a regular hearing. The contention with regard to extended period of limitation was also rejected on the ground that the holding charges being recovered by the dealers have been suppressed from the department and, therefore, the extended period of limitation has been rightly invoked. The Tribunal ordered the sum of Rs.150 crores as a condition for the hearing of appeal u/s 35Fof the Act.

On appeal before the High Court it was held, that No question of law arises in view of the prime facie conclusions arrived at by the Tribunal. The Tribunal after giving benefit of pre

deposit has already reduced the amount of deposit to the tune of Rs.150 crores out of a duty of Rs.240.57 crores along with equal amount of penalty and interest. No substantial question of law arises which have been raised by the applicant and the issues raised require consideration at the hearing of the appeal as to the judgments relied upon by the appellant. The opinion formed by the Tribunal was merely a prima facie opinion which cannot be faulted.

Accordingly, the appeal was dismissed but the appellant was granted 3 months time to deposit the amount from the date of order.

Cases referred:

Union of India & others Vs. Bombay Tyres International Ltd. 1984 (17) ELT 329
Maruti Suzuki India Ltd. Vs. CCE, Delhi-III 2010 (257) ELT
Tata Motors Ltd. Vs. UOI 2012 (286) ELT 161 (Bom.)
Benara Sales Ltd. Vs. Commissioner of Central Excise 2006 (207) ELT 513
ITC Ltd. Vs. Commissioner (Appeals) Customs 2005 (184) ELT 347 (All.)

Present: Mr.V.Lakshmikumaran, Advocate,
Mr.Aman Pratap Singh, Advocate,
Mr.Amrinder Singh, Advocate,
Mr.R.K.Hasija, Advocate and
Mr.Shobit Phutela, Advocate, for the appellant.

Mr.Kamal Sehgal, Advocate, for the respondent.

****

G.S.SANDHAWALIA J.

1. This judgment shall dispose of CEA Nos.93 & 94 of 2014, filed under Section 35G of the Central Excise Act, 1944 (for short, the 'Act'), filed by the manufacturer, since common questions of law and facts are involved and by a common impugned order passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi (for short, the 'Tribunal') dated 15.10.2014 (Annexure A-1), the lis has been decided.

2. The Tribunal, vide order dated 15.10.2014, directed the appellant manufacturer to deposit a sum of ₹150 crores, within 8 weeks and that the balance amount of duty interest and penalty shall remain stayed, subject to the deposit, while deciding the stay application of the appellant.

3. The following four questions of law have been framed by the appellant for the decision by this Court:

> *"(i) Whether in facts and circumstances of the present case, the Appellate Tribunal is correct in directing the Appellant to deposit Rs.150 crore out of Rs.240 crore (approx) demand as a precondition to hear the Appeal on merits when the entire case is covered in favour of the Appellant by rulings of the Hon'ble Supreme Court and the Bombay High Court?*
>
> *(ii) Whether in facts and circumstances of the present case the Appellate Tribunal is correct in directing the Appellant to make a pre-deposit as a pre-condition to hear the Appeal on merits when the entire case is covered by order of the Appellate Tribunal in Appellant's own case; thus, breaching the doctrine of judicial discipline and judicial propriety?*
>
> *(iii) Whether in facts and circumstances of the present case the Appellate Tribunal is correct in directing the Appellant to make a pre-deposit as a pre-condition to hear the*

Appeal on merits, when the Hon'ble Tribunal has failed to pass an order after reserving the judgment for more than five months without considering the submissions of the Appellants and deciding the matter on facts and issues which were never part of the proposed demand in the Show Cause Notice?

(iv) Whether in facts and circumstances of the present case the Appellate Tribunal is correct in directing the Appellant to make a pre-deposit when substantial period of demand is time barred and beyond the period of limitation?

4. A perusal of the paperbook would go on to show that vide a show cause notice dated 19.06.2009 (Annexure A-7) and five other notices, the Revenue, on the basis of an audit conducted from 11th to 15th November, 2008, noticed that the appellant-manufacturer was giving dealership margins to the respective dealers for vehicles being sold by them, over and above the assessable value and taxes, as declared in the invoices. The appellants were also permitting different incentive schemes as corporate discounts, free insurance for the sale of the vehicles under the brand name 'Maruti' by way of regular advertisement. The advertisement provided the details of the offers and also gave the names and telephone numbers of the dealers through whom the schemes could be availed. After going through the advertisement and investigation done on the ground that the show cause notice was got issued on the ground that the promotional schemes should be included in the assessable value, as per the definition of transaction value, given under Section 4(3)(d) of the Act, which provided for determination of demand of customs or the central excise duty of transaction value. Investigations were made, accordingly, and correspondence *inter se* the appellants and the dealers and a conclusion was *prima facie* arrived at that the schemes were conceived and prepared by the manufacturer and the dealers were not party to the schemes and the stand taken that the schemes were launched by the dealers, was not correct. The dealers were bound to implement the schemes and the considerations pertaining to the dealers' contribution was liable to be added in the assessable value to arrive at the transaction/assessable value. Accordingly, quantifying the total discounts given by the manufacturer and the central excise duty payable on the same, the said show cause notice was issued.

5. The defence taken by the appellants was that whatever discounts were passed to the end consumers as the customers had bought the vehicles from the dealers and had got maximum savings and no loss had been incurred by the dealers. The discounts were advertised and known prior to the removal of the goods. Reliance was placed upon the judgment of the Apex Court in ***Union of India & others Vs. Bombay Tyres International Ltd. 1984 (17) ELT 329***. The demand was denied and it was pleaded that the demand duty was barred under Section 11A of the Act. The balance-sheet and profit and loss accounts of the entire period of dispute had been shown and it was submitted that there was no suppression of facts and statements and that the investigation on the extended period of limitation was perverse and contrary to the facts and time-barred.

6. The adjudicating authority, vide order dated 10.01.2013 (Annexure A-9), by taking into account the defence of the appellants, came to the conclusion that the period relates to the evaluation of vehicles from June, 2004 to March, 2012. The provisions of Section 4(3)(d) of the Act were taken into consideration to hold that the discounts given by the dealers of the manufacturer would be includible in the assessable value of the goods. The objection raised by the appellants that the dealers were not incurring any expenditure and the discounts were being borne by them on their own accord, was taken into consideration and it was held that under the dealership agreement, they were to follow the promotional schemes as issued by the manufacturer. Accordingly, by holding that the manufacturers have legally enforceable rights upon the dealers, the amounts of discounts were held to be included in the transaction value. It was further held that the manufacturer had wilfully mis-stated that the promotional scheme had

been launched and rather the promotional schemes were formulated and launched by the manufacturer and therefore, proviso under Section 11A had been rightly invoked. Resultantly, the dealers' contribution and consumers' promotion scheme provided from the dealers' margins had been included in the assessable value, which was quantified as ₹15,70,21,54,908/- and the central excise duty was quantified at ₹240,57,84,802/-. Recovery of interest were also ordered under Section 11AB and penalty to the tune of an equivalent amount of ₹240,57,84,802/- was levied, while giving the benefit upon the institutional discounts and spot discounts which were not to be included in the assessable value.

7. The appellant-manufacturer, filed an appeal before the Tribunal along with an application for waiver of the pre-deposit and taken the plea that there was no fraud and no wilful mis-statement and the demand was time-barred. Vide the impugned order, the Tribunal came to the conclusion that the only issue involved was whether the amount of dealers' margin which had been offered as part of the promotional discount, was includible in the assessable value, for the purpose of payment of central excise duty or not, in view of the definition of Section 4(3)(d) of the Act, wherein, transaction value had been defined. It was, accordingly, held that it would form part of the assessable value of such goods and would be an indirect consideration, received by the assessee in clearance of the products manufactured by him. The promotional scheme being mandatory upon the dealers, the manufacturer's contention that they were doing on their own accord, was rejected on the ground that the agreement was liable to be terminated. Reliance was placed upon the judgment of the larger Bench of the Tribunal in ***Maruti Suzuki India Ltd. Vs. CCE, Delhi-III 2010 (257) ELT*** wherein it had been held that the provision of running pre-delivery inspection and three free after sale services were also part of the price of goods. The judgment of the Bombay High Court in ***Tata Motors Ltd. Vs. UOI 2012 (286) ELT 161 (Bom.)***, was referred to but not taken into consideration on the ground that the appellant would be provided opportunity to argue on its ratio during regular hearing. Other judgments relied upon were rejected on the ground that the transaction value came into force w.e.f. 01.07.2000 and the judgments were prior to that point of time.

8. Another factor which weighed with the Tribunal was that the dealers were also charging handling charges, over and above the ex-showroom price and the manufacturer had no control over the dealers in this regard. Thus, the handling charges were being recovered by the dealers which range from ₹6000/- per vehicle and thus, had been suppressed from the Department and therefore, the extended period of limitation had rightly been invoked. The discount was being compensated from handling charges, collected by the dealers, indirectly and thus, the appellants were undervaluing the excisable goods while delivering to the dealers.

9. Counsel for the appellants has, thus, submitted that in view of the judgment of the Bombay High Court in **Tata Motors Ltd.** (supra), the circular dated 01.07.2002 had been quashed and therefore, while placing reliance upon ***Benara Sales Ltd. Vs. Commissioner of Central Excise 2006 (207) ELT 513***, argued that once a *prima facie* case was made out, it would be undue hardship to the appellant to deposit the amount and therefore, the conditions imposed to deposit the sum of ₹150 crores, was not justified. It was further submitted that dispensation of deposit was to be allowed as there was two views possible while placing reliance upon the Division Bench judgment of the Allahabad High Court in ***ITC Ltd. Vs. Commissioner (Appeals) Customs 2005 (184) ELT 347 (All.)***.

10. Counsel for the Revenue, on the other hand, submitted that in view of the amendment made in the section, the transaction value would include the value of the concession given by the dealers and the interest of the Revenue was to be protected. In the absence of any financial hardship being faced by the appellant-company, the discretion exercised by the Tribunal is not lightly to be interfered with, in the facts and circumstances and

out of the ₹240,57,84,802/- of duty along with penalty of the equivalent amount and interest etc., only a sum of ₹150 crores had been asked to be deposited.

11. The provisions of Section 35F of the Act provide that the Appellate Tribunal should take into account the factum of undue hardship of the appellant and may dispense with such deposit, subject to the conditions it may deem fit, to impose, so that the interest of the Revenue can be safeguarded. The said provisions read as under:

> *"SECTION 35F. Deposit, pending appeal, of duty demanded or penalty levied. - Where in any appeal under this Chapter, the decision or order appealed against relates to any duty demanded in respect of goods which are not under the control of Central Excise authorities or any penalty levied under this Act, the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the adjudicating authority the duty demanded or the penalty levied : Provided that where in any particular case, the Commissioner (Appeals) or the Appellate Tribunal is of opinion that the deposit of duty demanded or penalty levied would cause undue hardship to such person, the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal, may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue."*

12. The facts have already been noticed in detail above. The Tribunal, *prima facie,* after taking into account the fact that in view of the provisions of Section 4(3)(d), has come to the conclusion that the transaction value means the price paid or payable for the goods once sold. The same has been held to be inclusive of the amount charged, which the buyer of the vehicle is liable to pay, in connection with the sale and whether the same is payable at the time of the sale regarding advertisement marketting and selling expenses. The factum of the issue being decided against the assessee itself by the larger Bench of the Tribunal in **Maruti Suzuki India Ltd.** (supra), is also not disputed wherein the point taken into consideration was whether the charges incurred towards pre-delivery investigation and after sales service by the dealers from the buyers of car, were to be included in the assessable value, as per the definition of transaction value, given in the Act. The same reads as under:

> *"SECTION 4. Valuation of excisable goods for purposes of charging of duty of excise. –*
>
> *(1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall –*
>
> *(a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value;*
>
> *(b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.*
>
> *xxxx xxxx xxxx*
>
> *(d) "transaction value" means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods."*

13. As regards the judgment of the Apex Court in **Bombay Tyres International Ltd.** (supra), the Tribunal noticed that the amendment to Section 4 which came into force on 01.07.2000, incorporating the value of the excisable good, for the purpose of charging the duty on excise to the transaction value and as per their definition, the price actually paid would include in addition to the price charged which the buyer was liable to pay, in connection with the sale regarding the amount charged for advertising, publicity, marketing and selling.

14. A perusal of the judgment of the Bombay High Court in **Tata Motors Ltd.** (supra) would also go on to show that the issue in challenge therein was to the circulars dated 01.07.2002 and 12.12.2002, issued by the Revenue, pertaining to the cost of the pre-delivery inspection and free further sales service incurred which had been included in the assessable value. The Court came to the conclusion that the circulars issued by making reference to Rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, had wrongly been invoked and linked with the expenses of publicity. Clause 7 of the circular dated 01.07.2000 was, accordingly, held to be not in conformity with the provisions of Section 4(3)(d) and accordingly, held to be illegal and void. That the pre-delivery inspection and free further sales service charges could be included in the transaction value only when they are charged by the assessee from the buyer and thus, it was held to be a question of fact. It was also noticed that the adjudication order was not under challenge and whether the adjudicating authority was justified, would be decided in appeal. In the present case, there is no circular, as such, which is subject matter of challenge and the demand has been raised on the basis of the provision itself and therefore, reference to the said judgment is without any basis.

15. Once the whole issue *prima facie* has been considered by the Tribunal and has been decided against the appellants, the Tribunal, thereafter, has given the benefit of reducing the deposit to the tune of ₹150 crores, out of the duty of ₹240,57,84,802/-, levied along with equal amount of penalty plus interest. Though the Tribunal also took into account the handling charges issue, which was not subject matter of the notice, but it has on merits also *prima facie* discussed the main issue of transaction value for the purpose of deciding the stay application and therefore, in the absence of any question of law arising, this Court would not interfere in the discretion which has been exercised, keeping in view the facts and circumstances of the present case. The authorities have came to the conclusion that the demand was within the limitation, on account of the fact that an attempt had been made earlier that the dealers, at their own level, had been trying to promote the same by way of advertisement to get out of the ambit of transaction value. However, on a closer examination by the authorities, it revealed that the said fact was not correct and rather, the company was organising the advertisements and the dealers had to comply with the said terms and conditions, in view of the mandatory provisions of the agreement.

16. Under Section 35G of the Act, this Court would only interfere if there is a substantial question of law involved and the appeal is only to be heard on the questions so formulated. Keeping in view the above discussion, this Court is of the opinion that the substantial questions of law which have been raised by the appellant, do not arise for consideration of this Court in an appeal against an order of pre-deposit. The issues raised require consideration at the hearing of the appeal as to the judgments relied upon by the appellant. Moreover, needless to clarify that the observations herein and in the impugned order would not affect the parties at the hearing of the appeal.

17. In such circumstances, this Court is not inclined to interfere with the discretion which has been exercised and where the benefit of pre-deposit has been restricted to a reasonable amount, in favour of the appellant-manufacturer. However, since an interim order had been passed in favour of the appellant company by this Court, it is granted 3 months' time

to deposit the amount, as per the direction of the Tribunal, from the date of this order. 18. The appeals are, accordingly, dismissed.

PUNJAB & HARYANA HIGH COURT

ITA NO 110 of 2015

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THE PRINCIPAL COMMISSIONER OF INCOME TAX-2
Vs.
HARISH GOYAL

S.J.VAZIFDAR, ACTING CHIEF JUSTICE AND G.S. SANDHAWALIA J

25th May, 2015

HF ▶ Assessee - Respondent

PENALTY – INCOME TAX ACT – REBATE CLAIMED U/S 88E OF I.T. ACT – MISTAKE OF ACCOUNTANT – PENALTY LEVIED BY ASSESSING OFFICER FOR WRONG CLAIM – PENALTY SET ASIDE BY COMMISSIONER AND TRIBUNAL ON BASIS THE OF ERRONEOUS CLAIM MADE ON ACCOUNT OF RETURNS FILED ON BEHALF OF RESPONDENT BY HIS CONSULTANT – APPEAL FILED BY DEPARTMENT BEFORE HIGH COURT – APPEAL DISMISSED SEEING NO REASON TO INTERFERE WITH THE CONCURRENT FINDINGS BY THE AUTHORITIES BELOW – ASSESSEE NOT TO BE PENALIZED FOR ACCOUNTANT'S FAULT.

The returns for the Assessment Year 2007-08 were filed. Rebate u/s 88E of Income Tax Act, 1961 was claimed. Due to claim wrongly made penalty was levied by the Assessing Officer. The Commissioner set aside the penalty on appeal and the orders were further upheld by the Tribunal in favour of Assessee. The Department appealed before High Court. It was contended that the erroneous claim was made on account of the Returns filed by the Consultant on Respondent's behalf. Therefore, dismissing the appeal, it was held that there was no reason for the High Court to interfere in the concurrent findings of the authorities below that the assessee should not be penalized for his Accountant's fault.

Present: Ms. Urvashi Dhugga, Advocate, for the appellant.

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S.J.VAZIFDAR, ACTING CHIEF JUSTICE

1. This is an appeal against the order of the Tribunal dated 17.10.2014 upholding the decision of the CIT (Appeals) setting aside the penalty levied by the Assessing Officer.

2. We must proceed on the basis that the respondent/assessee wrongly claimed rebate under Section 88 E of the Income Tax Act, 1961 in respect of the assessment year 2007-2008. The respondent added the income from the share trading in his other total income and claimed the benefit of rebate to the extent of the security transaction tax.

3. We see no reason to interfere with the concurrent findings of the CIT (Appeals) and the Tribunal that the erroneous claim was on account of the return filed on behalf of the respondent by his consultant. They have decided not to visit the assessee with the drastic

consequences of a penalty on account of the accountant's default. In these circumstances, no question of law arises.

4. The appeal is, therefore, dismissed.

PUNJAB & HARYANA HIGH COURT

VATAP NO. 170 OF 2014

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RAKHI AGENCIES LTD.
Vs.
STATE OF HARYANA & ANOTHER

S.J.VAZIFDAR, ACTING CHIEF JUSTICE AND G.S. SANDHAWALIA J

25th May, 2015

HF ▶ Assessee

REVIEW – TRIBUNAL – TAX AND PENALTY IMPOSED BY CHECKING OFFICER – APPEAL BEFORE TRIBUNAL DISMISSED – REVIEW APPLICATION ADMITTED ON THE QUESTION OF JURISDICTION - APPEAL FIXED TO BE HEARD ON MERITS –REVIEW PETITION DISMISSED BY MAJORITY SUBSEQUENTLY NOT NOTICING THE ORDER ALLOWING REVIEW – APPEAL BEFORE HIGH COURT – HELD ONCE REVIEW APPLICATION HAD BEEN ENTERTAINED ON THE POINT OF JURISDICTION, THE SAME HAD TO BE DECIDED ON MERITS – MATTER REMANDED TO TRIBUNAL FOR HEARING THE PETITION AS PER THE PREVIOUS ORDER ALLOWING THE APPLICATION FOR REVIEW – APPEAL ALLOWED.

Tax & Penalty u/s 9(2A) of CST Act read with Section 31(8) of HVAT Act was imposed on the appellant. On the dismissal of first appeal, an appeal was filed before Tribunal which was also dismissed vide order dated 6.11.2008. Against this order a review application was filed. Since the matter struck at the very root of the jurisdiction of the officer who imposed penalty, review was allowed vide order dated 9.7.2012. The appeal was fixed to be heard on merits., However, subsequently, the review petition was dismissed by majority of two members of the Tribunal without noticing the order dated 9.7.2012 on the ground that there was no mistake apparent on the face of the order dated 6.11.2008 and that the issue of jurisdiction was not raised earlier. On appeal before High Court it is held that it is obvious that the majority passed the order without noticing the order dated 9.7.2012 allowing the review petition. The Chairman (Minority Judgement) rightly observed that once the review petition had been entertained on the point of jurisdiction, the same had to be decided. The appeal is allowed and matter remanded to Tribunal to hear the petition in accordance with the order dated 9.7.2012 passed by the Tribunal.

Present: Mr.Sandeep Goyal, Advocate, for the appellant.
Ms.Mamta Singla Talwar, AAG, Haryana, for the respondents.

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S.J.VAZIFDAR, ACTING CHIEF JUSTICE

1. This is an appeal against the order of the Haryana Value Added Tax Appellate Tribunal, Haryana (for short, the 'Tribunal') dated 28.05.2013 (Annexure A-11), dismissing the appellant's review petition, erroneously, as it had earlier been allowed by the Tribunal.

2. The appeal is admitted on the following substantial question of law:

"Whether on the facts and circumstances of the case, the Ld. Tribunal was justified in dismissing the Review Application of the appellant even though vide its order dated 9.7.2012 the Review Application had already been allowed and the appeal was ordered to be heard on merits?"

3. The Assessing Authority, vide an order dated 03.10.2003 (Annexure A-6), imposed a tax and penalty under Section 9(2A) of the Central Sales Tax Act, 1956, read with Section 31(8) of the Haryana Value Added Tax, 2003. The First Appellate Authority dismissed the appeal. The appellant filed an appeal before the Tribunal, which was dismissed by an order dated 06.11.2008 (Annexure A-9). Against this order, the appellant filed the said application for review. The Tribunal, in its order dated 09.07.2012, noted that its observations in paragraph 6 of the order dated 06.11.2008 were not strictly in accordance with law; that the matter struck at the very root of the jurisdiction of the Officer who imposed the penalty and that it would, therefore, be in the interest of justice to allow the review petition. The Tribunal, accordingly, fixed the appeal for hearing on the issue discussed in the order.

4. In the circumstances, the appeal had to be heard on merits, *de novo.* For some reason, the majority of two Members of the Tribunal failed to notice the order dated 09.07.2012 (Annexure A-10). The majority order dated 28.05.2013 observed that the appellant had filed a review petition against the said order of the Tribunal dated 06.11.2008 and proceeded to dispose of the review petition, yet again. This they could obviously not have done as the review petition had already been allowed vide order dated 09.07.2012 which has attained finality. The order dated 09.07.2012 has, admittedly, not been challenged. It is obvious that the majority treated the matter as a review petition, for the order observed that there was no mistake apparent on the face of the order dated 06.11.2008, sought to be reviewed and that nothing of relevance escaped the notice of the Tribunal that passed the order dated 06.11.2008. The majority also observed that the appellant had not raised the issue of jurisdiction before the checking officer.

However, as we noted earlier, the Tribunal, vide the order dated 09.07.2012, had granted the review and had, in fact, observed that the issue was at the very root of the matter. It is obvious that the majority, passed the order without noticing the order dated 09.07.2012. The minority judgment of the Chairman dated 28.05.2013 noticed the order dated 09.07.2012. The Chairman rightly observed that once the review petition had been entertained on the point of jurisdiction, which went to the root of the case, the same had to be decided. Obviously, the Chairman also had, inadvertently, stated that the appeal is allowed. The appeal is, now, to be considered by the Tribunal.

5. The appeal is, accordingly, allowed. The question of law is answered in favour of the appellant. The impugned order and judgment dated 28.05.2013 (Annexure A-11) is quashed and set aside. The matter is remanded to the Tribunal and the petition shall be heard in accordance with the order dated 09.07.2012, passed by the Tribunal.

PUNJAB & HARYANA HIGH COURT

CWP NO. 11477 OF 2015

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RAWAT CRANE SERVICE
Vs.
STATE OF HARYANA AND OTHERS

S.J.VAZIFDAR, ACTING CHIEF JUSTICE AND G.S. SANDHAWALIA J

28th May, 2015

HF ▶ Assessee

STAY OF RECOVERY – SECURITY – PENDENCY OF APPEAL BEFORE TRIBUNAL – TRIBUNAL NOT CONSTITUTED – WRIT FILED SEEKING INTERIM RELIEF – RECOVERY PROCEEDINGS TO BE STAYED IF SECURITY FURNISHED BY PETITIONER BY THE DATE FIXED – RECOVERY PROCEEDINGS TO BE STAYED TILL THE DECISION REGARDING ADEQUACY OF SECURITY IS TAKEN AND ONE WEEK THEREAFTER IF SECURITY FOUND INADEQUATE – PETITIONER REFRAINED FROM DISPOSING OF ITS IMMOVABLE PROPERTIES OR ENCUMBERING THE SAME TILL PENDENCY OF APPEAL – SECTION 33(5) OF HVAT ACT.

An appeal had already been filed before Tribunal. Since the Tribunal had not been constituted Writ was filed seeking interim relief. The Hon'ble High Court has directed for the stay of recovery proceedings in the event of furnishing of security u/s 33(5) of the Act. The recovery proceedings shall not be initiated till the decision of the Respondents and one week thereafter in case the security is found inadequate. The petitioner is directed not to dispose of its immovable property or encumber the same till pendency of appeal. The appeal is disposed of.

Present: Mr. Rajiv Agnihotri, Advocate, for the petitioner.

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S.J.VAZIFDAR, ACTING CHIEF JUSTICE

1. The petitioner has filed an appeal before the Tribunal. However, the Tribunal under the Haryana Value Added Tax Act, 2003 has not yet been constituted. The constitution of the Tribunal also depends upon certain other proceedings which have been filed unconnected to the present writ petition. In the circumstances, the appeal that had been filed by the petitioner cannot proceed at this stage. In lieu thereof, it is not possible for the petitioner to seek interim relief before the Tribunal. Considering the order passed in similar matters including an order dated 04.03.2015 in Civil Writ Petition No. 3961 of 2015 (*M/s Kohinoor Foods Ltd. v. The State of Haryana and others*), we dispose of this writ petition by the following order:-

2. In the event of the petitioner furnishing by 15.06.2015 security contemplated under Section 33(5) of the said Act, recovery proceedings be not initiated. The respondents shall consider whether the security, if offered by the petitioner, is satisfactory or not. In the event of security being offered by 15.06.2015, the recovery proceedings shall not be initiated till the decision of the respondents on the question as to whether the security is adequate or not and for

a period of one week thereafter, in the event of the decision being adverse to the petitioner. However, pending the appeal the petitioner shall not dispose of its immovable properties or encumber the same in any manner whatsoever.

PUNJAB & HARYANA HIGH COURT

CWP NO. 2764 OF 2015

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BAXTER INDIA (P) LTD.
Vs.
STATE OF HARYANA AND OTHERS

S.J.VAZIFDAR, ACTING CHIEF JUSTICE AND G.S. SANDHAWALIA J

28th May, 2015

HF ▶ Assessee

STAY OF RECOVERY – BANK GUARANTEE – PENDENCY OF APPEAL BEFORE TRIBUNAL – TRIBUNAL NOT CONSTITUTED – WRIT FILED – PETITIONER'S UNDERTAKING FOR KEEPING BANK GUARANTEE ALIVE TILL PENDENCY OF APPEAL – RESPONDENTS DIRECTED TO HEAR APPEAL ON MERIT – RESPONDENTS ENTITLED TO INVOKE BANK GUARANTEE ONLY UPON EXPIRY OF FOUR WEEKS FROM DATE OF COMMUNICATION OF ORDER OF TRIBUNAL, IF PASSED AGAINST PETITIONER – PETITIONER DIRECTED TO AMEND BANK GUARANTEE WITHIN THE TIME SPECIFIED FAILING WHICH RESPONDENTS ENTITLED TO ENCASH THEM – WRIT DISPOSED OF.

A writ was filed whereby the Petitioner had undertaken to keep the Bank Guarantee alive till pendency of appeal before Tribunal and its disposal. The Court has directed for hearing of appeal on merits. The Respondents would encash the Bank Guarantee only if an adverse order is passed against the petitioner. The petitioner is to keep the Bank Guarantee alive and if this amendment is not done within the time specified the Respondents shall be entitled to encash the Bank Guarantees. The Writ is disposed off.

Present: Mr. Avneesh Jhingan, Advocate, for the petitioner.
Ms. Mamta Singla Talwar, Assistant Advocate General, Haryana.

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S.J.VAZIFDAR, ACTING CHIEF JUSTICE

1.The petitioner's appeal is pending before the Haryana Tax Tribunal. The only reason this petition has been filed is because the Haryana Tax Tribunal has not been constituted as yet. There is some difficulty in constituting the Tribunal, inter alia, on account of the pendency of certain proceedings questioning the constitution of the Tribunal. The writ petition is, therefore, disposed of by directing the appeal to be heard on merits in view of the petitioner's undertaking to keep the bank guarantees alive pending the hearing and final disposal of the appeal and for a period of six weeks thereafter. The respondents shall be entitled to invoke the

bank guarantees only upon the expiry of a period of four weeks from the date of the communication of the decision of the Tribunal, if adverse to the petitioner.

2. The amendment to the bank guarantees to keep them alive pending the hearing and final disposal of the appeal before the Tribunal shall be carried out within four weeks from today. If the amendment is not carried out within four weeks from today, the respondents shall be entitled to encash the present bank guarantees.

PUNJAB & HARYANA HIGH COURT

STA NO. 7 OF 2015

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TOPS SECURITY LTD. AND OTHERS
Vs.
COMMISSIONER, CENTRAL EXCISE AND SERVICE TAX COMMISSIONERATE

S.J.VAZIFDAR, ACTING CHIEF JUSTICE AND G.S. SANDHAWALIA J

26th May, 2015

HF ▶Assessee

APPEAL – RESTORATION – POWER OF CESTAT – PRE DEPOSIT – DEMAND RAISED – APPEAL FILED BEFORE CESTAT – ORDER PASSED FOR PRE DEPOSIT AS A CONDITION PRECEDENT FOR HEARING OF APPEAL – EXTENSION OF TIME SOUGHT TWICE FOR DEPOSITING THE AMOUNT – FAILURE TO DEPOSIT ON THE REQUISITE DATE I.E. 20.4.2013 – APPLICATION FOR FURTHER EXTENSION OF TIME FILED ON 22.4.2013 – APPEAL DISMISSED ON 23.4.2013 FOR NON COMPLIANCE WITHOUT DECIDING LAST APPLICATION FOR EXTENSION – FINALLY AMOUNT DEPOSITED ON 27.4.2013 – APPLICATION FOR RESTORATION OF APPEAL DISMISSED – APPEAL BEFORE HIGH COURT – CONTENTION RAISED BY DEPARTMENT THAT CESTAT HAS NO POWER TO RESTORE APPEAL – ALLOWING APPEAL, HELD, CESTAT HAS POWER TO RESTORE THE APPEAL AND TO GRANT EXTENSION OF TIME FOR PRE DEPOSIT – APPEAL RESTORED TO THE FILE OF CESTAT TO BE HEARD ON MERITS – SEC. 86(6A) OF FINANCE ACT, RULE 41 OF CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL (PROCEDURES) RULES – 1982.

A demand was raised by the Commissioner against which an appeal had been filed before the CESTAT. The Appellant was directed to deposit a sum as a condition precedent for hearing of appeal. An extension of time was sought twice for pre deposit. On the date of 20.4.2013, again the appellant failed to deposit the amount. On 22.4.2013 once again an application for extension of time for depositing the amount was filed. On the same day before deciding the application, the appeal was dismissed for non compliance. On 27.4.2013 the amount was finally deposited and an application for restoration of appeal was filed which was dismissed. On appeal before High Court it was contended by the department that the CESTAT has no power to restore appeal or grant extension of time. Allowing the appeal, it is held that CESTAT has the power to restore the appeal or extend the time for pre deposit in view of Sec.86 of Finance Act and Rule 41 of Customs, Excise & Service Tax Appellate Tribunal. The appeal is restored before CESTAT to be heard on merits.

Present: Mr. Sandeep Goyal, Advocate, for the appellants.
Mr. Kamal Sehgal, Advocate, for the respondents.

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S.J.VAZIFDAR, ACTING CHIEF JUSTICE

C.M. No. 10874-CII of 2015

Application for placing on record Annexure A-13 is allowed, subject to all just exceptions.

Annexure A-13 is taken on record.

STA No. 7 of 2015

1.This is an appeal against the order of the CESTAT dismissing the appellants' application for restoration of their appeals and dismissing the applications of the appellants for extension of time to deposit the amounts as a condition precedent to the maintainability of the appeal.

2. The appeal is admitted on the following substantial questions of law:-

"i) Whether in the facts and circumstances of the case, rejection of the application for restoration of the appeal by the Learned Tribunal was justified in law?

ii) Whether in the facts and circumstances of the case, the delay of 4 days to deposit the amount of pre-deposit owing the financial hardship faced by Appellant was justified in law and condonable?"

3. The appellants had filed an appeal before the CESTAT against an order of the Commissioner raising a demand of about `58 lacs. The merits of the demand are not relevant for the purpose of this judgment. By an order dated 25.09.2012, the appellant no. 1 was directed to deposit the balance of the service tax within 8 weeks. Appellants no. 2 and 3 are the Directors of the company. They were directed to deposit an amount of `5,00,000/- each within 8 weeks. The deposit of the aforesaid amounts was a condition precedent to the maintainability of the appeals.

4. By an order dated 29.01.2013, the time to deposit the amount was extended by a period of 8 weeks. By yet another order dated 15.04.2013, the time to deposit the amounts was extended upto 20.04.2013. On 22.04.2013, the appellant filed an application for a further extension. The appellants had failed to deposit the aforesaid amounts.

5. On 22.04.2013, the appeal itself was dismissed for noncompliance of the aforesaid orders requiring the appellants to deposit the said amounts. At that stage, the last application for extension filed on 22.04.2013 had not been decided. As we mentioned earlier, the last date for depositing the amounts was 20.04.2013.

6. On 27.04.2013, the appellants deposited the entire amounts. Accordingly, they made an application for restoration of the appeal which had been dismissed in default on 20.04.2013.

7. There was, therefore, a delay of only 7 days in complying with the orders requiring the appellants to deposit the amounts. The application for extension of time filed on 22.04.2013 and the application for restoration were, however, dismissed by the order of the Tribunal dated 26.09.2013 impugned in this appeal.

8. We do not see any reason to deny the appellants an extension of a mere 7 days. It would be grossly inequitable and unfair to deny the appellants an opportunity of having their case heard on merits on account of their having delayed in complying with the order by just 7 days. The application for extension dated 22.04.2013 was pending when the appeal was dismissed on 23.04.2013 for non-compliance with the said orders. They could not have deposited the amounts on that date without a formal order. Had the order been passed on the date of the application itself, there would be a delay of only 2 days.

9. The contention that the CESTAT does not have power or jurisdiction to grant an extension of time or to restore the appeal is not well founded. Section 86(6A) of The Finance Act, 1994 reads thus:-

> ***"86. Appeals to Appellate Tribunal***
>
> *xxx xxx xxx*
>
> *[(6A) Every application made before the Appellate Tribunal,-*
>
> *(a) in an appeal for rectification of mistake or for any other purpose; or*
>
> *(b) for restoration of an appeal or an application; shall be accompanied by a fee of five hundred rupees:"*

10. Sub section (6A) of Section 86 of the Finance Act presupposes the maintainability of an application for restoration of an appeal or an application. Thus, even assuming that there is no separate provision relating to or permitting applications for restoration, it would make no difference. The CESTAT would always have the power to restore an appeal which has been dismissed for any reason including for non-compliance of a deposit order.

11. Rule 41 of the Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982 which makes this clearer, reads as under:-

> *"**41. Orders and directions in certain cases.***
>
> *The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect or in relation to its orders or to prevent abuse of its process or to secure the ends of justice .*" *(emphasis applied.)*

12. The concluding words "to secure the ends of justice" are wide enough to cover cases such as these viz. to grant an extension of time to deposit an amount or to restore appeals dismissed on account of the failure to comply with the orders of pre-deposit.

13. The appeal is, therefore, allowed. The questions of law are answered in favour of the appellants and against the respondents. The appeal shall stand restored to the file of the CESTAT and shall be heard on merits.

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NOTIFICATION

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NOTIFICATION LEVYING ENTRY TAX ON SUGAR

PART III
GOVERNMENT OF PUNJAB
DEPARTMENT OF INDUSTRIES AND COMMERCE
NOTIFICATION
The 1st June, 2015

No. S.O. 21/P.O. 1/2015/S.4/2015. – In exercise of the powers conferred by sub-section (1) of section 4 of the Punjab Development of Trade, Commerce and Industries Ordinance, 2015 (Punjab Ordinance No. 1 of 2015) , and all other powers enabling him in this behalf, the Governor of Punjab is pleased to levy tax at the rate of eleven percent (11%) on the entry of sugar, specified in the Schedule, for consumption, use or sale into the State of Punjab.

ANIRUDH TEWARI, IAS
Principal Secretary,
Department of Industries and Commerce.

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

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PUNJAB VALUE ADDED TAX (INCENTIVES FOR EXPANSION PROJECTS) RULES, 2015.

PART III
GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE AND TAXATION
(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION
The 6th April, 2015

No. G.S.R. 19/P.A.8/2005/Ss.8-E and 70/2015.— In exercise of the powers conferred by section 70 read with section 8-E of the Punjab Value Added Tax Act, 2005 (Punjab Act No. 8 of 2005), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to make the following rules, to carry out the purpose of the said Act, namely :—

RULES

1. Short title and Commencement.—

(1) These rules may be called the Punjab Value Added Tax (Incentives for expansion projects) Rules, 2015.

(2) They shall come into force on and with effect from the date of their publication in the Official Gazette.

2. Definitions.— In these rules, unless the context otherwise requires,—

(a) 'Acts' means the Punjab Value Added Tax Act, 2005 and the Central Sales Tax Act, 1956;

(b) 'Agro Industrial and Food Processing Industries' means units which add value to agricultural produce, their intermediates and residues, and edible animal products by processing or by improving storability or by providing the link from farm to the market or part thereof Agro Industry also includes hi-tech agriculture, fish processing, honey processing, cold chain infrastructure, steel silos and warehouses for food grains;

(c) 'agriculture produce' means produce of agriculture, horticulture, agro forestry, floriculture and bio-mass/agro produce;

(d) 'competent authority' means the Chief Executive Officer of the Punjab Bureau of Investment Promotion;

(e) 'eligible area' means an area eligible for incentives as specified in the Fiscal Incentives for Industrial Promotion, 2013;

(f) 'Eligibility Certificate' means a Certificate granted by the competent authority;

(g) 'Eligible period' means the maximum period during which an eligible unit can exhaust the incentive limit granted and it shall commence with effect from the date of approval of the unit;

(h) 'Eligible unit' in relation to an expansion project means a unit in an eligible area satisfying the following conditions :

(1) There shall be a minimum 50 per cent. increase in the Fixed Capital Investment (original value without depreciation) for all projects with original investment of Rs 100 crore or less subject to the condition that the minimum increase in the Fixed Capital Investment would be Rs 1 Cr.

(2) For projects with original investment above Rs. 100 crore, the minimum increase in Fixed Capital Investment shall be 25 per cent. subject to a minimum limit of Rs 50 crore; and

(3) Such expansion shall have to be carried out after the cut off date of 01.04.2013 meaning thereby that the unit shall make the requisite Investments only after 01.04.2013 as expansion of the existing project;

(i) 'Existing unit' means any other unit which is not availing incentive under the Industrial Policy of 2013;

(j) 'Fixed Capital Investment (FCI)' shall include the investment of building (excluding land), plant and machinery and equipment in relation to an industrial unit, including miscellaneous assets, technical know-how and other cost components associated with the industrial activity as appraised and firmed up by Banks or Financial Institutions;

(k) 'Form' means a Form appended to these rules;

(l) 'Government' means the Government in the Department of Excise and Taxation;

(m) 'Incentive limit' means the maximum cumulative quantum of tax incentive granted, which can be availed by an eligible unit during an eligible period;

(n) 'Information technology' means information technology and telecommunication;

(o) 'Information Technology Industry' means information technology, hardware and software industries;

(p) `Integrated Steel Plant' shall mean a steel plant in which final end product is to be sold in retail sale such as sponge iron, billets, balooms, slabs etc. and is manufactured starting from iron ore or scrap and all the processes concerning such manufacturing are performed in the plant itself;

(q) 'Integrated Textile Unit' means one that consists of composite process including spinning, weaving or knitting, processing and manufacturing of end products like fabrics, garments, towels, etc.;

(r) Interdepartmental Committee' means committee constituted, as such, by the Government, which shall comprise representatives from the Department of Finance, Department of Industries and Department of Excise and Taxation;

(s) 'Manufacturing' means a process by which the material is transformed into a different and distinct product with the minimum value addition of 25 per cent. in the value of the raw material, but does not include the process of treating, repairing, reshaping, reconditioning, assembling, electroplating, polishing, blending, cutting, dyeing, heat treatment, wire drawing and conversion of penultimate product into final product for the purpose of availing incentives;

(t) 'Negative List' means the list of units and goods specified in Annexure-A

(u) Prescribed authority' means an Assistant Excise and Taxation Commissioner, incharge of the district;

(v) 'tax' means tax under the Acts, excluding surcharge under the Punjab Value Added Act, 2005;

(w) 'tax incentive' means the amount of tax collected and retained by the eligible unit but the retention of tax shall be restricted to that part of net tax liability accrued under the Acts (after adjusting it against input tax credit if any available), in case of the unit availing incentive scheme, which is adjustable against the incentive limit granted under the Industrial Policy of 2013. The net tax liability on account of surcharge accrued under the Punjab Value Added Act, 2005 shall not form the part of tax incentives;
(x) 'Zone I area' means an eligible area notified as such by the Industrial Policy of 2013; and

(y) 'Zone II area' means an eligible area notified as such by the Industrial Policy of 2013.

3. **Conditions for eligibility and entitlement.—** These incentives shall be admissible to an 'Eligible unit' in relation to an expansion project subject to the following conditions :—

(1) These incentives shall not be available to the goods specified in the Negative List given at Annexure 'A'.

(2) These incentives shall be admissible to an expansion project, which falls in an eligible area and in respect of which an Eligibility Certificate has been granted by the competent authority.

(3) The maximum time period and maximum cumulative amount of incentive available for different kinds of industries and with different amounts of investment shall be as per the restrictions and tables referred to in the Rule 4.

(4) If any false declaration is given for the purpose of availing incentives or if any incentives are availed for which the unit was not eligible, the amount of incentives are liable to be recovered from the date of availment of such incentives along with interest compounded annually @ 18 per cent. per annum.

(5) Government of India is in the process of introducing a uniform Goods and Services Tax (GST) regime throughout the country. In this event the benefits related to CST/VAT incentives granted or being availed would be suitably modified by the State Government in conformity with the Goods and Services Tax regime.

4. Quantum of Entitlement.—

(1) The tax incentives from the liability to pay tax under the Acts with regard to group of industries situated in different zones shall be available subject to the maximum benefit as per table given below.

TABLE
Incentives for New large manufacturing Sector units.

Eligible Area		Fixed Capital Investment from Rs. 25 Crs. to Rs. 100 Cr.	Fixed Capital Investment from Rs. 100 Cr. to Rs 500 Cr.	Fixed Capital Investment above Rs. 500 Cr.
Zone I	Quantum of incentive available	30% VAT + 37.5% CST	35% VAT + 37.5% CST	40% VAT+ 37.5% CST
	Maximum cumulative quantum of incentive	30% of Fixed Capital Investment.	35% of Fixed Capital Investment	40% of Fixed Capital Investment
Zone II	Quantum of incentive available	15% of VAT+ 25% CST	17.5% VAT+ 25% CST	20% VAT+ 25% CST
	Maximum cumulative quantum of incentive	15% of Fixed Capital Investment	17.5% of Fixed Capital Investment	20% of Fixed Capital Investment
Eligibility from date of application in years.		10	11	13

(i) Incentives for manufacturing sector units with Fixed Capital Investment from Rs. 10 Cr. to 25 Cr.

Eligible Area	Fixed Capital Investment from Rs. 10 Cr to Rs. 25 Cr.	Maximum cumulative quantum of incentive	Eligibility from date of application in years.
Zone I	25% VAT + 37.5% CST	25% of Fixed Capital Investment	8
Zone II	12.5% VAT+25% CST	12.5% of Fixed Capital Investment	8

(ii) Incentives for manufacturing sector units with Fixed Capital Investment from Rs. 1.0 Cr. to 10 Cr.

Eligible Area	Fixed Capital Investment from Rs. 1.0 Cr to Rs. 10 Cr.	Maximum cumulative quantum of incentive	Eligibility from date of application in years.
Within approved Industrial Focal Points, Industrial Estates and Industrial Parks	25% VAT+ 37.5% CST	25% of Fixed Capital Investment	7

(iv) Incentives for Integrated Textile Units.

Eligible Area			Fixed Capital Investment from Rs. 150 Cr. to Rs. 500 Cr.	Fixed Capital Investment above Rs. 500 Cr.
Textile Zone i.e.				
(a)	Districts of Mansa, Bathinda, Muktsar, Fazilka, Ferozepur, Faridkot, Moga, Barnala, Sangrur, Patiala, Amritsar and Tarn Taran	Quantum of incentive available	40% VAT+ 40% CST	45% VAT+ 40% CST
(b)	All approved Industrial Parks, Industrial Focal Points and Industrial Estates in all districts of the State	Maximum cumulative quantum of incentive	40% of Fixed Capital Investment	45% of Fixed Capital Investment
Eligibility from date of application in year			11	13

(v) Incentives for Agro and Foods Processing Industry.			
Fixed Capital Investment	Fixed Capital Investment (Rs. 1 Cr. to <Rs 25 Cr.)	Fixed Capital Investment (Rs. 25 Cr. to < Rs. 100 Cr.)	Fixed Capital Investment (Rs. 100 Cr. and above)
Incentive	40% VAT+ 37.5 CST	42.5% VAT+ 40% CST	45% VAT+ 42.5% CST
Maximum cumulative quantum of incentive	40% of Fixed Capital Investment	42.5% of Fixed Capital Investment	45% of Fixed Capital Investment
Eligibility from date of application in year	10	10	12

(vi) Incentive for Electronic Hardware and Information Technology Industry.		
Sector	Software Sector	Hardware sector
Investment	Fixed Capital Investment (Rs. 1 Cr. and above)	Fixed Capital Investment (Rs. 5 Cr. and above
Area	Mohali and Amritsar only	Whole of State of Punjab
Incentive	40% VAT + 40% CST	40% VAT + 40% CST
Maximum cumulative quantum of incentive	40% of Fixed Capital Investment	40% of Fixed Capital Investment
Eligible from date of application in years	10	10

[Editor's Note :— After (ii) point, there is no (iii) point in the original notification.]

(2) The expansion project in an eligible area shall be entitled to the incentives under sub-rule (1) on the incremental production only and a separate account of incremental production resulting from such expansion shall mandatorily be maintained.

EXPLANATION: 'Incremental Production' in relation to an expansion project shall mean production over and above either the installed capacity or actual production before such expansion, whichever is more."

Illustration :

1. *If the date of commencement of incentive for the eligible unit is 01.04.2014 and the unit before expansion is having an average quarterly production of 100,000/- units of the product over the last 2 years and the installed quarterly capacity is 90,000/- units of the product. If such a unit, after expansion, produces 1,20,000/- units per quarter, then the incremental production in the quarter will be taken as 20,000/- units of the product.*

2. *If the date of commencement of incentive for the eligible unit is 01.04.2014 and the unit before expansion is having an quarterly production of 100,000/- units of the product over the last 2 years and the installed quarterly capacity is 1,10,000/- units of the product. If such a unit, after expansion, produces 1,20,000/- units per quarter, then the incremental production in the quarter will be taken as 10,000/- units of the product.*

(3) The quantum of incentives availed by an expansion project during a period shall be calculated at the prevalent rates of tax payable under the Acts on the taxable turnover in respect of the incremental production of the concerned expansion project subject to sub-rule (1).

5. Mode of availing tax incentives.— (1) An eligible unit shall make an application to the competent authority for the grant of Eligibility Certificate for availing tax incentives. On receipt of the application, the competent authority shall refer the matter to the Interdepartmental Committee for the purpose of determination of Fixed Capital Investment.

(2) The Interdepartmental Committee shall determine the actual Fixed Capital Investment after taking into account the project appraisal report of the Bank or Financial Institution, certificate of Chartered Accountant, invoices of the purchases of capital goods and the industry norms regarding Capital Investment etc.

(3) Since the total Fiscal incentives cannot be more than 100 per cent. of the Fixed Capital Investment, therefore, the eligible unit shall inform the competent authority about the quantum of tax incentives it wants to claim, subject to the aforesaid cap of total Fiscal incentives.

(4) Keeping in view the provisions of rule 4 and sub-rules (2) and (3) of this rule, the competent authority shall quantify tax incentives and issue an Eligibility Certificate to the eligible unit.

6. Conditions regarding availability of input tax credit to a person purchasing goods from a unit availing incentive scheme,—

(a) The unit availing incentives shall issue a VAT invoice/ Retail invoice, as the case may be, as is issued by a unit which is not availing incentive scheme. The provisions regarding availability of input tax credit as applicable to person purchasing goods from a unit which is not availing incentive scheme shall apply mutatis mutandis to a person purchasing goods from a unit availing incentive scheme :

Provided that if the goods sold by a unit availing incentive scheme on VAT invoice are subsequently sold or used in manufacturing, processing or packing of goods for sale, by a taxable person in the course of inter-state trade or commerce or in the course of export outside India, that taxable person shall be entitled to claim input tax credit only to the extent of tax actually deposited by the unit availing the incentives, in the State Treasury.

(b) Minimum period required for availing benefit of incentives,—

(i) if the unit availing the benefit of incentives dis-continues its business before the expiry of the incentive period or before the exhaustion of the incentive limit granted, it shall be liable to deposit the entire amount of incentives availed into the Government Treasury along with interest compounded annually @ 18 per cent. per annum; and

(ii) the unit availing incentive shall be required to continue its operations till it pays into the Treasury, a cumulative tax amount equal to at least 50 per cent. of the amount of incentives availed. If any unit closes its business before the happening of such an event, it shall be liable to deposit the differential amount of incentive availed and the cumulative amount of tax paid into the Government treasury alongwith interest compounded annually @ 18 per cent. per annum.

7. Withdrawal of Incentives.— The entire tax incentives granted in respect of an eligible unit, including the availed amount shall be liable to be withdrawn by the Commissioner, if it is found that.—

(i) the Eligibility Certificate has been obtained by fraud, deceit, misrepresentation, mis-statement or concealment of any material fact; or

(ii) the unit availing incentives has indulged in any type of malpractice like bogus billing, bogus claim of input tax credit; or

(iii) the unit has concealed any particulars from any return furnished by him; or

(iv) the unit has deliberately furnished incorrect particulars therein; or

(v) the unit has concealed any transactions of sale or purchase from his account books; or

(vi) the unit has not maintained intelligible accounts, which prevent the Commissioner or the designated officer to assess the tax due from him; or

(vii) the unit has availed input tax credit to which he is not entitled to; or

(viii) the unit has claimed refund which was not due to him; or

(ix) the unit has claimed credit in respect of tax, which was not actually paid,

(x) the unit has not maintained true separate account of incremental production resulting from such expansion.

In addition, the Commissioner may direct that the person who has been found to be indulging in any of the above irregularities or malpractices, shall pay by way of penalty, a sum equal to twice the amount of incentive availed by him. The provisions of section 56 of the Punjab Value Added Tax Act, 2005, shall also be applicable to such person. However, no order shall be passed by the Commissioner without affording opportunity of being heard.

8. Filing of returns.— (1) The unit holding Eligibility Certificate shall continue to file the returns in the manner as provided under the Acts and the rules made there under.

(2) Notwithstanding anything contained in these rules, the unit holding Eligibility Certificate, shall attach an attested copy of the Eligibility Certificate and Treasury Receipts as proof of payment of amount of tax, which is outside the incentive scheme, alongwith the return. Such a unit shall continue to do so till the incentive is fully availed of or the period of incentive under these rules, expires, whichever is earlier.

9. Assessment of tax.—(1) The assessment of an eligible unit in respect of which an Eligibility Certificate has been granted shall be made in accordance with the provisions of the Acts and the rules made thereunder, but it shall preferably be made within a period of one year from the date of filing of the annual statement or due to be filed, whichever is earlier. The additional demand so determined, if any, shall be paid into the Government Treasury as per the provisions of the Acts and the rules made thereunder.

(2) If an order of withdrawal of the incentives is passed before the Eligibility Certificate is due for expiry, the entire amount of tax incentive availed by the unit shall become payable immediately in lump-sum and the provisions relating to recovery of tax, interest and penalty, if any, under the Acts, shall be applicable in such cases. The provisions of section 35 of the Punjab Value Added Tax Act, 2005 shall also apply mutatis mutandis regarding recovery of tax, interest and penalty due under these rules concerning first charge of State on the property of the unit availing incentive.

10. Registers to be maintained by the Prescribed authority.— The prescribed authority shall maintain a register in respect of units availing incentive and entries regarding the grant of Eligibility Certificate shall be made in the register so maintained.

11. Settlement of disputes.— If any dispute arises regarding eligibility of the unit or the quantum of incentives to be granted, the matter shall be referred to the Financial Commissioner (Taxation), whose decision shall be final and binding on the unit.

Annexure-A
[See rule 2(t)]
Negative List

1. Distilleries, Breweries, Bottling Plants and Canning Plants
2. Manufacturing of Tobacco products, cigar/Cigarettes and Gutka.
3. Traditional Brick/Tile Kilns except ceramic tile manufactured from basic stage.
4. Manufacturing of Cement
5. Vanaspati Ghee Mills
6. Rice Shellers (With Fixed Capital Investment of less than Rs. 10 Crore)
7. Refining of petroleum products.
8. Iron and Steel Industry except Integrated Steel Plants having Fixed Capital Investment of more than Rs. 100 Crore

D.P. REDDY,
Financial Commissioner Taxation and
Secretary to Government of Punjab,
Department of Excise and Taxation.

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INDUSTRIALISTS RAISE DEMAND FOR MAKING FORM C AVAILABLE ONLINE

With the Haryana government making Form C available online on Monday, industry in the city has once again pressed for its long-standing demand for the same. Industrialists feel that the step would not only save them from meaningless hassle, but would also help in reducing corruption and bringing transparency.

"This is the most desired step. Once Form C is made available online, transactions will become more transparent and would bring down malpractices such as bogus billing. It would also reign in harassment of the industry by various departments. While most states already provide online facility, Punjab is among the few who are yet to do this, adding to problems of the industry in their deals outside the state," said president Federation of Punjab Small Industries Associations (FOPSIA) Badish Jindal.

Proof of CST purchase, Form C is a certificate issued by the dealer for purchasing goods from a dealer from another state. The seller has to obtain this form from the purchaser and show it to the sales tax department to get tax exemption. In case the purchaser does not release Form C, the seller has to pay the tax at the time of sales tax assessment

Absence of the facility makes imports tough, said president Ludhiana Knitwear Club Vinod Thapar. "Many a times, the providers of raw material refuse to send the consignment without getting Form C in the first place and the importer is in a tizzy because of that. And sometimes we have to pay CST in the absence of Form C. Punjab government had started the facility some time ago, but withdrew it back within days," said Thapar.

However, Manjeet Singh Matharoo, president Ludhiana Machine Tools said Form C should be done away with totally. "It puts so many constraints on us. Firstly, Form C is given only to the owner of the unit. Secondly, in case someone else is sent on behalf of the owner, the person has to carry a power of attorney. And then, it is available only twice a week, on Monday and Thursday. Also, sellers from other states deduct tax amount if Form C is not given," he pointed.

He blamed Punjab government and said its seriousness on the issue can be understood from the fact that it had promised to provide the facility before the Assembly elections in Haryana. While the neighbouring state has implemented it, Punjab still doesn't seem thinking about it.

Courtesy: The Times of India
3rd June, 2015

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BEST YET TO COME: FM

India may have become the world's fastest-growing major economy, but it is still in "recovery mode" and the best is yet to come, finance minister Arun Jaitley said on Friday.

The Indian economy grew 7.3% in 2014-15, measured by a controversial new formula, while quarterly growth of 7% between January and March outpaced China's 7% expansion, indicating Asia's thirdlargest economy was coming out of its worst slowdown in 25 years.

"The best in our economy is yet to come," Jaitley told HT in an exclusive interview. "If you have a 39.5% jump in indirect tax revenue — customs, excise and service tax — it is actually indicative of increased economic activity. That's the best yardstick."

Jaitley, who met bank CEOs earlier in the day, said a huge jump in indirect taxation revenues in the first two months of this fiscal indicated a turnaround in the economy.

He also slammed the Congress, saying it had positioned itself as "against development and growth" by opposing reform measures such as the Goods and Services Tax Bill. "The Congress wants to present itself in that light. Otherwise, having pioneered GST, there is no reason for them to oppose it."

Jaitley said the government would soon notify the "compliance window" for people to disclose hidden assets stashed overseas.

"The period (of compliance) we will notify. It is different from the voluntary disclosure of income scheme (VDIS). In VDIS you just paid the tax after making a disclosure. Here it is a new tax that is being imposed. It is a fresh taxation measure on an undisclosed asset," he said. "Those who do not have undisclosed assets outside the country have nothing to fear."

He said it was a "very challenging task" for India to improve its rankings from 142 to 50 by 2016 in the World Bank's Ease of Doing Business report. "Many procedures have been simplified in many ministries. But I would say it is still a work in progress." NEW DELHI: Finance minister Arun Jaitley on Friday said the Congress has positioned itself as "against development and growth", otherwise there was no reason for the party to oppose reforms measures such as the goods and services tax (GST) Bill. The Indian economy is the world's fastest growing major economy, but the best is yet to come, he added. Jaitley spoke to HT on a range of issues. Excerpts:

The government's data shows that India grew at a robust 7.3% in 2014-15. Corporate earnings, however, has recorded the weakest results in several years. Is the recovery not as real as official statisticians would have us believe?

The Central Statistics Office (CSO) is a highly credible organisation. They have implemented the fresh basis for GDP calculation with effect from past date and therefore they apply a uniform figure. On the back of envelope calculations, you can't judge GDP figures. For instance, if you take certain indicators like a 7%-plus growth rate in manufacturing last year, a huge jump in indirect taxation revenues in the first two months of this year even without the additional revenue raising measures, the jumping is signification. The revised service tax (14% from 12.36% earlier) start from June. These figures are for April and May. So, if you have a 39.5% jump in indirect tax revenue — customs, excise and service tax — it is actually indicative of increased economic activity. That's the best yardstick.

Have we turned the corner yet?

There were three significant legacies damaging to the economy that had been left behind by the United Progressive Alliance (UPA) government. The first was discretion in matters of allocation of natural resources. This led to serious allegations of corruption, criminal prosecution and cancellation of licences. The second was the credibility of the Indian taxation system. We were seen as regressive with unsustainable demands and

retrospective legislation. The alibi given by (former finance minister) P Chidambaram on rectifying these mistakes is that he didn't have 282 (seats in the Lok Sabha). Along with allies, which the UPA had managed, there were more than 300 (members in the Lok Sabha). These legislations, being financial legislations, only required to be approved by the Lok Sabha. So, this is a very poor alibi. In the first year of the NDA, we have been able to substantially correct both these problems in terms of following the transparent auction route and putting a lot of these adversarial taxation issues to rest. The third significant damage was to the banking sector. The NPAs were 6% (of total advances) and along with stressed assets, it was a total of 13%. With the slowdown in the economy, the possibility of correcting these NPAs was very challenging. For the first time, for the quarter-ending March 31, 2015, NPAs are down 5.2%. We have to wait for another two to three quarters both for the economy to pick up, for banks to take corrective action, and for us to put some resources into banks for capitalisation. That process has started, although it is still work in progress.

Critics such as former finance minister P Chidambaram has pointed out that you have allowed the controversial retrospective tax issue to linger. Your comments.

I have more than corrected it. We have not chosen to allow it to linger. Our policy is that, first, we will not legislate retrospectively. Two, no new notices on those controversial legislations will be issued without CBDT's (Central Board of Direct Taxes) permission. Not a single notice has been issued. And third, pending disputes will be resolved through a judicial process — either through courts or arbitration. Some have been resolved in relation to transfer pricing, while some are still pending. And I hope they will be resolved.

The NDA government had vowed to eliminate "tax terrorism". Yet, what prompted the tax department to issue notices to FIIs for retrospective demand of minimum alternate tax (MAT)? Wasn't it avoidable?

There is no retrospective demand. There was a nonperformance between 2012 and 2014. The opinion of the Authority on Advance Rulings (AAR) saying that foreign institutional investors (FIIs) are not exempted from MAT came in 2012. The then finance ministry slept over the issue. It is only on March 31, 2015 when assessing authorities had to issue notices (because otherwise the demands would have become time-barred and the assessing authorities would have been questioned by our authorities as to why you didn't act), that the FIIs woke up and asked the Supreme Court to resolve the issue. The government also asked the Supreme Court to resolve the issue. I had, in any case, given a clarificatory amendment with effect from April 1, 2015. So, I have resolved the problem for the future. The past will be answered by the Supreme Court.

India's biggest tax reform initiative — GST — has cleared the Lok Sabha hurdle. But without bi-partisan support from the Congress, how do you expect to get it past the Rajya Sabha?

The Congress has positioned itself against development and growth. Otherwise, having pioneered GST, there is no reason for them to oppose it. I hope they reconsider their position and stick to their earlier pro-GST stance. I am targeting the date (April 1, 2016), for GST roll-out.

By when will you announce the details of the compliance window for disclosing overseas hidden assets? There is also a view that the new black money law is draconian. Your thoughts.

The period we will notify. It is different from the Voluntary Disclosure of Income Scheme (VDIS). In VDIS you just paid the tax after making a disclosure. Here a new tax is being imposed on undisclosed money outside. I have to give a period for compliance. Those who kept undisclosed money will be taxed 30% plus 30%, meaning 60%. In VDIS you don't pay a higher tax. Secondly, after the compliance period closes, you are liable to pay 30% plus 90%, meaning 120%, and also suffer a prosecution. This is not how a VDIS is structured. It is only those who are uncomfortable with this law call it draconian. Those who do not have undisclosed assets outside the country have nothing to fear.

How would you respond to your political opponents' criticism that "aache din" remains elusive as no productive jobs have been created over the last one year?

More jobs have been created in the last 12 months than 2012-13 and 2013-14 if we go by the same data. But to turn the economy, it takes a reasonable period of time. I think we should take some satisfaction in the fact that we are the world's fastest-growing major economy and yet I believe that we are recovering. The best in our economy is yet to come.

How do you plan to get labour reforms going in face of stiff opposition from trade unions?

There are many ways of using labour reforms to add to efficiencies. The government will consider all options.

The Opposition doesn't seem to be in any mood to relent on its hard stance against it. How do you plan to get around it?

Many farmers' organisations have had series of meetings with me and I find their attitude quite positive. It is not correct that we did not take the Opposition into confidence. On both the bills (land acquisition and GST), we have

discussed it, formally and informally, with opposition parties. That is why except the Congress, every party supported GST.

Forecasts point towards deficient monsoon for the second successive year. Aren't you worried given that food prices have started climbing sharply?

At present, though I keep my fingers crossed, the monsoon seems to proceeding reasonably well. The forecast showed some shortage in the northwest, which is otherwise an irrigated region. Even if rains are deficient in that region, it should not affect food output or cause undue concern on inflation.

How do you get banks to lend more to corporates to boost investments and spin jobs?
I have had a meeting with banks today itself. They are in a position to lend. Retail credit off-take has improved. It is the corporate credit off-take that has to improve. Under-utilised overcapacity is one of the reasons, and they have probably over-leveraged themselves.

Courtesy: Hindustan Times
13th June, 2015

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GST WILL HELP SIMPLIFY PRESENT REGIME IN COUNTRY, SAYS CII

The Confederation of Indian Industry (CII) has called for an early implementation and consensus building across the states on the Goods and Service (GST) — considered to be the most awaited reforms.

The industry body has also decided to sensitise different sectors of the industry about various intricacies of the new system, and help them adopt it easily.

Besides, a series of sessions and roadshows will also be held to make people aware about the benefits of the GST.

"The Goods and Services system will harmonise and simplify the existing taxation system in the country and the economy will take an upward swing with the GDP expected to get a boost of almost 1.5% with its implementation," said Rajiv Aggarwal, chairman of CII Himachal Pradesh State Council.

"It will remove the cascading effect and save industry of double taxation. It is expected to also lower down the input costs of industry by at least 25-30 % which would make businesses more viable in India," added CII HP chairman.

Courtesy: Hindustan Times
Chandigarh
13th June, 2015

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TAXATION SYSTEM TO BE SIMPLIFIED, SAYS CII

The Confederation of Indian Industry (CII) has called for an early implementation and consensus building across the states on the Goods and Service (GST). The CII has also decided to sensitise different sectors of the industry about various intricacies of the GST, and help them adopt it easily. Besides, a series of sessions and roadshows will also be held to make people aware about the GST. "The GST will harmonise and simplify the existing taxation system and the economy will take an upward swing with the GDP expected to get a boost of 1.5 % with its implementation," said Rajiv Aggarwal, chairman, CII Himachal Pradesh State Council.

Courtesy: Hindustan Times
Chandigarh
14th June, 2015

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CONG LAUNCHES SCATHING ATTACK ON JAITLEY, ACCUSES GOVT OF DUPLICITY

The Congress on Saturday hit back at finance minister Arun Jaitley for his remarks that the Opposition party was "anti-growth", saying the BJP had obstructed the goods and services (GST) bill for six years and also tried to pull down the UPA government on the nuclear deal and the FDI in retail issues.

In an exclusive interview to HT on Friday, Jaitley had slammed the Congress, saying it had positioned itself "against development and growth" by opposing reform measures such as the GST bill.

"If we ask for a proper response to agrarian crisis, is that an obstruction? Can there be growth and equity by keeping farmers out of the frame in India? Is there any doubt about the rural distress aggravating under the Modi government? Is that a result of Congress obstruction?" party spokesman Tom Vadakkan said.

"Who obstructed GST for six years? BJP even tried to pull down our government on nuclear deal as well as FDI in retail. The FM should clearly state what will happen to FDI in retail. Why this duplicity?"

Attacking the BJP-led government, Vadakkan said it had failed to fulfil its poll promise of creating 20 crore jobs in five years and even slashed funds for MNREGA.

Courtesy: Hindustan Times
14th June, 2015

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SERVICE TAX ONLY IN AC RESTAURANTS

Restaurants without air conditioning facility will not charge any service tax from their customers while the ones with ACs will charge only on the 40% of the total bill amount, the Finance Ministry has clarified.

According to the clarification, restaurants, eating-joints or messes, which do not have the facility of air-conditioning or central-heating in any part of the establishment, are exempt from service tax.

"In other words, only air-conditioned or air-heated restaurants are required to pay service tax," the government said.

In case of air-conditioned or air-heated restaurants, "60% of the value is to be deducted from the total amount charged while applying the rate of service tax and tax is to be calculated on the balance 40%," it added.

With the increase in the rate of service tax to 14% (subsuming the education cess) from June 1, the effective rate of tax will be 5.6% of the total amount charged.

Prior to June 1, when the rate of service tax was 12.36% (including education cess), the effective rate was 4.94%.

Courtesy: The Tribune
10th June, 2015

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SERVICE TAX: PASSENGERS FLAY HIKE IN TRAIN FARE

Passengers flays hike in fares for first class and AC classes in passenger trains besides freight charges will go up by 0.5 per cent from today as the new service tax will come into effect.

If the AC fare is Rs 1,000, then the passengers will be charged Rs 10 more. Increase in the service tax will be applicable on tickets purchased on June 1 and onwards, while the increase in passenger fare is applicable on the AC and first class only, the service tax will be levied on all goods transported by railways.

Sanjeev Kumar, a passenger, said the hike would severely affect the poor, the middle class and also lead to a steep increase in prices of essential commodities and vegetables.

At a time when the inflation was still riding high, such a hike would only further increase it and severely affect the country's economy, he added.

Another passenger, NitinJasiwal, said the government is putting unnecessary burden by raising fare directly or indirectly through hike in taxes. He state instead of hiking fares, the government should first focus on providing better facilities to the passengers during traveling.

Krishan Kumar, another passenger, said, "We were expecting 'acche din' but nothing 'accha' seems to have come out of this NDA government so far. Right from hotel bills, telephone bills to traveling in train everything have became costlier."

Gurmeet Singh, another passenger, said the service tax was the real cause of rise in commodity prices and should have rather been reduced to bring down prices. He demanded that the proposed increase hike in service tax should be rolled back.

He also stated that it is surprising that service tax has been added to those items where service element is either inbuilt or there is no scope for any service.

Courtesy: The Tribune
1st June, 2015

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ENTRY TAX ON SUGAR NOTIFIED

The Industries and Commerce Department has issued a formal notification imposing 11 per cent entry tax on sugar coming into Punjab from other states.

After getting the notification on June 2, the Excise and Taxation Department has started collecting this tax on the inter-state borders. With this, sugar that was priced at Rs 27 per kg some days ago was available between Rs 30 to Rs 31 per kg today in the retail market.

Of the total consumption of sugar in the state, more than 80 per cent comes from other states like Uttar Pradesh. Now, every import of sugar from UP is burdened with 11 per cent extra tax.

Sources said that the state government imposed this huge tax on the import of sugar to protect the domestic sugar industry which is lagging behind the UP sugar industry.

The imposition of entry tax is facing strong opposition from sugar dealers in Punjab. On May 29, wholesale dealers of sugar went on a one-day strike to oppose it.

Courtesy: The Tribune
3rd June, 2015

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DISTRIBUTORS SEEK CHANGES IN GST BILL

The Amritsar Distributors Association has demanded changes in GST Bill, FDI in modern trade, FSSAI and e-commerce. Addressing mediapersons here today, association president Anil Kapoor demanded changes in the GST Bill, FDI in modern trade, FSSAI and e-commerce. He said the government had not yet made clear in the GST whether the Central GST would also be imposed with the state GST. He said in case the state GST was imposed, then it must be common in at least six adjoining states like Punjab, Haryana, Chandigarh, Delhi, Uttar Pradesh and Jammu and Kashmir.

He asked the government to encourage FDI in infrastructure like hospitals, schools. He demanded that distributors must be kept out of the jurisdiction of the Food Safety and Standards Authority of India (FSSAI) as they were selling only packed goods and products manufactured by public limited concerns. He demanded imposition of 14 per cent service tax on online sites. Besides, the state governments should also issue VAT numbers to e-commerce operators to watch their transactions, he added.

Courtesy: The Tribune
14th June, 2015

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GST TO BOOST ECONOMY: CII

The CII has called for an early implementation and consensus building across the states on GST.

"GST will harmonise and simplify the existing taxation system and the economy will take an upward swing with GDP expected to get a boost of 1.5% with its implementation," said Rajiv Aggarwal, chairman, CII Himachal Pradesh State Council, during a workshop on GST today.

"GST is a reform in Indian taxation system and would bring a paradigm shift in the operation of businesses and tax laws in our country. It would remove the cascading effect and save industry of double taxation. It is expected to bring down the input costs by at least 25-30% which would make businesses more viable in India," he said.

Courtesy: The Tribune
12th June, 2015

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GST AT CONSENSUS LEVEL, SAYS PANEL HEAD MANI

The states are moving towards creating a single common market in the country through Goods and Services Tax (GST), chairman of Empowered Committee of State Finance Ministers KM Mani said today.

Speaking at the conference organised by the Indirect Taxes Committee of the ICAI, he said GST is a major tax reform and it should benefit the final consumer and public without affecting resources of the states.

The committee was in the process of discussing and arriving at consensus on a large number of issues of GST, he said.

"It is a stupendous achievement that all the states with so much diversity and diverse political governance have come under the umbrella of the Empowered Committee of Finance Ministers and inching forward towards creating a single common market in the country," Mani said, who is also the Finance Minister of Kerala.

The empowered committee, Mani said, has been called by the Select Committee of the RajyaSabha to represent its views on the GST on June 16.

The Constitutional Amendment Bill for rolling out of GST was referred to the Select Committee, while the LokSabha has already cleared the Bill. The Select Committee is scrutinising the Bill.

He said the Committee had a useful meeting last month in Kerala and another yesterday in Delhi.

The Centre aims to roll out the new indirect tax regime from April next year.

Courtesy: The Tribune
5th June, 2015

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GST ROLLOUT TO REDUCE LOGISTICS COSTS UP TO 30%: CRISIL REPORT

The implementation of GST will help reduce logistics costs for companies by up to 30% over 3-4 years due to savings in warehousing cost and elimination of check-posts, ratings agency Crisil said today.

Once the CST (Central sales tax) is phased out, optimisation of warehouses and inventories will accrue in savings on logistics.

However, to maximise benefits from the rollout of GST, a complete phasing out of CST (currently paid for inter-state movement of goods) and dismantling of state-level check-posts are imperatives.

The report said to get states on its side, the government has proposed allowing the states to levy an additional tax of 1% on supply of goods in lieu of CST for 2 years.

"We believe this is against the core principle of GST, and will defer full benefits of the rollout. This will also delay the dismantling of check-posts so critical to ensure faster transit of goods", it said.

Today, a considerable amount of journey time — estimated at a quarter — is spent at check-posts and city entry points, which add to the cost of transporting goods, and forces companies to maintain buffer inventories.

Crisil Research's assessment shows the consumer durables sector will be the biggest beneficiary of GST, potentially saving 30% of logistics costs from current levels of 7-8% of sales. The sector has the most number of warehouses set up solely to avoid paying CST and hence offers maximum scope for consolidation. Also, consumer durables have high brand recall and long shelf life, so can't be easily substituted. This would persuade manufacturers' to consolidate loads in larger warehouses.

For FMCG and pharma firms, cost gains may be a relatively lower at 15-20%. According to the report, for these companies given that stocks need to be replenished quickly, warehouses are located closer to distributors. So consolidation will be more calibrated and gradual.

Courtesy: The Tribune
9th June, 2015

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CONG TO FIRM UP STANCE ON GST, LAND BILLS

Discussions on Congress' position on the controversial land acquisition Bill and the Goods and Services Bill will be on the agenda when party president Sonia Gandhi meets the Chief Ministers of Congress ruled states on June 9.

Both the Bills are currently being debated by the parliamentary committees with the Congress divided on its role in the Joint Parliamentary Committee constituted to examine the land bill. The GST Bill which seeks to introduce a uniform tax regime by subsuming several layers of taxation currently in prevalence, is being reviewed by a Select Committee of RajyaSabha, with the Congress expressing reservations on some of the amendments the BJP Government had brought to the original bill the UPA had piloted.

"Clarity on Congress' stand on the two Bills will emerge from the meeting whose agenda is at an advanced stage of preparation," Congress sources said today.

Also on the discussion table will be massive social sector budget cuts which the NarendraModi led Government has effected through the ministries of education, health, women and children, minorities and tribals, leaving several key schemes thirsting for finances.

"A key agenda will be the systematic dilution of the MNREGA scheme which the Congress led UPA government had introduced. Also the much hyped devolution of finances by the Centre to the states will be discussed to see how the social sector schemes will be affected by this devolution which does not translate in real terms," a party leader said adding that Chief Ministers of Congress ruled states will help calibrate the party's position on the aforesaid critical areas in a better way.

Land acquisition Bill, which Congress vice-president Rahul Gandhi has been vehemently opposing, will be discussed threadbare to take a position on the law and decide the party's political strategy post the outcome of the JPC deliberations.

Although the Congress has officially denied the existence of differences within on the matter of joining the JPC (since Congress had earlier said it wanted the 2013 version of the law and nothing else), party leaders today said the views of CMs would help ensure that party criticism to the law is broad based and aggressive.

"A more aggressive position on the Bill would have to be taken. Even on the GST Bill, we would need to evolve a comprehensive strategy both at the level of AICC and states. The feedback from CMs will inform the position Congress takes in the parliamentary panel deliberations on the land and GST Bills," sources said.

The Congress is in power in nine states — Himachal Pradesh, Uttarakhand, Karnataka, Kerala, Assam, Mizoram, Meghalaya and Manipur. Also present in the meeting will be general secretaries of the states concerned.

Courtesy: The Tribune
5th June, 2015

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ABERRATIONS IN GST: ACCI CHIEF WRITES TO JAITLEY

The president of Apex Chamber of Commerce and Industry, Punjab, PD Sharma, has written a letter to Union Finance Minister ArunJaitley regarding some aberration in the Goods and Service Tax (GST).

Sharma said the industry was watching the process of GST implementation with a baited breath. "Despite full and sincere efforts to implement GST in right spirit, some major distortions/aberration are discernible," he said.

He said there was a provision to impose 1 per cent additional levy on goods moving across state boundaries. Unfortunately this additional levy would be applicable in every state through which the goods pass. For instance if goods move from Gujarat to Tamil Nadu they have to cross at least four states. This means the levy would be 4 per cent not 1 per cent. This may be equivalent to importing goods from say Bangkok to Tamil Nadu. "The industry is very apprehensive about the GST rate. Although you have indicated that the rate will be less than 25%, no definite level is indicative. The industry wishes that GST rate should not go beyond 20%," Sharma said.

Courtesy: The Tribune
31st May, 2015