SGA
LAW OFFICES

Issue 14
July 2015

NOMINAL INDEX

NOTICE & NOTIFICATIONS

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NEWS OF YOUR INTEREST

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LAW OFFICES

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SUBJECT INDEX

Issue 14
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PUNJAB & HARYANA HIGH COURT

CWP NO. 4709 OF 2015

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SUMIT AGENCIES
Vs
STATE OF PUNJAB & OTHERS

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

30th June, 2015

HF ▶ Assessee- Petitioner

Encashment of cheques given by petitioner at the time of inspection in the absence of any assessment is not justified and arbitrary on part of the department.

COLLECTION OF TAX – INSPECTION –TWO CHEQUES TAKEN IN ANTICIPATION OF TAX LIABILITY ON BASIS OF INSPECTION WITHOUT FRAMING ANY ASSESSMENT – ENCASHMENT OF ONE BY DEPARTMENT BEFORE NOTICE SERVED FOR PROVISIONAL ASSESSMENT – PAYMENT OF SECOND STOPPED BY PETITIONER – WRIT FILED ALLEGING MALAFIDES AGAINST THE OFFICER – PROVISIONAL ASSESSMENT RAISING DEMAND MADE DURING PENDENCY OF WRIT ADJUSTING THE AMOUNT ALREADY ENCASHED — ENCASHING CHEQUES TO DISCHARGE ANTICIPATED LIABILITY IN ABSENCE OF ASSESSMENT NOT JUSTIFIED - ARBITRARINESS ON PART OF DEPARTMENT - PROVISIONAL ASSESSMENT FRAMED QUASHED – AMOUNT ALREADY ENCASHED ORDERED TO BE REFUNDED - OTHER CHEQUE TO BE RETURNED TO PETITIONER - COSTS OF RS. 10,000/- IMPOSED ON RESPONDENT OFFICER – WRIT ALLOWED

The Excise and Taxation Officer had inspected the premises of the petitioner and taken two cheques by coercion amounting to Rs 3 lacs each towards the anticipated liability. One of them was encashed and thereafter a notice was served to which the petitioner replied against the encashment of one and stopped payment of another cheque. A writ was filed before High Court. It is alleged by the department that the officer had inspected the premises and found discrepancies and huge amount of stocks lying were found without documents. That is why the cheques were taken in anticipation of the liability. During the pendency of writ, the provisional assessment was framed and produced before the court alleging that the demand of Rs 11,20,281 was due from petitioner against which Rs 3 lacs have been adjusted as already taken and the balance is due to be paid.

It is held by the High court that in the absence of any assessment, the action of the respondent to take two cheques in favour of department was not justified. This procedure smacks of arbitrariness and high headedness on part of authorities. The provisional assessment so framed is quashed as it was done by the officer who had inspected the premises of the

petitioner during the pendency of writ petition. The petitioner is to be refunded the amount of Rs 3,10,000/- within a period of one week and a sum of Rs 10,000/- shall be recovered from the respondent officer for his arbitrary action. The other cheque is to be returned. The proceedings are to be decided by an officer not connected with the inspection in this case. To safeguard the interest of the revenue, Rs 3 lacs shall have to be maintained by the petitioner in his bank account from which cheque was encashed during the pendency of proceedings.

Present: Mr.Aman Bansal, Advocate, for the petitioner.

Mr.Jagmohan Bansal, Addl.A.G., Punjab.

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G.S.SANDHAWALIA J.

1. Challenge in the present writ petition is to the action of the respondent No.3, the Excise & Taxation Officer, Mobile Wing, Ludhiana, whereby two cheques bearing Nos.053461 & 053462, amounting to Rs. 3 lacs each, were taken from the petitioner, without any liability and notice. Prayer is, accordingly, made for conducting an independent and impartial enquiry on the ground that there was no order against the petitioner and in the absence of the liability, the cheques could not be taken.

2. The pleaded case of the petitioner is that the petitioner-Firm is engaged in the business of supply of cigarette, biddi, pan masala etc. And duly registered under the Punjab Value Added Tax Act, 2005 (for short, the 'PVAT') and was not a defaulter. It has been alleged that respondent No.3, Navjeet Singh, the Excise & Taxation Officer, Mobile Wing, Ludhiana, who has been impleaded in his personal capacity, came to his premises on 16.02.2015 and threatened him and demanded exorbitant amounts with the help of police. The cheques in question amounting to Rs.3 lacs each were taken despite the fact that no notice had ever been issued and under the threat of coercion on account of completion of target of Revenue before 31.03.2015. The said respondent had also taken the signatures of the petitioner on blank papers and thereafter, encashed one cheque bearing No.053461 on 21.02.2015, as per the bank's statement. Thereafter, notice had been served upon the petitioner on 09.03.2015 to which a reply had been filed that the two cheques were forcibly taken and one of the cheque, amounting to Rs.3 lacs had already been encashed and the payment of the second cheque had been stopped by the petitioner. Resultantly, the present writ petition has been filed for the necessary relief, mentioned above.

3. In the written statement, filed by the said respondent No.3 on behalf of respondents No.1 & 2, the defence taken was that there was prior permission of the Assistant Excise & Taxation Commissioner, Mobile Wing, Ludhiana and inspection was conducted along with other officers and supporting team. The Proprietor of the Firm, namely, Harish Kumar, had run away and the local police was called and he had returned with some person and thereafter, inspection was carried out in his presence and two cheques were taken as anticipatory tax liability because huge stock of goods were found, without any documents. The proceedings were in progress and many irregularities were found and true and correct account had not been maintained resulting in evasion of tax. Several discrepancies were pointed out and the plea taken was that the cheques were submitted voluntarily at the time of inspection. Thereafter, one of the cheque was encashed with full knowledge as the petitioner had desired to discharge his anticipated liability in parts. Notice had been issued to the petitioner for provisional assessment of the income under the PVAT Act.

4. At the time of arguments on 30.06.2015, counsel for the State had placed on record the provisional assessment order, passed on 26.06.2015 by one Manmohan Singh, Excise &

Taxation Officer, Mobile Wing, Ludhiana, whereby a sum of Rs.11,20,281/- has been assessed as provisional assessment, without prejudice to the outcome of the present writ petition and the sum of Rs.3 lacs, as per cheque No.053461 dated 16.02.2015 has been adjusted against the said amount and a demand for the balance amount of Rs.8,20,281/- has been raised. The original record has also been produced for perusal of this Court to see that in which manner the authorities have exercised their jurisdiction. A perusal of the same would go on to show that the authorities have acted in an arbitrary and illegal manner.

5. Respondent No.3, firstly, has filed his reply on behalf of respondents No.1 & 2 also and not replied against the allegations of *mala fides* levelled against him and accordingly, it is presumed that the same are true and correct since there is no denial on his part. Counsel for the State could not demonstrate that in the absence of any demand or liability how the two cheques amounting to Rs.3 lacs each had been taken and one of them had been encashed on 21.02.2015. As per the file, respondent No.3 had asked the petitioner/Proprietor-Harish Kumar to produce the necessary documents on 16.02.2015. The said respondent had, thereafter, conducted proceedings and notice of motion was issued by this Court on 17.03.2015. As per the zimni order dated 10.03.2015, recorded by respondent No.3, it has been noticed that one of the cheques has been encashed in favour of the Department. Thereafter, the said official had further conducted proceedings and he was informed on 08.04.2015 that the matter is pending in this Court and proceedings continued on account of the fact that there was no stay.

6. On 09.06.2015, permission was taken by respondent No.3, firstly, for entrusting the proceedings to some other officer which was granted and one Manmohan Singh, Excise & Taxation Officer, Mobile Wing, Ludhiana was entrusted with the said file. Thereafter, permission was taken from respondent No.2 to frame provisional assessment on the same date, i.e., 09.06.2015. The said officer, thereafter, issued notice for 17.06.2015 and noticed that written reply has been received but none had appeared despite numerous opportunities given and the Proprietor was wilfully avoiding appearance. Accordingly, the judgment was reserved on 17.06.2015 and as noticed above, the provisional assessment was framed and accordingly, a demand of Rs.11,20,281/- was raised by passing the impugned order on provisional assessment on 26.06.2015.

7. The said procedure smacks of arbitrariness and highhandedness of the authorities on the face of the record itself, which cannot be appreciated, in any manner. In the absence of any assessment, the action of respondent No.3 to take two cheques on 16.02.2015 amounting to Rs.3 lacs each in favour of the respondent-Department, was not justified. The encashment five days later to the tune of Rs.3 lacs, allegedly in discharge of the anticipated liability, as per the reply filed, cannot be appreciated, in any manner. The eagerness of the official-respondents to meet their targets at the end of the financial year, by following this method of recovery, cannot be approved.

8. Though there is no challenge to the provisional assessment framed thereafter, but in view of the above facts and circumstances, since it has been done during the pendency of the writ petition, we are of the opinion that the same is liable to be quashed since the same was done by an officer who was entrusted with the proceedings inspite of the fact that he was also part of the inspection team which had visited the premises of the petitioner on 16.02.2015. Therefore, it is apparent, *prima facie* that such a huge liability has been made out against the petitioner without giving him proper opportunity to put-forth his case merely on account of the fact that the petitioner was prosecuting his remedy, in accordance with law. The said order, though not specifically challenged, has apparently been passed to spite the petitioner and is necessarily to be quashed. Accordingly, the provisional assessment order dated 26.06.2015 is hereby quashed.

9. Accordingly, the present writ petition is allowed by directing that the respondents shall refund a sum of Rs.3,10,000/-, within a period of one week from the receipt of a certified copy of this order and a sum of Rs.10,000/- shall be recovered from respondent No.3, by the State, for his arbitrary action. The cheque bearing No.053462 amounting to Rs.3 lacs shall also be returned to the petitioner. However, to safeguard the interests of the Revenue, the petitioner shall maintain a sum of Rs.3 lacs in his bank account from which the cheque was encashed, during the pendency of the assessment proceedings which have now been initiated under the Act. The said proceedings shall be decided by an officer of competent jurisdiction, who was not associated with the inspection conducted on 16.02.2015 and who would be appointed by respondent No.2. The said proceedings shall be finalized within a period of 2 months from the date of the receipt of the certified copy of this order. In case of any demand, it shall be open to the respondents to recover the same, in accordance with law and to the petitioner to agitate in appeal, if required. The original record of the case be returned to Mr. Jagmohan Bansal, Addl.A.G., Punjab, under proper receipt, for onward transmission.

10. With the abovesaid directions, the present writ petition stands allowed.

PUNJAB & HARYANA HIGH COURT

VATAP NO. 116 OF 2014

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BABBAR HOSIERY
Vs.
STATE OF HARYANA AND ANOTHER

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

29th June, 2015

HF ▶ Appellant

Delay in filing of appeal is condoned as there is nothing on record to show any lapse on part of appellant

APPEAL – CONDONATION OF DELAY – LIMITATION – DELAY IN FILING APPEAL BEFORE TRIBUNAL BY 25 DAYS – BONAFIDE IMPRESSION THAT LIMITATION IS OF 90 DAYS INSTEAD OF 60 DAYS - PLEA ACCEPTED BY HIGH COURT ON APPEAL AS NOTHING ON RECORD TO INDICATE ANY LAPSE ON PART OF APPELLANT – APPEAL ACCEPTED – TRIBUNAL DIRECTED TO HEAR APPEAL ON MERITS- *SEC 5 OF LIMITATION ACT*

The appellant was under a bonafide impression that limitation for filing of appeal is 90 days instead of 60 days. The delay was not condoned by Tribunal. However, the High Court has condoned the delay as there is nothing on record to indicate that there was any lapse on part of appellant. The impugned order is set aside and Tribunal is directed to hear the appeal on merits.

Present: Mr. Rohit Gupta, Advocate, for the appellant.

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S.J.VAZIFDAR, ACTING CHIEF JUSTICE

CM No. 20424-CII of 2014

Heard. In view of the fact that the appellant after signing the papers forwarded the same to its counsel by courier and there was a delay in delivery of the parcel resulting in consequent delay of 60 days in filing of the appeal, the delay is condoned.

VATAP No. 116 of 2014 (O&M)

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

1) Whether on the facts in the circumstances of the case the learned Tribunal was justified in dismissing the appeal of the appellant by majority on the ground of delay of 25 days?

The Haryana Tax Tribunal disbelieved the appellant's case that the appellant was under a bonafide impression that the period of filing the appeal was 90 days. The appellant fairly stated in his application that he was under the impression that limitation was 90 days and when he approached his counsel, he was informed that the limitation for filing the appeal is 60 days and not 90 days. There is nothing on record which indicates that there was any lapse on the part of the appellant. There is no reason why the appellant would not have filed the appeal within 60 days, had the appellant actually been aware of the correct period of filing an appeal.

In the circumstances, the question of law is answered in favour of the appellant. The impugned order and judgment is se-aside. The Tribunal shall hear the appeal on-merits.

PUNJAB VAT TRIBUNAL

APPEAL NO. 242 OF 2014

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AMCO INDUSTRIAL ENTERPRISES PVT. LTD
Vs.
STATE OF PUNJAB

JUSTICE A.N. JINDAL, (RETD.)
CHAIRMAN

29th May, 2015

HF ▶ Assessee

Denovo assessment to be framed as assessment orders observed to be contradictory to the admission made by the officer.

ASSESSMENT – DISALLOWANCE OF INPUT TAX CREDIT – ITC DISALLOWED FOR WANT OF PURCHASE INVOICES – APPEAL DISMISSED BY FIRST APPELLATE AUTHORITY FOR NON COMPLIANCE OF CONDITION OF PREDEPOSIT – APPEAL BEFORE TRIBUNAL – CONTRADICTORY ORDERS PASSED BY ASSESSING OFFICER AS OFFICER ADMITTED THAT INVOICES WERE PRODUCED – MATTER REMITTED FOR FRAMING DENOVO ASSESSMENT – APPEAL ACCPPETED- *SEC 62 (5) AND SEC 13 OF THE PVAT ACT*

Assessment order was passed raising an additional demand. The ld. DETC dismissed the appeal on grounds of non compliance of the condition of predeposit. It was observed by Tribunal that the officer had admitted that original invoices were produced by appellant but has disallowed ITC on basis of non production of purchase invoices. On the basis of contradictory orders passed, the impugned orders are set aside as they have been decided without application of mind. The case is remitted back to assessing authority for framing denovo assessment after hearing the appellant. The appeal is accepted.

Present: Mr. Bal Krishan Gupta, Advocate Counsel for the appellant.

Mrs. Sudeepti Sharma, Deputy Advocate General for the State

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JUSTICE A.N. JINDAL,(RETD.) CHAIRMAN

1.This appeal is directed against the order dated 15.4.2014 passed by the Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana dismissing the appeal against the order framing the assessment for the year 2009-10 dated 1.11.2013 passed by the Assessing Authority-cum-Designated officer, Ludhiana-I on the ground of non compliance of Section 62(5) of the Punjab Value Added Tax, 2005.

2. The counsel for the appellant has urged that the order passed by the Assessing Authority is void for the following reasons:-

> *It is contradictory in as much as in the first part of the order, the officer observed as under:-*
>
> > *There is no incriminating material on the file which needs verification. Sales are progressive as compared to the last year. The dealer has produced purchase invoices, which have been scrutinized, but in the later part of the order ITC was not allowed for want of original purchase bills.*

3. The counsel has also urged that the appellant was not allowed to confront with the material while creating additional demand. To the contrary State has disputed the fact that the order is contradictory in nature.

4. It may also observed that when the officer admitted that original VAT Invoice has been produced then the officer should not have recorded the observations that "ITC disallowed for want of original purchase invoices" or he would have mentioned as to which invoices were not produced or could not be verified.

5. Faced with the situation State Counsel has stated that the case may be remitted back to the Assessing Authority to frame the denovo assessment. In view of the above, this Tribunal is the view that it is fit case for setting aside both the orders being not sustainable in the eyes of law, as the Assessing Authority as well as the Deputy Excise and Taxation Commissioner did not deal with the real question into controversy, but proceeded to decide the same without application of mind.

6. Resultantly, this appeal is accepted, impugned orders are set-aside and the case is remitted back to the Assessing Authority to frame the denovo assessment after hearing the appellant.

7. Pronounced in the open court.

PUNJAB VAT TRIBUNAL

APPEAL NO. 1 OF 2014

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AMRITSAR DYES & CHEMICAL
Vs.
STATE OF PUNJAB

JUSTICE A.N. JINDAL, (RETD.)
CHAIRMAN

23rd April, 2015

HF ▶ Revenue

Condonation of delay declined due to the conduct of appellant indicating his delay in filing of appeal to put off penalty.

APPEAL – LIMITATION – CONDONATION OF DELAY – PENALTY ORDER DISPATCHED ON 18/6/04- CLAIMED TO HAVE BEEN RECEIVED ON 15.3.2012 – DELAY IN FILING OF FIRST APPEAL BY 8 YEARS – NO SATISFACTORY EXPLANATION TENDERED – APPEAL DISMISSED – APPEAL BEFORE TRIBUNAL – CONDUCT OF APPELLANT NOT COOPERATIVE DURING EARLIER PROCEEDINGS – NO AFFIDAVIT SUBMITTED REGARDING NON RECEIPT OF ORDERS IN TIME – APPELLANT HELD TO BE FULLY AWARE OF THE DISPATCH OF ORDERS – TIME TAKEN TO PUT OFF PENALTY – CONDONATION DECLINED – APPEAL DISMISSED - *SEC. 64 OF PVAT ACT*

The penalty order was dispatched by post on 18.6.04. The appellant claims it to have been received on 15.3.2012. The first appeal was dismissed for delayed filing on the ground that the appellant did not appear to explain the circumstances leading to the delay. The Tribunal observed that during the proceedings the conduct of the appellant remained non cooperative. The letters dated 28th Feb and 15th May 2007 indicate his knowledge regarding orders passed by the designated officer. No affidavit was ever given before the Court regarding his not receiving orders by the department on 18.6.04The contentions raised by the appellant are not supported by any evidence. Wrong statement regarding the condonation of delay by DETC before the Tribunal was made by the appellant's counsel. Thus due to the conduct of the counsel it is apparent that he had full knowledge of passing of order and the delay was just to put off the responsibility to pay penalty .Therefore, condonation is declined and the appeal is dismissed.

Present: Mr. Ravi Kant Sharma, Advocate Counsel for the appellant.

Mrs. Sudeepti Sharma, Deputy Advocate General for the State.

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JUSTICE A.N. JINDAL,(RETD.) CHAIRMAN

1. This is an appeal against the order dated 18-06-2013 passed by Deputy Excise and Taxation Commissioner (Appeals) cum Joint Director (Investigation) Patiala Division, Patiala dismissing the appeal of the appellant on the ground of delay of 9 years in filing the appeal.

2. The Assistant Excise and Taxation Commissioner ICC Shambu Import passed an order on 28-4-2004, imposing a penalty of Rs. 1,63,000/- u/s 14(B)(7)(ii) of the Punjab General Sales Tax Act, 1948. The copy of the judgment reveals that it was sent by post to the appellant on 18-06-2004.

3. Appellant preferred the appeal against the said order on 19.4.2012 on the basis of a notice received by the counsel. The appeal is not accompanied by an application for condonation of delay.

4. The Counsel for the appellant has sought condonation of delay on the ground that the delay in filing the appeal is unintentional. Actually he had not received the certified copy of the order allegedly dispatched on 18.06.2004 but it was received on 15.3.2012, therefore he filed the appeal on 23.4.2012 thus there was no delay in filing the appeal. It was within time from the date of receipt of the copy of the order. It was further argued that the delay if any in filing the appeal, being unintentional, the same be condoned.

5. On the other hand Mrs Sudeepti Sharma, Counsel for the respondents has agitated the issue by urging that the order was passed on 28-4-2004 and copy of the order was sent on 18-6-2014 through the ICC staff by way of registered post, therefore the presumption would be that the appellant had received the copy of the order. The appellant did not appear before the Deputy Excise and Taxation Commissioner to explain the circumstances leading to the delay whereupon the Deputy Excise and Taxation Commissioner with the assistance of record as well as Sh. Darshan Kumar Excise and Taxation Inspector dismissed the appeal on the ground that there was unexplained delay of more than 8 years and he was not satisfied with the reasons as explained by the appellant.

6. Being dissatisfied the appellant had filed this 2nd appeal. Having scrutinized the case of the appellant to the depth, it is observed that the conduct of the appellant remained non-cooperative throughout the proceedings and the fact that appellant did not have the knowledge of the order and it remained incommunicable to him, is without any substance.

7. While going through the order dated 28.4.2004, it transpires that in response to the notice Bharat Bhushan Accountant of the appellant firm had appeared but he could neither explain nor justify his case against detention of goods nor produced the book of accounts. Again on 19-4-2004 Shri Bhagirath Upadhayaya, another partner appeared before the designated officer along with Sh. Ravi Kant Sharma, Advocate but did not respond to the request regarding production of books of account for verification of the covering documents. The department has been issuing notices time and again even thereafter, but the appellant did not appear to explain the things. The letter dated 28th February, 2005 and 15th May 2007, indicate that the appellant was in the knowledge of the order passed by the designated officer.

8. The appellant neither appeared before the DETC nor before this court to file an affidavit to the effect that he was never in the knowledge of order passed by the designated officer and he did not receive the order sent by the Department on 18-6-2004. He had applied for the copy of the order for filing the appeal. Thus the contentions raised by the appellant remained unsupported by any documents and evidence much less an affidavit. Therefore this inordinate delay of more than 8 ears can't be condoned for no reasons.

9. It is cardinal principle of law that the delay of minutes, hours or days need not be explained with such mathematical precisions, certainty and proof yet rights can not be created

by condoning the unexplained delay of long years altogether as after such long pause (more than 8 years) even the departmental record is destroyed. Sometimes, the modus oprandi of the litigants is to knock the door of the Courts/authorities after the evidence against them is lost or destroyed. The non cooperative and habitual conduct of the appellant is also an important factor to be looked into at the time of condoning the delay.

10. In the present case the circumstances speak for themselves that the appellant had the knowledge of the proceedings as well as the passing of the order and he was served with the order. Appellant has not denied, by way of duly sworn affidavit, that he did not receive the copy of the order as dispatched by the department through registered post. The appellant even did not cooperate with the Deputy Excise and Taxation Commissioner at the time of arguments in appeal before him. Moreover, there is 57 days unexplained delay in filing the appeal. It may also be observed that when once it is proved that the letter was dispatched by the authorities by post at the last known address, then it would be presumed that the letter has been duly received by the addressee unless it is proved otherwise. The appellant has nowhere stated that the address which letter was sent was not his last known address therefore he had not received the copy of the order and that the letter was returned undelivered.

11. It may further be observed that on 9-1-2015 Shri Ravi Kant Sharma Counsel for the appellant had stated orally before the Tribunal that the Deputy Excise and Taxation Commissioner vide a separate order 28-6-2014 had condoned the delay but when the file of Deputy Excise and Taxation Commissioner was called and scrutinized as brought before me today, this statement (oral) made by the counsel was found to be false. Deputy Excise and Taxation Commissioner in none of his orders had condoned the delay in filing the appeal. Thus this conduct of the appellant is to be viewed seriously.

12. In these circumstances this court is of the view that the appellant had full knowledge of passing of order and that there are neither sufficient grounds to condone the delay nor it is in the interest of justice to ignore this delay and decide the appeal on merits rather the appeal appears to have been filed just to put off the responsibility to pay the penalty. Resultantly, the prayer for condonation of delay in filing the appeal is declined. Consequently, the appeal fails and is dismissed.

PUNJAB VAT TRIBUNAL

APPEAL NO. 688 OF 2013

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BHARAT CABLES, SANGRUR
Vs.
STATE OF PUNJAB

JUSTICE A.N. JINDAL, (RETD.)
CHAIRMAN

21st May, 2015

HF ▶ Dealer

Element of mensrea cannot be attributed to the transaction on mere misdescription of goods in invoice when rate of tax applicable is same for both items and not much difference in their value as shown in invoice and on physical verification is found.

PENALTY – CHECK POST – ATTEMPT TO EVADE TAX – MENSREA – GOODS X AND Y IN TRANSIT – INVOICE REFLECTING ONLY GOODS X IN TWO COUNTS I.E. 150 AND 220 BAGS – MISDESCRIPTION OF GOODS FOUND BY CHECKING OFFICER – SLIGHTLY EXCESS QUANTITY TRANSPORTED – RATE OF TAX APPLICABLE ON X AND Y IS SAME – NO SUBSTANTIAL DIFFERENCE IN VALUE OF GOODS AS SHOWN IN INVOICE AND ACTUALLY FOUND IN TRUCK – VOLUNTARY REPORTING – ELEMENT OF MENSREA RULED OUT – PENALTY QUASHED – APPEAL ACCEPTED – *SEC 51(7)(C) OF PVAT ACT.*

As per the invoice, the goods entering into the state of Punjab consisted of 150 bags and 220 bags of PVC compound. On physical verification, they were found 165 bags of PVC compound instead of 150 bags and 234 bags of PVC coil instead of 220 bags of PVC Compound. The driver admitted the mistake. Penalty u/s 51 was imposed.

On appeal before Tribunal it is observed that PVC coil and PVC compound is subject to same rate of tax i.e. 12.5.% . Excise duty was duly paid by appellant. Entry tax @ 2% was also paid and the goods were voluntarily reported. Also, there was not much difference regarding value of goods as shown in invoice and goods actually found in the truck at the time of physical verification. Therefore, intention to evade tax cannot be assumed. Tax cannot be imposed on mere misdescription of goods. The tax under PVAT would be payable only when goods are sold in the state of Punjab. No loss to the state is found. Element of mensrea to evade tax is not reflected. Therefore, the appeal is accepted and penalty quashed.

Case relied upon:
M/s Bhushan Power & Steel Ltd., R.C 5.l Road, Mandi Gobindgarh Vs State of Punjab (2012) 43 PHT 321

Present: Mr. Rishab Singla, Advocate Counsel for the appellant.

Mrs. Sudeepti Sharma, Deputy Advocate General for the State.

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JUSTICE A.N. JINDAL,(RETD.) CHAIRMAN

1. The crucial question involved in the present appeal is "whether there is element of mensrea on the part of the appellant to evade tax?

2. This appeal is directed against the order dated 12.7.2013 passed by the Deputy Excise and Taxation Commissioner-cum-Joint Director (Investigation), Patiala Division, Patiala (herein referred as the First Appellate Authority) dismissing the appeal against the order dated 9.7.2011 passed by the Excise and Taxation Officer-cum-Designated Officer/ Information Collection Centre, Dhabi Gujran imposing a penalty of Rs. 2,05,535/- under Section 51 (7) (c) of the Punjab Value Added Tax Act, 2005 (herein referred as the Act of 2005). ;

3. The factual matrix of the case is that on 25.5.2011, the driver of the truck bearing No. HR-62-5852, when reached the information Collection Centre, Dhabi Gujran, produced the following documents:-

1. Invoice No.195 dated 24.6.2011 of M/s Bansal Polyplast Pvt. Ltd. Narela Delhi issued in favour of M/s Bharat Cables Tunga Road, Sangrur for Rs.7,08,788/- (including VAT).
2. GR No.48442 dated 24.6.2011 of M/s Ludhiana Hemkunt Sahib Transport Co., Delhi.

4. The PVC Compound as shown in the bill was on two counts one was relating to 150 bags and the other was relating to 220 bags. The price of both the items including tax was shown as Rs.7,08,788/-.

5. On physical verification of the goods, the goods loaded in the vehicle mismatched with the goods actually loaded. The PVC compound was found to be 165 bags against 150 bags. The other commodity found was 234 bags of PVC Coils each bag containing three coils instead of 220 bags of PVC compund and price of the each Coil was 585/-.

6. Since there was mis-description of the goods, the detaining Officer detained the goods and issued notice U/s 51 (6) (b) of the Punjab Value Added Tax Act, 2005. In response to the notice, the driver admitted his fault of transporting PVC Coils in the place of PVC compound. Shri Naresh Kumar, who had also appeared before the Detaining Officer, admitted that value of the one Coil was Rs.585/- and the total value of PVC Coils was Rs.4,10,670/- The appellant also failed to produce any account books. The Detaining Officer, thereafter, forwarded the case to the Designated Officer who also served a notice upon Shri Naresh Kumar, partner of the firm. Whereupon Shri Pardeep Bansai, Advocate and Shri Santosh Kumar, Partner of the appellant firm appeared on 9.7.2011. The appellant produced the account books before the Designated Officer. Ultimately, the penalty to the tune of Rs.2,05,535/- was imposed.

7. Arguments heard. Record perused. There is no denying a fact that the consignment was consisting of two parts; one part was relating to 150 bags of PVC compound and other was relating to 220 bags of PVC' compound. On verification, 165 bags of PVC compound were found from the truck as against 150 bags. Similarly, in place of 220 bags of PVC compound, 234 bags of PVC Wire Coils were recovered from the vehicle. Each bag contained three PVC Wire Coils. It is also admitted that the PVC Coils were subject to the same rate of tax as is recoverable from PVC compound i.e. 12.5%. It was also admitted by Shri Naresh Kumar, partner of the appellant firm that he was importing PVC Coils instead of PVC compound and the entry in the bill was the result of bonafide mistake. It is also not in dispute that the PVC Coils roll as well as PVC compound were excisable items for which the appellant had paid excise duty to the tune of Rs.37,080/- and had paid sales tax @ 2% amounting to Rs.7,920/- before the entry into of Punjab. The sales tax was to be paid under the Punjab VAT Act at the

first stage of sale in the State of Punjab. The rate of tax was the same on PVC compound as well as on Wire Coil. The appellant was to receive back the excise duty which he had paid as he had to claim sanamen credit. He had also reported the matter voluntarily at the ICC. The goods had been purchased against 'C' Form. The tax over 235 bags of wire coil is almost equal to the tax levied over 220 bags of PVC compound. Therefore, the question of concealing the good in order to evade tax does not arise.

8. It is also pertinent to mention here that the Excise and Taxation Officer did not proceed to impose tax on 15 bags which were found excess at the time of physical verification.

9. Now the questions arise as to "whether there was any element of Mens Rea on the part of the appellant to evade tax?" and if not, then "whether penalty could be imposed on account of mis-description of the goods in the given circumstances of the case?"

10. Admittedly, the goods as shown in the consignment were 220 bags of PVC compound, whereas the goods detected from the truck were 234 bags of wire coils. It is also not disputed that the price of wire coils at the relevant time was 585/- per coil including tax and the total price of the coils comes to Rs.4,10,670/-. If the price of 234 bags of' wire coils is calculated at the rate of admitted price of 585/- per coil, it comes to Rs.4,05,021/-. Had there been a big margin between the price of the goods as mentioned in the invoice and the goods found at the time of physical verification, then the things would have been different and the appellant could be said to have made an attempt to evade tax. There is not much difference regarding the value of the goods as shown in the invoice and the goods actually found in the truck at the time of physical verification. The Central Sales Tax as well as the Central Excise stood already paid on the goods being transported. The rate of tax chargeable on the wire coils was the same as on PVC compound. Therefore, the intention to evade tax cannot be calculated. In such circumstances, the appellant could not be imposed tax because of mis-description of the goods. The tax under the Punjab Value Added Tax would be payable only when the goods are sold in the Punjab State. As such the mis- description of the goods in the consignment has not resulted into any loss of revenue to the State ex-chequer. Similar view was taken by the Tribunal in case of M/s Bhushan Power & Steel Ltd., R.C 5.l Road, Mandi Gobindgarh Vs State of Punjab (2012) 43 PHT 321, whereas, it appears as under:-

> *"The penalty has been imposed on the solitary ground that on scrutiny of the 'documents it was found that the goods were described to be `Bloom-Tariff 72071920' though on physical verification, these were found not be Steel plates." Under the stress of arguments, the ld. State counsel admitted that the rate of tax on Blooms and Mis-rolled plates is the same. When it is so, there was no occasion for the detaining officer to detain the goods or for the AETC to impose penalty. The Department has also not placed on record any expert opinion showing that the goods were "Steel plates." If it is assumed to be a case of mis-description of goods, attempt to evade tax has been made. In any case, if there was any dispute with regard to the nomenclature of alleged mis-description of the goods, the only remedy or alternative available to the authority was to refer the matter to the Assessing Authority of the appellant. The goods had moved from Orissa State and were to reach Mandi Gobindgarh (Punjab). Therefore, in view of the provisions of Section 3 of the Central Sales Tax Act, 1956, it is an interstate sale transaction. Consequently, the tax was chargeable in Orissa State as the goods had moved from there. More to point, the transaction was a stock transfer. The tax of Punjab State would be involved only when the goods are sold in this State. Since the transaction has been reported at the ICC, therefore, the goods can not be kept out of 'account books. To add further to it, "Blooms" or be it "Steel Plates", these are raw materials for different Industries and when these are used by the industries, they become entitled to MODV T credit of excise suffered by the goods. The excise amount is*

much more than the tax amount. No prudent business man would do away with credit of almost 16% of Excise for 4% of tax. The tax due," if any, was to be collected by the concerned authority of Orissa State from where the goods had moved. Thus to my mind, element of tax of Punjab State is not involved in this transaction."

11. In the present case also the value of the goods taken into consideration by the Designated Officer is the same as has been depicted in the bills. The driver had voluntarily reported at the ICC. The fault on the part of the consignor, who prepared the manual bills carelessly, is not sufficient to contribute to impose tax by the Designated Officer.

12. Having examined the impugned orders, the same do not appear to be correct as both the authorities did not proceed to examine the element of mensrea on the part of the appellant to evade tax. When the actual amount of tax has been paid for the goods as recorded in the consignment and the same amount of tax was levyable on the goods which were found on physical verification, then to hold mensrea of the appellant to evade tax would be remote observation. Had there been any substantial difference of tax paid or to be paid, then mensrea on the part of appellant to evade tax could be made out. But the present case does not reflect such guilty intention of the appellant. Consequently, the orders passed by the authorities below cannot be sustained.

13. Resultantly this appeal is accepted, impugned orders are set aside and the penalty stands quashed.

14. Pronounced in the open court.

SGA LAW OFFICES

PUNJAB VAT TRIBUNAL

APPEAL NO. 536 OF 2013

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BHOLA RAM SHRI KRISHAN
Vs.
STATE OF PUNJAB

JUSTICE A.N. JINDAL, (RETD.)
CHAIRMAN

12th May, 2015

HF ▶ Dealer

Non entering of previous transaction cannot be made basis for detention and imposing penalty U/s 51(7)(b) of the Act.

PENALTY – CHECK POST/ ROADSIDE CHECKING – ATTEMPT TO EVADE TAX – GOODS IN TRANSIT DETAINED SUSPECTING UNDERVALUATION AND EXCESS QUANTITY – BILL BOOK PRODUCED - BILLS ISSUED FOR SMALLER AMOUNTS AS COMPARED TO BILL IN QUESTION – TEMPERING OF BILL BOOK SUSPECTED – PENALTY IMPOSED FOR INGENUINE DOCUMENTS – DISMISSAL OF FIRST APPEAL HOLDING THAT PREVIOUS TRANSACTION NOT ENTERED IN ACCOUNT BOOKS AND BILL FOR PRESENT TRANSACTION INSERTED LATER IN ACCOUNT BOOKS – HELD BY TRIBUNAL THAT DIVERGENT BASIS TAKEN BY DESIGNATED OFFICER AND APPELLATE AUTHORITY FOR IMPOSING PENALTY – NON ENTERING OF PREVIOUS TRANSACTION NOT TO BE PENALIZED U/S 51(7)(c) OF THE ACT - NO MENS REA FOUND – NO DEFECT POINTED OUT IN ACCOUNT BOOKS BY PENALIZING OFFICER – NO EVIDENCE REGARDING INSERTION OF BILLS FOR CURRENT TRANSACTION IN BOOKS LATER ON – IMPUGNED ORDER SET ASIDE – PENALTY DELETED AND APPEAL ACCEPTED – *SEC 51(7)(c) OF THE PVAT ACT.*

The goods in transit were detained suspecting undervaluation and being excess in quantity. The account book and bill book were produced before the AETC. It was concluded that the appellant had issued bills for smaller amounts i.e. below Rs 2000/- only and the bill in question was of bigger amount. Tempering of bill book was suspected. It was observed that the dealer has issued bills from another parallel bill book and in case of checking the said invoice is inserted in the regular bill book. Penalty was imposed u/s 51(7)© for ingenuine documents. The first appellate authority dismissed the appeal on the ground that the previous transactions were not entered in account books. It is observed by the Tribunal that the basis of detention is quite contradictory to the notice issued by the designated office. The first appellate authority has ignored the observations made by the designated officer and has raised the point of non entering of transaction in contradiction to the points raised by designated officer. On appeal before Tribunal held:-

Imposition of penalty for non entering of previous transactions is beyond the scope of sec 51(7)(c) of the Act. No mensrea has been established on part of appellant. The allegation by the first appellate authority regarding insertion of bill relating to the transaction in question later on is held to be untrue after examination. The impugned orders are set aside ad penalty is deleted. The appeal is accepted.

Case relied upon:
B.S Traders, Goniana, District Bhathinda Vs State of Punjab(2008 31 PHT 310 (PVT).

Present: Mr. K.L.Goyal, Sr. Advocate alongwith Mr. Rohit Gupta, Advocate counsel for the appellant.

Mrs Sudeepti Sharma, Deputy Advocate General for the State.

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JUSTICE A.N. JINDAL,(RETD.) CHAIRMAN

1. This appeal is directed against the order dated 21-2-2013 passed by the Deputy Excise and Taxation Commissioner (Appeals) Faridkot Division, HQ, Bathinda, "dismissing the appeal against the order dated 31-7-2006 passed by the Assistant Excise and Taxation Commissioner, Mobile Wing, Bathinda imposing a penalty of Rs. 31,900/- u/s 51(7)(b) of the Punjab Value Added Tax Act 2005 (herein referred as the Act of 2005).

2. In nutshell, the facts as emanating from the record are that on 20.7.2006 the Excise and Taxation Officer, Mobile wing, Bathinda detained the goods i.e. Cotton Yarn being transported through the vehicle bearing No. HR-39 9833. When the vehicle was on its way from Bareta to Kotkapura, the Detaining Officer while suspecting that the goods were under valued and excess in quantity, detained the goods.

3.The driver produced the following documents :-

Invoice No. 000129 & 000130 dated 20-7-2006 issued by the appellant for Rs 49,920/-.'

4.On enquiry, the Detaining Officer opined that the dealer had not shown regular and proper bills, suppressed the sales and is evading the tax. Consequently, he referred the matter to Assistant Excise and Taxation Commissioner, Mobile Wing, Bathinda (herein referred as the designated officer) who issued notice u/s51(7)(b) of the Punjab Value Added Tax Act 2005. Shri Ujwal Kumar, proprietor of the firm along with Shri S.K. Jindal, Advocate appeared in response to the notice. When confronted with the allegations, the appellant produced account book and bill books ; one from serial No. 101- 125 and the other from serial No. 126-150, and further pleaded that the goods were accompanied by proper and genuine documents.

5.On concluding the enquiry, the Assistant Excise and Taxation Commissioner, Mobile Wing, Bathinda reached the conclusion that the appellant had issued the bills for smaller amounts i.e. below Rs 2000/- only and the bill in question was of bigger amount. He also observed that bill book was rebound, hence tempered. It was also opined that the modus operandi of the dealer is that bills are issued from another parallel bill book and in case of checking the said invoice is inserted in the regular bill book, therefore the documents covering the goods were neither genuine nor proper. Ultimately the Designated Officer imposed a penalty of Rs 31,900/- u/s 51(7)(b) of the PVAT Act 2005.

6.On appeal, the Deputy Excise and Taxation Commissioner (Appeals), Faridkot dismissed the same while observing that the issue involved in this case is non entering of the

transactions in the regular account books. Since the appellant had not entered the previous transaction in the account books, therefore, he was not maintaining the true account books. Consequently, he dismissed the appeal.

7. Heard the basis of detention is quite contradictory to the notice issued by the designated officer. Reasons for detention as assigned by the Detaining Officer are as under:-

(i) The goods are under valued and excess in quantity.

8. The Designated Officer While' imposing the penalty observed as under:-

(i) The appellant has two parallel bill books and bills are issued from parallel bill book and in case of checking, the copies of the actual bill copied would be inserted in the regular bill book, in addition to it, other reason was that carbon copies of the bill in question have been inserted in the regular bill book. Therefore, documents covering the goods are not proper and genuine.

9. The 1st appellate authority, while dismissing the appeal, ignored the observations as framed by the designated officer and took the view that the issue involved in this case was regarding non entering of the previous bills in the regular account books. The point raised by him is contradictory to the points raised by Designated Officer.

10. The plain reading of the order passed by the Deputy Excise and Taxation Commissioner suggests that there was no issue of under valuation or excess quantity on the basis of which the goods were detained. It is pertinent to mention here that the designated officer as well as the first appellate authority were divergent in their opinion and the basis which was made to impose the penalty.

11. That the imposition of penalty on the basis of non entering of the previous transactions in the account books is totally against the scope of Section 51(7) of the Act because the Section 51(7) (b) is applicable to the goods under transportation. It has been observed by this Tribunal in case B.S. Traders, Goniana, District Bathinda Vs State of Punjab (2008 31 PHT 310 (PVT) that previous transactions cannot be made the basis for levying penalty. The relevant observation made by the Tribunal are reproduced as under:-

There is also nothing on record to suggest if after detention or during the enquiry proceedings any officer made any attempt to verify the earlier transactions regarding sales and purchases of the wheat, by the appellant firm from other sources. Even otherwise the previous transactions could not made basis for detaining the goods and imposition of penalty under Section 51(7) © of the Act. The genuineness of those earlier transactions could only be scrutinized.

12. It may also be observed that the designated officer has observed nothing about the existence of mensrea on the part of appellant to evade tax. The appellant produced account books before Ld. A.E.T.C but he did not point any defect in the account books.

13. The designated officer, in his order, has only observed that the account books are doubtful for the reason that the firm has issued bills for smaller amounts with regard to other transactions i.e. below Rs 2,000/- where as the entry in question is for a larger amount however he has not observed that the present entry in the books was in anyway tempered. Any way the 1st appellate authority did not concur with such findings and dismissed the appeal on a different point.

14. Thus the tribunal concludes that the Designated Officer as well as the 1st appellate authority while deviating from recording any observation on the original allegations on the basis of which the goods were detained started probing the books of account relating to the previous transactions. As such the impugned orders can't be sustained. As regards the specific

allegation that the bills relate to the present transaction were inserted later in the book of account, as recorded by the Deputy Excise and Taxation Commissioner, it may be observed that on examination of the books of account in question to the depth., the same does not appear to be tempered. Therefore the impugned orders passed by the authorities being against the facts and law are liable to be set aside.

15. Resultantly, this appeal is accepted impugned order is set aside and penalty as awarded by the designated officer is quashed.

PUNJAB VAT TRIBUNAL

APPEAL NO.337 OF 2014

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GODREJ AGROVET LTD.
Vs.
STATE OF PUNJAB

JUSTICE A.N. JINDAL, (RETD.)
CHAIRMAN

5th May, 2015

HF ▶ Revenue

Presenting one year old bill at check post in relation to the transaction in question shows clear mensrea to evade tax.

PENALTY – CHECK POST – ATTEMPT TO EVADE TAX – INGENUINE DOCUMENTS – JURISDICTION –GOODS IN TRANSIT – INVOICE AND GR PRODUCED DATED 4.2.2014 – UNDERVALUATION SUSPECTED – GOODS DETAINED AND PENALTY IMPOSED – OBSERVED BY TRIBUNAL THAT THE TRANSACTION IN QUESTION RELATED TO PREVIOUS CONTRACT OF APPELLANT – BILL SHOWN WAS OF YEAR 2013 – CURRENT BILL PRODUCED WAS AN AFTERTHOUGHT – CASE OF CLEAR MENSREA - INVOICE BEING UNDERVALUED AND FAKE QUA DATE OF ISSUE CHECK POST OFFICER HELD TO APPEAL HAVE EXCERCISED POWER WITHIN JURISDICTION – PENALTY UPHELD - *SEC 51(7)(b) OF PVAT ACT.*

The manual invoice and GR dated 4/2/2014 with respect to the goods in transit were produced at the ICC. On checking, the invoice was found to be undervalued and goods were detained. Computerized bill was produced by the seller admitting that manual bill was wrong by mistake. However, penalty u/s 51(7)(b) was imposed. The first appeal was dismissed. On further appeal, the Tribunal has observed that the transaction in question related to a previous contract of the appellants. The courts below have failed to notice that the invoice and GR dated 4/2/2013 were handed over and not of 4/2/2014 at the ICC. The bill invoice dated 4.2.2014 was an afterthought and prepared after the vehicle was checked. Since the driver had presented one year old bill against the goods sold on 4/2/2014, there is clear mensrea to evade the tax.

Regarding the question of jurisdiction raised by appellant, the court has held that the bill being contradictory to date of purchase, price and weight, the officer at the check post was competent to refer the case for enquiry. Therefore, due to ingenuine documents being shown, the appeal is dismissed.

Case distinguished

M/s Devi Dyal Gopal Krishan Ltd., Moga vs State of Punjab (2009) 33 PHT 413 (P&H)
M/s Ess Aar Soap Mills vs. State of Punjab (2014) 22 STM3 (PVAT-Tri)

Present: Mr. Harminder Singh, Advocate Counsel for the appellant.

Mrs. Sudeepti Sharma, Deputy Advocate General for the State.

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JUSTICE A.N. JINDAL,(RETD.) CHAIRMAN

1.This appeal is directed against the order dated 5.8.2014 passed by the Deputy Excise and Taxation Commissioner-cum-Joint Director (Investigation), Bathinda (herein referred as the First Appellate Authority) dismissing the appeal against the order dated 20.2.2014 passed by Officer Incharge-Cum-Excise and Taxation Officer, Information Collection Centre, Doomwali, imposing a penalty of Rs.I,73,551/- U/s 51 (7) (b) of the Punjab Value Added Tax Act, 2005.

2.On 5.2.2014, the driver of the vehicle bearing No. PB-29D-9673 loaded with Groundnut DOC from Jaipur to Khanna, when reached the Information Collection Centre, Doomwali presented the following documents:-

1. Invoice No.430 dated 4.2.2014 of M/s Shree Ji Enterprises, Jaipur valuing Rs.64,994/- issued from the manual VAT Invoice book.
2. GR No. 2096 dated 4.2.2014 issued by New Zira Ferozepur Transport Co., Bikaner.
3. VAT XXXVI dated 5.2.2014 for Rs.64,994/-
4. Receipt of advance tax of Rs.4620/-

3. The Excise and Taxation Inspector suspected the goods to be under weight. On physical verification, the value of the Groundnut DOC as loaded in the vehicle was much higher than the value given in the Invoice. Consequently, the goods were detained U/s 51 (6) (a) of the Punjab Value Added tax Act, 2005 for verification, in response to which, Shri Ram charan, Manager of M/s Shree Ji Enterprises, Jaipur and Shri J.M. Khan, Sales Manager of the appellant firm appeared before the Detaining Officer and they produced computerized invoice No.430 dated 4.2.2014 issued by M/s Shree Ji Enterprises, Jaipur showing the value of the goods as 6,49,935/-.The appellant admitted his mistake saying that manual bill was not correct where the value of the goods has been shown as Rs.64,994/-. The Excise and Taxation Inspector while observing that against the earlier defective hill, the company/appellant corrected itself and issued computerized invoice for the value of Rs. 6,49,935/- .

4. The notice U/s 51(7) (b) was issued against the appellant for 20.2.2014. The appellant appeared and explained the mistake. Ultimately after enquiry the Officer Incharge-cum-Excise and Taxation Officer, information Collection Centre, Doomwali, District Bathinda while observing that no account books were produced and the mistake committed by him has not been clarified as such thee was evasion of tax. He consequently imposed penalty of Rs. 1,73,551/-. The Deputy Excise and Taxation Commissioner also dismissed his appeal. Hence this second appeal.

5. Arguments heard. Record perused. The transaction related to a previous contract of the appellants with M/s Shree Ji Enterprises, Jaipur which was affected on 30.1.2014. According to which appellants had purchased 50 MT of Groundnut DOC @ Rs.26,000/- per Ton. The total value for the said 50 Tons of Groundnut DOC was to be paid at Rs. 13,00,000/-. The said contract fell flat because, as per invoice dated 4.2.2014 the appellants are said to have purchased 25 Tons of goods for Rs.6,43,500/-. An invoice and G.R. were handed over to the driver for delivery of the goods at Khanna.

6. Both the courts below have not taken note of the actual things. The driver handed over the invoice and GR. of 4.2.2013 and not of 4.2.2014 at the Information Collection Centre. Thus, it appears that neither the goods were sold by M/s Ji Enterprises as per contract nor as per rate as agreed between the parties. The invoice shows that Shri ji Enterprises prepared the bill @2,574.- per ton i.e.Rs 64350.00 whereas the computerized bill shows that the price of 25 ton was Rs.6,43,500/-. The bill invoice No.430 dated 4.2.2014 appears to be an after thought and prepared after the vehicle was detected and checked. The driver had presented the bill of 25 ton dated 4.2.2013 bearing the price of 64350/- Thus; it is apparent that the driver presented one year old bill against the goods which has been sold on 4.2.2014, thus there is clear menserea to evade the tax.

7. The Counsel has urged that on 4.2.2011 computer ystem of consignor was out of order and in order to complete the supply order in time they had to raise the invoice manually, thus while preparing the manual invoice due to an oversight and inadvertently the clerical staff could not differentiate the rate of goods to be charged for per metric ton or per quintal and calculated the taxable value of goods @ 2,574/- a metric ton instead of Rs.2,574/- per quintal. The driver of the vehicle started his journey and voluntarily generated the VAT XXXVI at Information Collection Centre and produced the documents accompanying the transaction, therefore, no mensrea could be attributed to him. The argument is not tenable as the bill and the invoice which he was carrying were one year old. Had the manual bills and computerized bill been of the same date then the argument could be said to have some weight but both the bills are of different dates therefore Mens Rea could be attributed to the appellant.

8. It is further urged that as per Section 14 B of the General Sales Tax Act, 1948 read with 3 A of the Central Sales Tax(Punjab) Rules, 1957,the Officer Incharge was not competent to detain the goods and impose penalty on the ground that the Designated Officer has no jurisdiction to examine the price and quantity of the goods. In this regard, the Counsel has referred as judgment delivered in case of M/s Devi Dyal Gopal Krishan Ltd., Moga vs State of Punjab (2009) 33 PHT 413 (P&H) wherein it was observed as under:-

> *"The plain language employed in the Section as well as in its intendment does not clothe the check post officer with jurisdiction to make an assessment as long as the documents carried in the vehicle satisfy the requirement of the prescription-**His job is to ascertain whether the prescribed document accompanied the vehicle and the goods which in turn are liable to tax under the Act. Anything else he does would be jurisdiction and liable to be quashed."***

9. The aforesaid judgment is not applicable to the facts present case because in this case, the Designated Officer on checking the documents was not satisfied about their genuineness. The goods were checked on 4.2.2014 whereas, the documents which the driver was carrying were dated 4.2.2013. The bill was contradictory and unmatching to the date of purchase, the price and the weight, therefore, the Officer Incharge of the Check Post, in such circumstances, was competent to refer the case for enquiry. The Counsel has also referred the judgment delivered in case of M/s Ess Aar Soap Mills vs. State of Punjab (2014) 22 STM3 (PVAT-Tri) wherein, it was observed as under;

> *"The penalty has been imposed on the solitary ground that the price of the goods i.e. Animal Fat as shown in the Invoice No.12 ibid is less than the market price. As alleged by the department, the market price of the goods in question is Rs.35/- per kg. Such a question regarding difference in price of the goods can only be determined by the Assessing Authority of the appellant dealer and not by the officers in exercise of the powers vested under Section 51 of the Act, 2005 by assuming the role of the assessing authority".*

10. The aforesaid judgment is also not applicable to the facts of the present case. Here the goods loaded were not only undervalued but the G.R. and the bill were false quo the date of issue as well, therefore the authority of the Officer Incharge of the Information Collection Centre to detain the goods could not be challenged.

11. In view of the facts and circumstances as referred to above, it is Cristal clear that there is a lot of evidence to conclude that the goods being carried in the truck were not accompanying the genuine and valid documents.

12. Resultantly, I do not find any merit in the appeal and the same is dismissed.

13. Pronounced in the open court.

PUNJAB VAT TRIBUNAL

APPEAL NO. 553 OF 2013

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LARSEN & TOUBRO LIMITED
Vs.
STATE OF PUNJAB

JUSTICE A.N. JINDAL, (RETD.)
CHAIRMAN

28th April, 2015

HF ▶ Revenue

The condition of predeposit for entertainment of appeal against the assessment framed within a period of six years from date of filing of returns cannot be waived off.

ASSESSMENT – LIMITATION – APPEAL - PREDEPOSIT – ENTERTAINMENT OF APPEAL – ASSESSMENT FOR THE YEAR 2008-09 FRAMED IN 2013- ADDITIONAL DEMAND RAISED – FIRST APPEAL DISMISSED FOR NON FULFILLMENT OF CONDITION OF PREDEPOSIT – PLEADED BEFORE TRIBUNAL THAT IMPUGNED ORDER OF ASSESSMENT BEING TIME BARRED CONDITION OF PREDEPOSIT OUGHT TO BE WAIVED OFF – HELD BY TRIBUNAL THAT ASSESSMENT COULD BE FRAMED WITHIN SIX YEARS FROM DATE OF FILING OF RETURNS AS PER THE AMENDED SEC 29(4) OF THE ACT – THEREFORE, IMPUGNED ORDER WAS WITHIN LIMITATION PERIOD – APPELLANT GIVEN ONE MONTH'S TIME FOR PREDEPOSIT FOR ENTERTAINMENT OF APPEAL FAILING WHICH ORIGINAL ASSESSMENT ORDER TO PREVAIL – *SEC 29(4) & SEC 62(5)OF PVAT ACT.*

An Assessment for the year 2008-09 was framed on 27.02.2013 raising an additional demand under the local Act as well as under the CST Act. The first appeal was dismissed for non compliance of sec 62(5) of the Act. It was alleged before the Tribunal that the last date for framing of assessment was 20.11.2012 but the assessment was framed on 27.2.2013. So the assessment being time barred in view of sec 29(4) of the Act, compliance of condition of pre deposit was not necessary.

The Tribunal has observed that as per the amendment of the sec 29 (4) ,the assessment that could be framed within three years can now be framed in six years from the date of filing of annual return. In the present case it could be filed upto 20.11.2015. The amendment was made with retrospective effect such that all pending cases where assessment was pending, could be framed where six years were not expired. However, the appellant is given a month's time for pre deposit for entertainment of appeal, failing which the orders passes by the excise and taxation commissioner shall remain intact.

Cases distinguished:

State of Punjab and Another Versus K.C. Motors (2013) 59 VST page/187
State of Punjab and Another Versus Novelty Associates Pvt. Ltd. (2013) 59 VST-page/185
Ahluwalia Contracts (I) Ltd. Versus State of Punjab and Others (2013) 59 VST page 183

Present: Mr. K.L.Goyal, Sr. Advocate alongwith Mr. Rohit Gupta, Advocate counsel for the appellant.

Mrs. Sudeepti Sharma, Deputy Advocate General for the State.

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JUSTICE A.N. JINDAL,(RETD.) CHAIRMAN

1.This order of mine shall dispose two connected appeals No. 553 & 554 of 2013. The appeals are directed against the order dated 26.8.2013 passed by the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala(herein referred as the First Appellate Authority) dismissing the appeal of the appellant for non compliance of Section 62 (5) of the Punjab Value Added Tax Act, 2005.

2.The appellant is engaged in the business of works contract and trading by the name of M/s Larsen & Toubro Limited (herein referred as the appellant) having its place of business at Mohali vide TIN No. 036311056652. The appellant firm is engaged in construction business and execution of works contracts for different clients including the State and Central Govt. Departments, Public Sector Undertakings, Electricity Board, Public and Private Limited Companies.

3.The appellant filed the return for the assessment 2008-09 while showing a gross turnover of Rs.50,54,95,244/-. The Assessing Authority was not satisfied with the return, therefore after giving an opportunity to the appellant, the Assessing Authority vide its order dated 27.2.2013 issued additional demand for Rs.38,08,319/- against the appellant under the Punjab Value Added Tax Act, 2005. The Officer also framed additional demand to the tune of Rs.39,34,726/- under the Central Sales Tax Act, 1956. The appeal filed by the appellants was not entertained for non compliance of Section 62 (5) of the Act of 2005 as such the same was dismissed vide order dated 26.8.2013, hence this second appeal.

4. The counsel for the appellant has contended that the assessment for the year 2008-09 was filed on 20.11.2009. The Assessing Authority issued notice on 8.3.2011. The last date for framing the assessment was on 20.11.2012, but the assessment was actually framed on 27.2.2013. Therefore, the assessment order in the light of Section 29(4) of the Act is time barred, consequently the order being bad in the eye of law, the compliance of Section 62 (5) of the Act was not necessary. Since the order of assessment was not passed within time therefore, the same was liable to be set-aside on this sole ground, as such there was no fun for compelling the appellant to comply with such provisions relating to deposit of tax for entertaining the appeal.

5. Having deliberated over the issue; firstly it is to be seen whether the assessment is time barred. For this, I need to reproduce Section 29(4) of the Punjab Value Added Tax Act, 2005 as amended by ordinance No.10 of 2011, [2011 (7) STM 122 (JS)] dated 17.8.2011 and notification No. 39-Leg./2011, dated 02.11.2011 which reads as under :-

> *29(4) An assessment under sub-section (2) or sub-section (3), may be made within a period of six years after the date when the annual statement was filed or due to be tiled, whichever is later:*
>
> *Provided that the assessment under subsection (2) or subsection (3), in respect of which annual statement for the assessment year 2006-07 has already been filed, can be made till the 20th day of November, 2014.*

5. On the perusal of aforesaid Section, it would be appropriate to hold that the assessment which could be framed within three years (earlier to the amendment) can now be framed within six years from the date when the annual statement was filed, or due to be filed.

In the present case, the annual statement for the assessment year 2008-09 was filed on 20.11.2009. The said assessment was pending adjudication at the time when the amendment was introduced. Therefore, in the light of the amendment dated 17.8.2011, the assessment could be framed upto 20.11.2015. The counsel for the appellant has urged that since the assessment was framed on 27.2.2013, therefore, the amendment which came after the period of limitation stood expired, could not be applied in the facts and circumstances of the present case. The appellant in support of his contention has relied upon the judgment delivered in the case of State of Punjab and Another Versus K.C. Motors (2013) 59 VST page/187 and State of Punjab and Another Versus Novelty Associates Pvt. Ltd. (2013) 59 VST-page/185, Ahluwalia Contracts (I) Ltd. Versus State of Punjab and Others (2013) 59 VST page 183.

6. Having examined the aforesaid judgments, the same are not applicable to the facts of the present case. In the K.C. Motors case supra, the provisional assessment was finalized on 31.5.2010 .The appeal was dismissed by the First Appellate Authority on 10th August, 2010. Thereafter, on appeal the Tribunal had also directed the Deputy Excise and Taxation Commissioner to hear the appeal on merits. All these facts of the said case indicate that assessment in that case stood finalized and the appeal was also dismissed prior to coming into force the amendment of Section 62 (5) of the Act which came into force with the commencement of the ordinance on 17.8.2011 and amendment was made by specific notification on 2.11.2011. As such this judgment is not applicable to the facts of the present case. In case of Novelty Associates supra, the order dated 29th Oct, 2010 was challenged and the Hon'ble High Court had decided the case on 19th May, 2011 i.e. the order was challenged much prior to coming into force the amendment. Similarly, in case of M/s Ahluwalia Contracts supra the matter was disposed off by the Hon'ble High Court on 29" July, 2010 i.e. much prior to coming into the force of the amendment. The judgments appear to have been cited before me just create confusion and mis-conception that amended provision of Section 62 (5) of the Act do not apply to the facts of the present case when actually the order under assessment was passed after coming into force of the aforesaid amendment and the amendment was applicable to the facts of the present case.

7. The matter does not end here, it has been made very clear by adding explanation-I to sub-section(4) of Section 29 that limitation period of six years for an assessment under sub-section (2) & (3) would also apply to those cases in which the aforesaid period of six years has not yet expired. The explanation-1 to Section 29 (4) of the Act reads as under:-

Explanations:-

(1) The limitation period of six years for an assessment under sub- section (2) or sub-section (3), shall also apply to those cases in which the aforesaid period of six years has yet not expired.

8. In the present case, the requisite period of six years had not expired because the assessment for the year 2008-09 could be framed upto 20.11.2015, whereas the Assessing Authority framed the assessment; on 27.2.2013. Therefore, the amended provisions of the Act as discussed above would apply to all the pending assessments. The intention of the Act was very much clear to enforce the amended provisions of Section 29 (4) explanation (1) with retrospective effect. Now, it applies to those cases where the assessment was still pending and six years had yet not expired. No other point has been argued to challenge the impugned order.

9. Resultantly, this appeal being devoid any merit is dismissed. However, in order of provide another chance to the appellant to comply with Section 62 (5) of the Act, so that appeal could be entertained and decided on merits, one month more time is provided. On doing so, the appeal of the appellant shall be entertained and decided on merits. Failing to comply with the

aforesaid section, the orders passed by the Deputy Excise and Taxation Commissioner shall remain intact.

10. Copy of the order be placed in the connected Appeal No.554 of 2014.

11. Pronounced in the open court.

SGA
LAW OFFICES

PUNJAB VAT TRIBUNAL

APPEAL NO. 281-284 OF 2014

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AMBUJA CEMENTS PVT. LTD
Vs.
STATE OF PUNJAB

JUSTICE A.N. JINDAL, (RETD.)
CHAIRMAN

30th March, 2015

HF ▶ Department

The appellate authority has the power to go beyond the scope of issues raised by the appellant in appeal before it if the impugned order is observed to be faulty.

APPELLATE AUTHORITY – POWER OF - REMAND – APPEAL – WHETHER APPELLATE AUTHORITY HAS THE POWER TO GO BEYOND THE SCOPE OF THE ISSUES FOR WHICH APPEAL IS PREFERRED BEFORE IT – HELD YES, THE APPELLATE AUTHORITY HAS POWERS TO SET THE ORDER RIGHT WHICH MAY BE FAULTY – RIGHTS OF THE APPELLANT ARE NOT EFFECTED IN THE INSTANT CASE – ISSUE LEFT OPEN TO BE DECIDED BY DESIGNATED OFFICER – REMANDING CASE WITH CERTAIN OBSERVATIONS TO BE LOOKED INTO BY DESIGNATED OFFICER FOR PASSING SPEAKING ORDER IS HELD WITHIN JURISDICTION OF THE AUTHORITY – APPEAL DISMISSED – *SEC 62(7) AND ORDER 41 R33 OF CPC*

The appellant was an exempted unit. An assessment was made by the assessing authority calculating the output tax liability on stock transfers estimating value of goods adding cost of primary freight besides some portion of gross profit. Tax @ 4% was calculated and reduced from total overall exemption limit of the assessee. An additional demand was raised. Assessee filed the appeal on this ground alone. The first appellate authority accepted the same and remitted the case back to the designated officer to frame assessment afresh and pass a speaking order with some observation on merits of case. It was remitted by going beyond the scope of issues taken up by the appellant in appeal. The designated officer was directed to consider why rate of tax @ 12.5% was not imposed and why secondary freight, gross profit and other expenses were excluded. He also pointed out there was a huge difference in between the stock transfer price and price of the cement bag at which it is sold to the consumer. Thus an appeal is filed before Tribunal urging that appellate authority erred in confronting the appellant over the proceedings being carried out at his own instance. The Tribunal has held that regarding the validity of the impugned order, no specific findings are given nor assessment enhanced which affects rights of the appellant. A conjoint reading of order 41 R33 and sec 62(7) of the Act suggest that the appellate court has the powers to set right the order which is faulty, in conflict with the basic tenets of law, completely against evidence and non speaking. The order in question does not affect the rights of the appellant. It is returned with findings and is no manner beyond his jurisdiction. The designated officer would pass orders without being influenced by higher authorities. The appeal is dismissed.

Editorial note:
This is for the information of our readers that appeal against this order has been filed before the Hon'ble HIGH Court and stay has been granted in this case.

Cases referred:
Global Business India Pvt. Ltd. and another vs. State of Haryana, (2013) 45 PHT 439 (P&H)
State of Kerala vs. Vijaya Store (1978) (4) SCC page 41
Varun Polymol Organics Ltd. vs. State of Maharashtra, (1997) STC page 55
State of Haryana vs. Frick India Ltd. Sales Tax Cases Vol. 71 page/148

Cases relied upon:
Kailash Takles vs State of Rajasthan (1908)-109-STC-169 (Raj)

Present: Mr. Sandeep Goyal, Advocate alongwith Mr. Rohit Gupta, Advocate counsel for the appellant.

Mr. Sudeepti Sharma, Deputy Advocate General for the State.

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JUSTICE A.N. JINDAL,(RETD.) CHAIRMAN

1.This judgment of mine shall disposed off all the aforesaid four connected appeals No. 281 of 284 against the order dated 17.7.2014 passed by the Deputy Excise and Taxation Commissioner(A), Patiala Division, Patiala (herein referred as the First Appellate Authority) accepting the appeals and remitting the cases back to the Assistant Excise and Taxation Commissioner-cum-Designated Officer, Ropar to frame a de novo assessment by considering all the relevant factors and after hearing the appellant/assessee as well as the State and frame assessment within two months. These appeals involve common questions of law and fact therefore, the same are decided by one judgment.

2. The facts in the back ground of the case are that the appellant is a dealer encaged in the manufacturing and sale of cement having its manufacturing units at Ropar and Bathinda in Punjab. Ropar Unit is exempted from payment of tax under the Punjab General Sales Tax (Deferment and Exemption) Rules, 1991 read with notification dated 6.4.2005 issued under Section 92(3) of the Punjab Value Added Tax Act, 2005 for a period from 24.06.2004 to 23.06.2019 for a maximum amount of Rs. 49,84,97,400/-.

3. Bathinda Unit is exempted for an amount of Rs. 17,1,87,00,000/- for a period from 14.2.2001 to 13.2.2016. The assessment of the appellant for the year 2007-08 was considered by the Assessing Authority on the basis of the annual return filed by it in VAT-20 and the output tax liability on the stock transfers was made by it on the notional basis as per the cost of the manufactured goods (cement) while adding primary freight and a notional profit for the branch transfer so as to arrive at the correct value of the stock transfer. The value so assessed was considered as the "estimated value of the goods" so transferred as per Condition 3(ii) of the Notification dated 6.4.2005 issued under Section 92(3)(a) of the Punjab VAT Act. The Assessing Authority had determined the "estimated value of goods for the purpose of stock transfer while adding the cost and primary freight besides some portion of gross profit whereas other expenses like secondary freight, forwarding expenses, godown rent, administrative expenses and octroi etc. Were left to be borne by the consignee branch. The tax was calculated on the said value @ 4% and reduced from the total overall exemption limit of the assesee, which was available to it at the beginning of the year 2007-08. The notional tax liability thus computed was eligible for adjustment towards the Exemption allowed to the appellant and thus an additional demand of Rs. 5,93,79,760/- was created under the Punjab Value Added tax Act, 2005.

4. On appeal by the appellant, the First Appellate Authority accepted the same and remitted the case back to the Assistant Excise and Taxation Commissioner-cum-Designated officer, Ropar vide its order dated 17.7.2014 to decide the same a afresh by passing a speaking order after considering all the contentions as raised by the appellant.

5.The main issues raised before the Assistant Excise and Taxation Commissioner (on the basis of which additional demand was created on 21.1.2013 by the Designated Officer) were addition of freight and other expenses to the stock transfer value to different States i.e. Haryana, Delhi, U.P. and Himachal Pradesh to work out the notional tax liability @ 4% on stock transfer value liability against 'F' Forms for its reduction from exemption limit which was available to the firm at that point of time. After calling for the detailed Statewise chart of primary freight, secondary freight, octroi and sales expenses i.e. godown rent and administrative expenses etc. Per bag of cement on the stock transfer to work out net stock transfer price, the Assistant Excise and Taxation Commissioner observed that the basis value of the cement should include only primary freight to work out the stock transfer value. However, for calculation of notional tax liability on this account, all other expenses i.e. secondary freight, forwarding expenses, godown rent, administrative expenses, octroi and profit margin are to be added in the sales value of cement per bag at the time of sale in that relevant State after stock transfer to that State by the appellant. In this manner, the Assistant Excise and taxation Commissioner-cum-Designated Officer, Roopnagar calculated the estimated value of the goods at the rate average value plus primary freight for stock transfer i.e. Rs. 14.70 per bag and this total value of primary freight (suppressed amount of stock transfer) was calculated Rs. 33,40,04,874/- and the notional tax liability @ 4% on this suppressed amount of primary freight was assessed at Rs. 1,33,60,195/- which was to be reduced from exemption amount available with the firm at the beginning of the year 2007-08 to work out its carry forward amount of exemption limit at the end of the year 2007-08.

6. The First Appellate Authority did not agree with the order passed by the Designated Officer and he while remitting the case observed as under:-

1. The point as raised by both the parties in the appeal have not been reasonably explaned.
2. The appellant though stated that he had already included the primary freight in the stock transfer yet the same has not been discussed (explained) and answered properly by the Designated Officer.
3. It is not properly explained as to why the secondary freight, gross profit and all other includible expenditures, as pointed by the State representatives have been excluded.
4. The First Appellate Authority also raised the issue that when notional tax liability on enhanced stock transfer price have been calculated @12.5% in the absence of 'F' Forms. Then how the Designated Officer has calculated @4%.

7. It has also referred to Section 2 (xxi) of the Punjab General Sales Tax (Deferment and Exemption) for defining "notional sales tax liability" according to which Notional tax liability means the amount of tax payable on "estimated sales of finished goods" for the purpose of exemption from tax computed at the rates specified under the relevant law. Therefore, the estimated value should have been nearest to the real value of the finished goods, so that reasonably correct amount of notional tax liability could be calculated. But the estimated value of the goods has not been correctly calculated by the Designated Officer as per the aforesaid rule. He has also pointed out that there is a huge difference between the stock transfer price and price of the bag at which it is sold to the consumer.

8. Consequently, while finding the order being short of reasons, he directed the Designated Officer to frame a denovo assessment by considering all the relevant factors and pass a speaking order.

9. While challenging the remand order, the counsel for the appellant has submitted that the Deputy Excise and Taxation Commissioner has gone beyond the scope of the issues for which the appeal was preferred before him for the following reasons:-

1. Though, the appellant had accepted before the Assistant Excise and Taxation Commissioner that it was only value of the goods at the factory gate and primary freight to assess and estimate the value of the goods for stock transfer over which the tax is regularly calculated @ 4%, yet no weight has been given to it.
2. Thought, the ld. Designated Officer had agreed in principle with the appellant that the goods in transit include the primary freight actually incurred by the appellant over the value of the stock transfer yet the Appellate Authority has not considered that the said freight has already been included. Therefore, the question before the Appellate Authority was; whether the primary freight stood already included in the price for stock transfer?''

10. Thus, it was urged that, the First Appellate Authority while ... beyond the scope of issues raised the observations over the matters which were never raised by the respondents by filing the appeal.

11. It was also urged that actually the Appellate Authority erred in confronting the appellant over the proceedings being carried out a his own instance. The appeal has been used as a tool to the benefit the respondent by the First Appellate Authority and that too without granting him any opportunity in that regard. To support this contention, he has referred to the judgment delivered in the case of Global Business India Pvt. Ltd. and another vs. State of Haryana, (2013) 45 PHT 439 (P&H) wherein, it was observed that Court should confine itself to the grounds of appeal filed before it and cannot travel beyond that while passing the judgment. The Court while passing the aforesaid judgment relied upon the judgment of Supreme Court in State of Kerala vs. Vijaya Store (1978) (4) SCC page 41. In this case, the Tribunal had enhanced the tax liability against the appellant in an appeal filed by the appellant himself. The Counsel has also relied upon the judgement of Varun Polymol Organics Ltd. vs. State of Maharashtra, (1997) STC page 55 wherein, it was observed that the powers of State Govt. to calculate that notional sales tax liability on the stock transfer is ultravires of the power of the State Govt. and in case of the exempted units, the tax on branch transfers cannot be calculated even for notional purposes. It was further held by the Hon'ble Bombay High Court that the parliament alone has power to levy tax on the consignment of goods under Article 246(1) of the Constitution read with Entry 92B of list-I contained in 7th Schedule appended to the Constitution. Accordingly, the Hon'ble Court held that the State Executive has no power to treat a notional sales transaction a "deemed sale" nor the State Executive has jurisdiction to levy sales tax directly or indirectly by creating fiction or otherwise on branch transfers. The Hon'ble Court went on to hold that notional sales tax liability required to be computed for purposes of ascertaining the quantum of tax benefit, cannot be more than actual sales tax liability, which would have been incurred by the eligibile unit but for the tax exemption.

12. To the contrary counsel for the respondent has raised the issued stating that powers of appellant court to pass an appropriate judgment on the bsisi of the facts, circumstances and the evidence led by both the parties in the case. The hands of the court cannot be tied by the issues raised in the grounds of appeal when the Appellant court finds the judgment to be suffering from some lacuna, then it is not helpless and divested of the powers to remove such defects and pass a correct judgment on the basis of the facts, circumstances and the evidence before it. The Court of appeal while exercising of the power has to pass an appropriate

judgment which has to be passed on the facts, circumstances and as per law. It is further urged that the respondent had also filed the revision before the Commissioner against the findings returned by the Designated Officer, but in the light of the order passed by the First Appellate Authority, the revision petition was withdrawn being infructuous. Even otherwise, the appellate authority has sought only clarification over the findings returned by the Designated Officer and while finding that the order is non speaking and ambiguous over many issues, with a view to remove the ambiguity, it has remitted the case back to the Assessing Authority. The relevant portion of the order reads as under:-

> *"I have heard the learned counsel for the appellant, the State representative and have gone through the written submissions made by both the parties. Whole issue in this case revolves around fixation of stock transfer price so as to work out correct and just notional sales tax liability. The points raised by the appellant and the State representative have not been reasonably explained in the assessment order under appeal. The inclusion of primary freight, if it was already included as claimed by the appellant has not been explained. On the other hand, exclusion of secondary freight and all other inclusible expenditure as pointed out by State representative have not been reasonably explained in the assessment order under appeal. Further "notional tax liability" on enhanced stock transfer price should have been calculated @12.5% in the absence of 'F' forms but it has been wrongly calculated @ 4%. As per rule 2(xxi) of the PGST (D&E) Rules notional sales tax liability means the amount of tax payable on estimated sales of finished goods for the purpose of exemption from tax computed at the rates specified under the relevant law. Estimated value should be nearest to the real value of the Finished goods so that reasonably correct amount of notional tax liability can be calculated. During proceedings, it was submitted by the appellant that during 2007-08, rate of one bag of 50kg cement sold to consumer was Rs. 230/- (app.) which was almost the same in the whole country. Even if one has to purpose it from Ropar itself where the appellant's factory manufactures it, it was still sold for Rs. 230/- (appl.) per bag. As per calculation sheet submitted by the appellant cost price of bag of cement at factory rate was Rs. 66.86/- and if Excise duty, Cess and profit @ 15% is added to it, then cost price per bag turns out to be Rs. 100.35/- (Approx.). As already said, rate per bag sold to consumer was Rs. 230/- minus VAT of Rs. 256/- (app.) i.e. Rs. 205/- (app.), so huge difference in stock transfer price and price at which sold to consumer has not been explained in the assessment order under appeal."*

Thus, the State Counsel has urged that the order of remand passed by the First Appellate Authority does not suggest of any defect or illegality, therefore, it does not call for any interference.

13. Any hearing the ld. Counsel for both the parties, I don't find myself in argument with the arguments raised by the appellant. The main issue before the Designated Officer was as to what is estimated value of the finished goods on stock transfer for the purpose of issuing the "notional tax liability". It would be appropriate to highlight the provisions regarding the sale price/sale value of the goods as defined under the Section 2(zg) of the Punjab Value Added Tax Act which reads as under:-

(zg) *"sale price" means the amount of valuable consideration received or receivable by a person for any sale made including any sum charge don account of freight, storage, demurrage, insurance and any sum charged for anything done by the person in respect of the goods at the time of or before the delivery thereof;*

Explanation:-

1) *"In relation to the transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract, 'sale price' means*

such amount as is arrived at by deducting from the amount of valuable consideration paid or payable to a person for the execution of such works contract, the amount representing labour and other charges incurred and profit accrued other than in connection with transfer of property in goods for such execution. Where such labour and other charges are not quantifiable, the sale price shall be the cost of acquisition of the goods and the margin of profit on them plus the cost of transferring the property. In the goods and al other expenses in relation thereto till the property in such goods, whether as such or in any other form, passes to the contractee and where the property passed in a different form, it shall include the cost of conversion.

2) In relation to the delivery of goods on hire purchase of any system of payment by instalments, the amount of valuable consideration payable to a person on such delivery.

3) In relation to the transfer of right to use any goods for any purpose (whether or not for a specified period), the valuable consideration received or receivable for such transfer.

4) The amount of duties levied or leviable on goods under the Central Excise and Salt Act, 1944 (1 of 1944), or the Customs Act, 1962 (52 of 1962), or the Punjab Excise Act, 1914 (1 of 1914), shall be deemed to be part of the sale price of such goods, whether such duties are paid or payable by or on behalf of the seller or the purchaser or any other person.

5) Sale price shall not include tax paid or payable to a person in respect of such sale."

14. As per the Punjab Tax on Entry of Goods into Local Areas Act, 1999 "Value of Goods as defined in Section 2(o) of the said Act which reads as under:-

(o) "value of the scheduled goods" means the purchase price at which a person has purchased the scheduled goods inclusive of charges borne by him as cost of transportation, packing, forwarding and handling charges, commission, insurance, taxes, duties and the like, or if such goods have not been purchased by him, the prevailing marking price of such goods in the local area.

(2) Words and expression used, but not defined in this Act, shall have he same meanings as assigned to them under the Punjab General Sales Tax Act, 1948."

Thus, on combined reading of the aforesaid Sections to my mind, the estimated value/price of the finished is that goods which company purposes for sale; including any reight, storage, demurrage, insurance and any sum charged anything done by the company in respect of the goods at the time or before the delivery thereof and gross profit, but it would not include the tax paid/payable to a person in respect of such sale.

15. The appellant unit is an exempted unit under the Punjab General Sales Tax (Deferment and Exemption) Rules, 1991. The appellant firm is manufacturing the cement for transferring the same for sale in and outside the State and Rule 5 of the exemption Rules of 1991 provides grant for deferment of the tax exemption for the period, for which it has been granted. However, Rule 2(xxi) defines notional tax liability which unit has to deduct from total tax liability till the end of the exemption period. Section 2(xxi) reads as under:-

2(xxi) "Notional Tax Liability" shall mean-

The amount of tax payable under the act on estimated sale of finished products and estimated purchase of raw material or otherwise liable to purchase tax of eligible unit during the year for the purpose of deferment of, or exemption from tax computed at the rates specified under the Act; &

EXPLANATION: The sales made on consignment basis within the State of Punjab or Branch transfers within the State shall be deemed to be sales made within State and liable to tax."

From above it, very much clear that the tax to be assessed as notional tax liability is to be assessed on the estimated sale value of the finished products and estimated purchase of raw material otherwise liable to purchase tax of the eligible unit and the sales made on consignment basis within the State or branch transfers within the State shall be treated as deemed sale.

16. The question arises as to "what is estimated value of the finished products?" has to be determined by the Assessing Authority. Rule 4of Exemption Rules refers to the quantum of entitlement

17. With regard to rate of tax, earlier there were certain conditions imposed by the department in the Rules of 1991 but the Government after due consideration vide Notification No. 21/P.O.5/2005/S, 92/2005, dated 6th April, 2005 framed fresh conditions. Relevant Condition is referred as under:-

3(ii) Output tax on inter-State stock transfer calculated at the rate of four per cent on the estimated value of the goods so transferred, on production of Form F as specified in the Central Sales tax Act, 1956;

18. Estimated value of the goods which is required to be mentioned in the invoice on certain transfer also finds reference in Rule 55, 56 & 57 of the Rules, 2005. The rule also refers to the price at which the goods are transferred. The rules are reproduced as under:-

Rule 55. PARTICULARS TO BE METNIONED IN A RETAIL INVOICE (Section 450):

(1) A retail invoice, shall be issued from duly bound invoice or cash memo book, except when the invoices are prepared on computer or any other electronic or mechanical device. It shall be at least in duplicate.

(2) The first copy of a retail invoice shall be issued to the purchaser of goods. The last copy shall be retained by the selling person.

(3) A retail invoice shall carry the following details:-

(a) a consecutive serial number, printed by a mechanical or electronic process.
(b) the name, address and registration number of the selling person.
(c) the name, address and registration number of the selling person.
(d) full description of the goods.
(e) the quantity of the goods.
(f) the value of the goods per unit.
(g) the total value.
(h) signature of proprietor or partner or director or/authorized agent.

(4) A retail invoice for interstate sale and exports out of the country shall carry the following details in addition to the details mentioned in sub-rule (3), namely:-

(a) the name, address and registration number of the purchase;
(b) the rate and amount of tax charged in respect of taxable goods;
(c) serial number of Form VAT-36; and
(d) mode of transportation and details thereof.

Rule 56. PARTICULARS TO BE MENTIONED IN CREDIT OR DEBIT NOTE (Section 45):

(1) A credit or debit note, shall be issued from the VAT or retail invoice book and shall contain the following information:-

(a) Words "debit note' or credit note" shall be written on the invoice prominently.

(b) The name, address and registration number of the person to whom issued.
(c) Number and date of invoice to which credit or debit note relates.
(d) Brief explanation about issuance of debit or credit note.
(e) The value of goods and the amount credited or debited along with tax effect.
(2) The note shall carry the date of issue and signature of proprietor or partner or director or authorized agent.

Thus the value of the goods at which the goods are sold or transferred other then by way of sale is required to be mentioned on the retail invoice on the transfer of good sin or outside the State.

RULE 57. PARTICULARS AND INFORMATION TO BE METNIONED IN A DELIVERY CHALLAN (Section 45 and 51):

(1) A delivery challan for transfer of goods other than by way of sale, shall be issued from duty bound book, except when the challans are prepared on computer or any other electronic or mechanical device. It shall be atleast in triplicate. The first copy shall be for purchaser or consignee. The second copy shall be for the transporter. The last copy shall be retained by the consignor. The serial number shall be printed by a mechanical process.

(2) A delivery challan shall contain the following particulars:-
(a) The words, "Delivery Challan" shall be prominently printed on the documents.
(b) Serial number of Form VAT-36 in case of interstate transaction.
(c) Date of transfer of goods.
(d) Name, address and registration number of the consignee.
(e) Description of goods, weight, quantity, estimated price per unit and total estimated value of goods.
(f) Mode of transportation of goods and details thereof.
(g) Signature of the Consignor.

Without going deep into the issue with regard to the estimated value of goods, lest the designated officer may be influenced by the findings given, I leave it to the Designated Officer to assess the estimated value of the finished goods to be sold inside and outside the State for the purposes the notional tax liability during the relevant period. The Designated officer would also make definite findings whether the primary freight has been included in the so called estimated value as assessed by the Designated Officer earlier.

However while examining the validity of the order in the light of the arguments raised by both the counsel, I am of the opinion that no fault could be found with the impugned order for the reason that the First Appellate Authority has not given any specific findings regarding estimated value of the finished goods rather the issues were left to the Designated Officer to be decided. The First Appellate Authority did not enhance any assessment, so that the order could be treated as adversely affecting the rights of the appellant. Therefore, the judgment delivered in case of State of Haryana vs. Frick India Ltd. Sales Tax Cases Vol. 71 page/148 would not apply to the facts of the present case. The Punjab Value Added Tax Act as well as Punjab General Sales tax do not debar the appellate court to pass any just and appropriate order which may be the outcome of the facts, circumstances, the evidence and the law prevailing at that time. The order 41 Rule 33 of the CPC vests the appellant court with the wide powers to pass any decree or make any order which ought to have been passed, which the facts and circumstances of the case may require.

Though, the Punjab Value Added Tax Act is complete code, however the principles as enshrined in the order 41R33 of the Code of Civil Procedure being procedural in nature could be used have assistance and elucidation in adjudication of the issues particularly when Punjab

Value Added Tax Act has also vested the Appellate Court with the similar powers (though not elaborately explained) . Section 62(7) of the Act reads as under:-

(7) In deciding an appeal, the appellate authority, after affording an opportunity of being heard to the parties, shall make an order-

(a) Affirming or amending or cancelling the assessment or the order under appeal; or

(b) may pass such order, as it deems to be just and proper. Order 41 Rule 33 CPC reads as under:-

> ***33. Power of Court of Appeal -*** *The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may be require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection. [and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees]:*
>
> > *[Provided that the Appellate Court shall not make any order under Section 35-A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.]*

19. On conjoint reading of the aforesaid provisions, the Tribunal is of the opinion that irrespective any appeal or revision, the appellate court has all ample powers to set right the order which may be faulty; in conflict with the basic tenets of law, completely against the evidence and non speaking. However, the appellate court, if passing any judgment, is of the view that it is adversely effecting the rights of the parties and would result in miscarriage of justice, then it may pass such order after giving due notice to the effected party(s). In other words, if any claim as awarded in favour of the party is being decreased or any penalty is enhanced, then such appellant must be heard/ But under Tax statues, the Courts have interpreted the words "pass such order as he thinks fit" in the manner that the Appellate Authority is competent to confirm, reduce, enhance annual tax or penalty. Reference if any could be made to the judgment delivered in case (1908)-109-STC-169 (Raj) Kailash Takles vs State of Rajasthan. Even otherwise, in the present case the respondents had filed a revision petition before Excise and Taxation Commissioner against some findings returned by the Designated Officer, but after the Appellate Authority remitted the case for fresh decision after clarifying the findings (returned by the Designated Officer), the respondents had withdrawn the petition. The relevant part of the order is reproduce as under:-

> *"It has come to my notice that DETC Appeals has set aside the impugned order and remanded the case to Assistant Excise and Taxation Commissioner, Ropar with following directions:-*
>
> > *"So, considering all the submissions as discussed above, I set aside the assessment order under appeal ad remand the case back to Assistant Excise and taxation Commissioner-cum-Designated Officer, Ropar to frame a denovo assessment by considering all the relevant factors and after hearing the appellant/assessee, so that due justice under law is done to the assessee and state exchequer. Assessment must be framed within two months from the receipt of certified copy of this order."*

In any case, the findings returned by the Appellate Authority do not adversely effect the rights of the appellant with the order of remand because the order passed by the Deputy Excise and Taxation Commissioner is in no manner beyond his jurisdiction. He has doubted the order being non speaking and directed the Designated Officer to pass the reasoned order. The words "would clarify" indicate a speaking order. If it is a case of double counting of primary freight, then the Designed Officer would go into it. At the same time, the Designated Officer would also examine as to what is the same value/estimated value of finished products for the purpose for assessing the notional sales tax liability and thereafter would frame a de novo assessment. Nothing aforesaid would be taken as final and conclusive but the designated officer would passed by the higher authorities.

20. Resultantly, finding no merit in the appeals, the same are dismissed. A copy of judgment be placed in each file.

21. Pronounced in the open court.

PUNJAB VAT TRIBUNAL

APPEAL NO. 14 OF 2015

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KESHAV IMPEX
Vs.
STATE OF PUNJAB

JUSTICE A.N. JINDAL, (RETD.)
CHAIRMAN

29th June, 2015

HF ▶ Assessee

In the absence of Bill of lading and agreement between parties the sale cannot be treated as high sea sale and is hence liable to be taxed.

HIGH SEA SALE – EVASION OF TAX – INSPECTION OF BUSINESS PREMISES – GOODS FOUND TO BE IMPORTED FROM PAKISTAN INTO PUNJAB – INCOMPLETE ACCOUNT BOOKS FOUND – GOODS IMPORTED ALLEGED TO BE SOLD AS HIGH SEA SALE THEREBY REQUIRING NO PAYMENT OF TAX – ABSENCE OF BILL OF LADING / BILL OF ENTRY – NO EVIDENCE FOUND IN THE ACCOUNT BOOKS OF THE ALLEGED BUYERS REGARDING HIGH SEA SALE MADE BY THE APPELLANT – NO AGREEMENT BETWEEN THE PARTIES PRODUCED – NO COMMUNICATION OF THE SAID SALE TO THE CUSTOM AUTHORITY- SALE IN QUESTION COULD NOT BE TREATED AS HIGH SEA SALE – HELD LIABLE TO BE TAXED – APPEAL DISMISSED. *SEC 3 AND SEC 5 OF CST ACT.*

On inspection of business premises it was found that the dealer was importing cement and sugar but no tax was accounted for. It was alleged that the goods were disposed off as 'high sea sales' and no tax was liable to be paid since the cement has been sold before it entered into the custom frontiers of India. On enquiry from the alleged buyers, no evidence regarding the sales by the appellant was found from their account books. Thus an additional demand was raised. The first appeal was dismissed. On appeal before Tribunal, the contention of the appellant was rejected as no evidence regarding delivery of goods (taken by two dealers as purported)has been placed on record. No bill of lading or agreement between the parties has been produced which is to be signed after dispatch from origin but before arrival at destination. The onus is on the appellant to establish that the sale of such goods had taken place as per Customs Act and sec 3 and sec 5 of the CST. Therefore, absence of Bill of lading / bill of entry and without communication of the said sale to custom authority of India the alleged sale could not be treated as 'high sea sale' and is liable to be taxed.

Present: Mr. Bal Krishan Gupta, Advocate Counsel for the appellant.

Mrs. Sudeepti Sharma, Deputy Advocate General for the State

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JUSTICE A.N. JINDAL,(RETD.) CHAIRMAN

1.This appeal is directed against the judgment dated 29.10.2014 passed by the First Appellate Authority whereby the appeal of the appellant against the order dated 6.5.2014 passed by the Excise and taxation Officer creating additional demand to the tune of Rs. 1,74,174/- was dismissed.

2. Briefly stated, the facts of the case are that on 8.5.2013, on surprise inspection of the business premises of M/s Keshav Impex, Jagraon TIN No. 03062097160 by a team of the officers of the Excise and taxation Department, it came to liht that the firm was conducting the business of cement and sugar while importing the same from Pakistan, but the tax was not accounted for by the appellant. Shri Rajesh Singla, Partner of the above firm disclosed that all the cement imported from Pakistan was disposed off by them as "High Sea Sales". In this regard, they were maintaining a manual bill book at Amritsar International Border and the other books of account were mainainined on their computer. He has further stated that there was no other sale office, godown or branch office of the appellant firm. Copies of sales account, purchase account etc. Were obtained and placed for further verification. One examination of the books, the same were not found to be complete. A Bundle containing documents relating the year 2012-13, which was found lying in the premises, was taken into possession. The statement of Shri Kumar Gaurav, Manager was recorded and the appellant was directed to appear before the Designated Officer on 09.05.2013 to produce all the books of account.

3. On 16.05.2013 another partner Shri Rohit Singla appeared and placed on record some documents allegedly relating to some sales made on High Sea which were placed on record.

4. The case was thereafter adjourned to 24.05.2013, 29.05.2013, 13.06.2013 and 19.06.2013, but the appellant or his representative did not turn up for clarification and evidence. Thereafter, a notice for appearance was issued for 1.7.2013.

5. On 1.7.2013 Shri 'Kumar Gaurav, Manager of the appellant firm appeared before the Excise and Taxation Officer, _Jagraon through Shri Jagdish Rai Garg, Advocate and presented the written arguments. Wherein he contended that the appellant was not liable to pay any tax as the cement has been sold before the same entered into the custom frontiers of India. The counsel was directed to produce the attested copies of the list of goods lying at the ICP, Attari (Amritsar) and all bank statements relating to the sales. The Counsel sought the dates' for the said purpose and the case was adjourned upto 12.8.2013.

6. On 12.8.2013 Shri Jagdish Rai Garg produced a bank statement. He was directed that he should make clear about the payments received in respect of Imports at the High Sea and the Sales thereof, effected during the period in question. At this, the counsel started seeking dates on one pretext or the other. In the meantime, the Excise and Taxation Officer, Jagraon collected the information from the Custom Authorities Amritsar about the quantum, of cement received by the appellant firm and the Taxation Authorities of other relevant states about the existence and functioning status of the consignee dealers in those States and the quantum of goods received by him by way of purchase. On examination 'of the report, it transpired that the appellant had not supplied the correct information and actually no High Sea Sales were made by the appellant. It was a modus operandi adopted by the appellant for evading the payment of tax. On receipt of the report, the Excise and Taxation Officer, Jagraon again issued a. notice to the appellant on 13.12.2013 for 12.2.2614 to clarify his stand in the light of reports, but the appellant continued getting the dates. In the meantime, similar information was received from the dealers to whom the appellant had allegedly supplied the cement i.e. M/s Krishan Steel Corporation, Una (HP) and M/s Anil Trading Company, Delhi, who had verified that the appellant firm had not made any High Sea Sales to them. The Excise and Taxation Officer

tried to verify sales from the account books of the appellant, but the said sales could not be verified from his account books. Thus, the Excise and Taxation Officer vide order dated 6.5.2014 created the additional demand. The Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana dismissed the appeal.

7. I have heard the arguments raised by both the parties.

8. The first contention raised by the appellant is that the respondents have not agreed with his contention solely ground that the two purchasing 'partners M/s Krishan Steel Corporation, Una (HP) and M/s Anil Trading Company, Delhi have not shown the alleged transaction made to them as "High Sea Sales" in their returns filed before the concerned authorities of the department of Himachal Pradesh and Delhi respectively. It was also argued that this fact, merely should not be sole ground to impose the tax as the goods could be verified from the custom authorities. He further 'urged that since delivery of the imported cement was not taken by the appellant and the transfer had already taken place before 'the goods entered into the custom frontiers of India, therefore inference should be drawn that the goods stood sold at the 'high seas. I do not find myself in agreement with contentions as raised by the appellant. No document with regard to the delivery of the goods (taken by two dealers) has been placed on the record. The copy of the relevant information sheet w.e.f. 1.4.2013 to 8.5.2013 regarding the High Sea Sales made by the said firm has been produced before me which reveals that M/s Krishan- Steel Corporation, Una (HP) had received the supplies of cement, but there is nothing to indicate whether the said cement was purchased by these firms from the appellant firm at the High Seas. No bill of lading/bill of entry or agreement between the appellant and the alleged dealers, which may have been entered between the parties when the goods were at the High Seas, has been produced by the appellant firm to prove the sale at the High Sea. There is evidence that a surprise- inspection of the "business premises of the firm was conducted on 8.5.2013 whereupon, it came to light that the cement imported from Pakistan by the appellant has been disposed off by the appellant firm as "High Sea Sales." Thus, the onus was upon the appellant to establish that the appellant had completed the process with regard to sale of such goods as per customs Act and Section 3 and 5 of the Central Sales Tax Act which are reproduced as under :-

Section 3:-

When is a sale or purchase of goods said to take the Course of inter-State trade or commerce:- *A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase-*

(a) occasions the movement of goods from one State to another; or

(b) is effected by a transfer of documents of title the goods during their movement from one State to another.

Explanation 1. *Where goods are delivered to a carrier or other bailee for transmission, the movement of goods shall, for the purpose of clause (b), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee.*

Explanation 2. *Where the movement of goods commences and terminates in the same State it shall not deemed to be a movement of goods from one State, to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State.*

Section- 5:-

When is a sale or purchase of goods said to take place in the course of import or export:(1) *A sale or purchase of goods shall be deemed to take place in the course of*

the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title of the goods after the goods have crossed the Customs frontiers of India.

(2) A sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the Customs frontiers of India.

(3) Notwithstanding anything contained in sub-section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods lout of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the 'purpose of complying with, the agreement or order for or in relation to 'such export.

(4) The provisions of sub-section (3) shall not apply to any sale or purchase of goods unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner, a declaration 'duly filled and signed by the exporter to whom the goods are sold in a prescribed form obtained from the prescribed authority.

9.The term High Sea Sales is used when the goods are transferred by the consigner to a' consignee while the goods are yet on the High Sea or after their dispatch from the port/airport of origin and before their arrival at the port/airport of destination.

10. The High Sea Sales are always under a contract/agreement which should be signed after dispatch of goods from origin and prior to their arrival at destination. The agreement should be on stamp paper. On concluding the High Sea Sales agreement, the bill of lading (B/L) should be endorsed in favour of the new buyer. In respect of air shipment, High Sea Sales seller should write to the airline consol agent informing that the High sea Sales agreement has been established with the High Sea Sales buyer and that the carried document should therefore be considered as endorsed in favour of the High Sea Sales buyer and further Import General Maniface (IGM) should be filed by the carrier in the name of High Sea Sales buyer. If the electronic data interchange (EDI) system allows name of the High Sea buyers to be entered in the system, then there may not be any need to amend the import general maniface (IGM). If the system has no provision for showing the name of High Sea buyer on the B/E, then the import General Maniface should be got amended and B/E tiled in the name of High Sea buyer.

11. In the case of High Sea Sales, the cargo in freight (CIF) value for calculation of duty is taken to be High Sea Sales value. In..the High Sea Sales contracts, the High Sea seller may not like to disclose the import value to the High Sea buyer. However, the customs can call for the original import invoice, in which the case of High Sea seller may have to part with this information. To overcome this, High Sea seller should take on the responsibility of custom clearance or site delivery. After custom clearance, the High Sea seller could withdraw import invoices and only hand over clearance documents, with the High Sea Sales agreement to the High Sea buyer.

12. High-Sea Sales is considered as a sale carried out outside the territorial jurisdiction of India. Accordingly, no sale tax is levied in respect of High Sea Sales. The customs document (bill of entry) is either filed in the name of High Sea Buyer or such Bill of Entry should have an endorsement indicating High Sea Buyer's name. The title of goods transfers to High Sea buyer prior to entry of goods in territorial jurisdiction of India, the relevant provision of the Central Sales Tax Act in case of High Sea Sales are again pointed out as under :-

Sub Section (2) of Section 5 of the Act says that the sale is deemed to take place in the course of import, on fulfilling of the following conditions:-

a) the sale or purchase either occasions such import, or

b) is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontier of India.

Section 2(4) of the sales of goods Act, 1930. defines " documents of title to goods." According to this section

" The documents of title to goods ' include a bill of lading, dock warrant, warehouse-keeper's certificate, wharfinger's certificate, railway receipt, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof to the possession or control of goods purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented."

The bill of lading is also considered to be a document to title and the sale can be made by endorsement, delivery or by mere delivery of a blank bill of lading before the goods cross the customs frontier.

In Dictionary' of English Language by Eari Jowitt, "document of title" has been defined as a document which enables the possessor to deal with-the property described in it, as if he were the owner. As per this dictionary also, it is mentioned that some documents of title (e.g. Bill of Lading) pass the ownership of goods represented by them, while other documents such as delivery order and dock warrant are merely the authority letters to obtain delivery of the goods.

In Ramdas Vs. S.Amer Chand & Co. (43 I.A.) 164 40 Bom.630) the Judicial Committee, alter referring to the expression "document of title" as defined in the Indian Contract Act, 1872 laid down that whenever any doubt arises as to whether an particular document is a "document showing title", or a "document of title" to goods for the purpose of Indian contract Act the test is whether the document in question is used in the ordinary course of business, as proof of the possession or control over goods, or it authorizes or purports to authorize, either by endorsement or deliver, the possession of the documents to transfer or receive the goods thereby represented. A receipt certificate regarding custody of goods or any such document can't be termed as a document of title, unless it is used in the ordinary course of business as the document to the goods.

The AWB is not considered as negotiable instrument, but it is contract regarding carriage of goods. On face of AWB it is mentioned as "not negotiable". Similar observations were made in case of M/s Nawrojee Wadia & Sons (P) Ltd., (S.A. 42 of 1989 dated 4.5.1990). In this case Maharastra Sales Tax Tribunal observed that AWB is not a negotiable instrument and no high sea sale can be effected by transfer of such AWB.

13. Now coming to the facts and circumstances of the present case, it is noticed that the appellant has shown the "High Sea Sales" to M/s Krishan Steel Corporation, Una (H.P.)for Rs.1,22,32,054/-, but the said sale could not be verified from account books of the appellant. Furthermore, M/s Krishan Steel Corporation," Una has not shown this purchase of High Sea Sales in question in its returns as it has not filed any returns to his respective department. The certificate received from the Assistant Excise and Taxation Commissioner, Una vide letter No.EXN/Una-Vat-2173, dated 10th April, 2014 at entry No.5 shows that M/s Krishan Steel Corp., Barnoh ,TIN No.O280400423 .has not tiled any return for the said period and its RC was cancelled on 13.9.2013'. Copy of the certificate has been placed on the record as Annexure-I. The appellant has also shown that he had sold the goods to M/s Anil Trading Co., Delhi for Rs.68,54,460/- during the year 2013-14 which could not be verified from the account

books of the appellant. It may further be' observed that M/s Anil Trading Co., Delhi has not shown this purchase of High Sea Sales in question in their returns' as it has filed 'Nil' returns to his respective department. The certificate received from the Assistant Commissioner, VAT (Ward-76) New Delhi vide letter No. T&T/Deptt./W076/2013-14/1589 dated 25th Feb., 2014 shows that M/s Anil Trading Co., Delhi TIN No. 07410458814 has filed Nil return for the said period. Copy of the certificate in this regard is Annexure-II.

14. On scrutiny of the aforesaid evidence and after considering all the circumstances prevailing over the case, it transpires that in the absence of any bill of entry/bill of lading and without communication of the said sale to the custom authorities in India, the alleged transfer of cement which laded in Punjab from Pakistan could not be treated as High Sea Sales, therefore liable to be taxed.

15. No other argument has been raised.

16. Resultantly, finding no merit in the appeal, the same is dismissed.

17. Pronounced in the open court.

CLARIFICATION (PUNJAB)

BEFORE SH. ANURAG VERMA, IAS,
EXCISE & TAXATION COMMISSIONER PUNJAB

Querist : JH METALS (Jalandhar)

1st April, 2015

Stainless steel bars and rounds are declared goods covered under sec 14 of CST Act and hence taxable @ 3.8%.

Brass forgings are unlike metal castings and taxable as unspecified item @ 14.30%.

ENTRIES IN SCHEDULE – STAINLESS STEEL BARS AND ROUNDS- AS PER ENTRIES IN CLAUSE IV OF SEC 14 OF CST ACT, STAINLESS STEEL BEING AN ALLOY FORMS A SPECIAL TYPE OF STEEL WHICH FALLS UNDER HEADING ix OF CLAUSE IV OF SEC 14 OF THE ACT – STEEL ROUNDS ARE COVERED UNDER ENTRY iv OF CLAUSE IV OF SEC 14- STAINLESS STEEL BEING A SPECIAL TYPE OF STEEL, THE ROUNDS MADE OF STAINLESS STEEL ALSO FALL UNDER THE SAME HEADING – THEREFORE, STAINLESS STEEL BARS AND ROUNDS FALL UNDER DECLARED GOODS U/S 14 OF CST ACT AND ARE TAXABLE @ 3.85%

ENTRIES IN SCHEDULE – BRASS FORGINGS – CLAIMED TO HAVE SAME OBJECT AS METAL CASTINGS FALLING UNDER ENTRY 70 OF SCHEDULE B OF PVAT ACT – DIFFERENCE FOUND IN TWO COMMODITIES – TAXABLE @ 14.30%.

The applicant has sought clarification regarding the taxability of stainless steel bars and rounds (Black and bright) claiming it to be falling under entry 14 of CST Act. To determine the answer, chemical composition of the item has to be studied. It is an alloy of iron which contains 11% chromium often combined with nickel to resist corrosion. On perusal of entries , it is observed that the stainless steel being an alloy forms a special type of steel which falls under the heading (IX) of clause IV of sec 14 of CST Act, 1956. Steel rounds are observed to be covered under entry no(iv)of clause IV of sec 14 and stainless steel being a special type of steel, the rounds made out of it would fall under the same heading meaning thereby that stainless steel bars and rounds fall under the category of declared goods u/s 14 of CST Act, 1956 and are thus taxable @ 3.85 %

Regarding rate of tax on Brass forgings it was alleged to have the same object as Metal castings which fall under entry 70 of PVAT Act. But the two are formed differently and are distinct commodities. Therefore, it is taxable @ 14.30% including surcharge.

ORDER

1.M/s JH Metals, 105, Industrial Area, Jalandhar has made an application before the undersigned U/s 85 of the PVAT Act, 2005 seeking determination of a question.

2.The applicant is registered under the Punjab VAT Act, 2005 holding TIN 03591136520 and is in the business of trading of Stainless Steel bright bars and rounds, stainless steel rounds.

3.The requisite fee has been deposited by the applicant in the government treasury. He has also certified that no proceedings relating to the issue involved in this question are pending at the level of the Designated Officer or at the appellate level.

4.The applicant has sought determination of the following question:

"What is the rate of tax on Stainless Steel Bars and Rounds (Black and Bright)?

"What is the rate of tax on Rough Brass Forgings (Without machining)?"

5.Sh GR Sethi Advocate and Sh Jatinder Bahri Proprietor of the firm appeared before the undersigned and submitted that they are under the impression that the goods i.e. Stainless Steel Bars and Rounds (Black and Bright) fall in the category of declared goods U/s 14 of the CST Act, 1956 and are thus taxable @ 3.85%.

6.They further submitted that K Chaturvedi in his book on Central Sales Tax Act, 1956 stated that in communication no 4(2) ST/58 dated 12/11/1958 the department of Economics Affairs, Govt of India, clarified that stainless steel comes under the category of tool alloy. Ordinarily tool alloy is that steel, mixed with some other metal from which tools are generally made and that stainless steel is a type of tool alloy steel.

7.They also prayed that the tax on Rough Brass Forgings (without machining) be clarified as Entry No 70 of Schedule B of the Punjab VAT Act, 2005 contains "Metal Castings" only but not forging, however the object of both casting and forging is the same.

8.To determine the tax on Stainless Steel Bars and Rounds the Chemical Composition of Stainless Steel, the provisions of the Punjab VAT Act and the CST Act are to be examined. As per Entry No 21 appended to Schedule E of the Punjab VAT Act, 2005 the Iron and Steel goods (except non-cenvat paid iron and steel scrap) enumerated in the Section 14 of the CST Act, 1956 are taxable at 3.85% (including surcharge). The said entry reads as under;

"Iron and Steel goods as enumerated in Clause-IV of section 14 of Central Sales Tax Act, 1956 except Non-Cenvat paid Iron and Steel Scrap."

9.The goods as enumerated in Clause-IV of Section 14 of the CST Act, 1956 are as under;

"[(IV) Iron and steel, that is to say,-

pig iron (sponge iron) and cast iron including (ingot moulds, bottom plates), iron scrap, cast iron scrap, runner scrap and iron skull scrap;

steel semis (ingots, slabs, blooms and billets of all qualities, shapes and sizes);

skelp bars, tin bars, sheet bars, hoe-bars and sleeper bars;

steel bars (rounds, rods, squares, flats, octagons and hexagons, plain and ribbed or twisted, in coil form as well as straight lengths);

steel structurals (angles, joists, channels, tees, sheet piling sections, Z sections or any other rolled sections);

sheets, hoops, strips and skelp, both black and galvanized, hot and cold rolled, plain and corrugated, in all qualities, in straight lengths and in coil form, as rolled and in riveted condition ;

Plates both plain and chequered in all qualities

discs, rings, forgings and steel castings ;

tool, alloy and special steels of any of the above categories;

steel melting scrap in all forms including steel skull, turnings and borings;

steel tubes, both welded and seamless, of all diameters and lengths, including tube fittings ;

tin-plates, both hot dipped and electrolytic and tin-free plates;

fish plate bars, bearing plate bars, crossing sleeper bars, fish plates, bearing plates, crossing sleepers and pressed steel sleepers, rails--- heavy and light crane rails;

wheels, tyres, axles and wheel sets;

wire rods and wires-rolled, drawn, galvanized, aluminized, tinned or coated such as by copper;

defectives, rejects, cuttings or end pieces of any of the above categories;]"

10. Stainless Steel is an alloy of Iron which contains a minimum of 11% Chromium often combined with nickel to resist corrosion. On perusal of the entries it is observed that the stainless steel being an alloy forms a special type of steel which falls under the heading (ix) of Clause IV of Section 14 of the CST Act, 1956.

11. Furthermore, Steel Rounds are covered under the entry no (iv) of Clause IV of Section 14 of the CST Act, 1956 and Stainless Steel being a special type of steel, the rounds made of stainless steel also fall under the same heading meaning thereby that Stainless Steel Bars and Rounds fall under the category of declared goods U/s 14 of the CST Act, 1956 and are thus taxable @ 3.85%

12. To determine the rate of tax on Rough Brass Forgings, the two commodities i.e. Forgings and Castings are to be identified as the same or two different commodities.

13. Castings are formed when the material is heated above its melting temperature and poured into a mold where it solidifies and Forgings are physically forced into shape while remaining in a solid state – although it is frequently heated. Forgings normally have less surface porosity, finer grain structure, higher tensile strength, better fatigue life/strength, and greater ductility than castings. Castings and Forgings are therefore two distinct commodities. Furthermore, Entry no 70 of Schedule B only contains Metal Castings and not Mouldings.

14. As discussed above I have carefully considered the facts and the submissions made by the applicant and thus the queries raised by the applicant are answered as under:-

Stainless Steel Bars and Stainless Steel Rounds are covered under declared goods U/s 14 of the CST Act, 1956 and are thus taxable @ 3.85%.

15. Brass Forgings are neither covered under the Entry No 70 "Metal Castings" as appended to the schedule B of the Punjab VAT Act, 2005 and nor covered under Section 14(IV) of the CST Act, 1956 and thus taxable @ 14.30% (including surcharge).

16. The question is therefore determined accordingly.

CLARIFICATION (PUNJAB)

BEFORE SH. ANURAG VERMA, IAS,
EXCISE & TAXATION COMMISSIONER PUNJAB

Querist: PVR LIMITED (Ludhiana)

2nd March, 2015

Popcorns sold held to be taxable @ 14.30% being unspecified item.

ENTRIES IN SCHEDULE – POPCORN - CONTENTED TO BE FALLING UNDER ENTRY 123 OF SCHEDULE B TERMING IT AS NAMKEEN – HELD IN COMMON PARLANCE POPCORNS ARE DIFFERENT FROM NAMKEENS AS LATTER ARE PRESERVED UNLIKE POPCORNS WHICH ARE SOLD FRESH – POPCORNS DIFFER FROM NAMKEEN AS THERE ARE DIFFERENT FLAVOURS AVAILABLE UNLIKE NAMKEEN WHICH IS ONLY SALTED – HELD TO BE AN UNSPECIFIED ITEM TAXABLE @ 14.30 %.

Applicant has sought clarification regarding rate of tax applicable on popcorns. It is contended that since popcorns is a salty Indian snack food, it falls under category of namkeen. It is held that no entry speaks of the method of preparation of snacks or namkeen. As per common parlance namkeen and bhujia mean fried sev or dal which is manufactured using preservatives to increase shelf life whereas popcorns are sold freshly popped. Popcorns are not sold in namkeen shops usually. Also namkeen is salted while popcorns are available in different flavours. Therefore, popcorn is an unspecified item taxable @ 14.30%.

Case referred:
Central Excise, Pune- III Vs M/s Frito Lay India
M/s Pepsi Foods Ltd Vs Commissioner of Cus & C Ex Chandigarh – II

Case relied upon:
M/s Porritts & Spencer (Asia) Ltd. A Vs State Of Haryana (1978)-42-STC-433 (SC)

ORDER

1. M/s PVR Limited, #Flamez Mall, 755, Gurdev Nagar, Ferozepur Road, Ludhiana has made an application before the undersigned U/s 85 of the PVAT Act, 2005 seeking determination of a question.

2. The applicant is registered under the Punjab VAT Act, 2005 holding TIN 03492030915 and is in the business of cinema exhibition and retail entertainment.

3. The requisite fee has been deposited by the applicant in the government treasury. He has also certified that no proceedings relating to the issue involved in this question are pending at the level of the Designated Officer or at the appellate level.

4. The applicant has sought determination of the following question:

"What is the rate of tax on Popcorn?"

5. Sh Chetan Jain Advocate of the firm appeared before the undersigned and submitted that the company 'PVR' sells a variety of Popcorns (i.e. popcorns with topping of cheese), caramel popcorn (i.e. popcorns with topping of caramel) etc. Popcorn sold by the company consists of the following ingredients: Puffed Corn (i.e. the corn puffs up when heated in popcorn machines installed at the cinemas of the company), Oil/Butter, salt and other spices.

6. To substantiate his claims that Popcorn falls under the category of Namkeen, he quoted the Judgment of Hon'ble Supreme Court of India in the case of Commissioner of Central Excise, Pune- III Vs M/s Frito Lay India and the Judgment of CEGAT Court in the case of M/s Pepsi Foods Ltd Vs Commissioner of Cus & C Ex Chandigarh – II.

7. He then submitted that as per the dictionary meaning of the word Namkeen, "it is any savory snack also regarded as salty Indian snack food" and Popcorn is defined as "maize kernels when popped, typically eaten as a snack". Hence the company is of the bonafide belief that popcorn falls under the category of Namkeen.

8. Furthermore, he submitted that even as per the common parlance test Popcorn falls in the category of Namkeen.

9. The learned counsel then submitted that as per the VAT Acts of other states popcorn has been classified as Namkeen and supported the same by producing the relevant entries of the said Schedules of other states.

10. Lastly the counsel prayed that considering his submissions and the Judgments quoted by him, Entry No 123 of Schedule B i.e. Namkeen shall be interpreted to include Popcorn as a Namkeen and thus taxable at 6.05%.

11. I have carefully considered the submissions made by the applicant and opine as under:-

> *The judgment of the Hon'ble Supreme Court of India quoted by the learned counsel in the case of Commissioner of Central Excise, Pune- III Vs M/s Frito Lay India deals with the fact that whether Cheetos Masala Balls/ Puffs fall under the heading of prepared foods obtained by swelling or roasting of cereal or cereal products or under the residual heading of Central Excise. In the instant case under the provisions/schedules of the Punjab VAT Act no entry speaks of the method of preparation of snacks or namkeen and only contain a specific entry i.e. Namkeen. Therefore the judgments quoted are irrelevant and do not support the contention of the appellant.*

12. As per the judgment of Hon'ble Supreme Court of India in the case of M/s Porritts & Spencer (Asia) Ltd. A Vs State Of Haryana (1978)-42-STC-433 (SC) it is held that in a taxing statute words of everyday use must be construed not in their scientific or technical sense but as understood in common parlance, meaning "that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it." Where a word has a scientific or technical meaning and also an ordinary meaning according to common parlance, it is in the latter sense that in a taxing statute the word must be held to have been used, unless contrary intention is clearly expressed by the Legislature. Applying the principle laid down by the Hon'ble Supreme Court of India, in common parlance Namkeen and Bhujia would mean fried sev or dal which is manufactured using preservatives to increase its shelf life whereas Popcorns are sold freshly popped. Moreover generally Popcorns are not sold on namkeen shops.

13. Also Namkeen & Bhujia is mostly salted whereas Popcorns are not just salted but are available in different flavors like cheese, caramel, tomato etc.

14. Therefore, I am of the considered view that "Popcorn" is an unspecified item and does not fall under Entry No 123 of Schedule B of the Punjab VAT Act, 2005 i.e. "Unbranded Namkeen & Bhujia" and is therefore taxable at 14.30% (Including Surcharge).

15. The question is therefore determined accordingly.

CLARIFICATION (PUNJAB)

BEFORE SH. ANURAG VERMA, IAS,
EXCISE & TAXATION COMMISSIONER PUNJAB

Querist: RICH GRAVISS PRODUCTS PVT LTD (Mohali)

13th April, 2015

Non dairy whip topping cream is considered to be a finished product unlike industrial input and taxable as an unspecified item @14.30% including surcharge

ENTRIES IN SCHEDULE – WHIP TOPPING CREAM – ALLEGED TO BE RAW MATERIAL FALLING UNDER 'INDUSTRIAL INPUTS' OF SCHEDULE B OF PVAT ACT - CONTENTION REJECTED TERMING IT AS FINISHED PRODUCT - HELD TO BE A SEPARATE COMMODITY – FOLLOWING THE JUDGEMENT PASSED BY ALLAHABAD HIGH COURT HELD TAXABLE @ 14.30 % BEING UNSPECIFIED ITEM(INCLUDING SURCHARGE)

The applicant has sought clarification regarding rate of tax applicable on 'whip creram'. It is contended that this item is used as a raw material and should be classified as an industrial input under entry 58 of schedule B of the Act. This contention was rejected in view of the judgement passed in the case [2013] 57 VST 78 by Allahabad High Court. It is held to be a separate commodity and is a combination of several ingredients not a raw material or industrial input. Therefore, it is taxable @ 14.30% including surcharge being unspecified item.

Case followed:
[2013] 57 VST 78(AP)

Case relied upon:
A.P. Products V State of A.P [2007] 8 VST 373; [2007] 6 SCC 365

Case referred:
M/s Rich Graviss Products Pvt Ltd Vs Commissioner, Commercial Tax

ORDER

1. M/s Rich Graviss Products Pvt Ltd Khasra No 53/112, Pandwala, Mubarakpur Road, Derabassi, Mohali has made an application before the undersigned U/s 85 of the PVAT Act, 2005 seeking determination of a question.

2. The applicant is registered under the Punjab VAT Act, 2005 holding TIN 03682159093 and is in the business of manufacturing and sale of bakery products.

3. The requisite fee has been deposited by the applicant in the government treasury. He has also certified that no proceedings relating to the issue involved in this question are pending at the level of the Designated Officer or at the appellate level.

4. The applicant has sought determination of the following questions:

"Whether non-dairy whip topping cream sold by the petitioner company in the State of Punjab as an input to bakery industry is liable to tax under the entry appearing at Sr No 58 of Schedule B appended to the Punjab VAT Act, 2005?"

5. Sh Narendra Sharma Advocate of the firm appeared before the undersigned. On the basis of the test analysis and certificate issued by Dr RP Singh Professor Department of Oil and Paint Technology from Harcourt Butler Technological Institute, Kanpur he submitted that whip topping is prepared from fats and oils which is further used in the bakery and confectionery industry. He also submitted that the test analysis based report of National Agricultural and Food Analysis and Research Institute describes the product i.e. whip topping as:-

"This is to state that Rich's Whip Topping is an edible mixture of vegetable oil and fats, sugar, stabilizing emulsifying agents, flavors in water. Its chief component is oil. This product is not standardized under prevention of Food Adulteration Rules, 1955 and it is categorized as a proprietary food. He also placed reliance upon the judgment of the Hon'ble Commercial Tax Tribunal Uttar Pradesh in the case of M/s Rich Graviss Products Pvt Ltd Vs Commissioner, Commercial Tax in which the product under consideration is ruled to be placed under the Industrial Inputs and thus taxable @ 4% and the same was then upheld by the Hon'ble Allahabad High Court.

6. He further submitted that whip topping is like margarine, an emulsion of oil and water which is edible but not directly consumed by human beings and is used for icing and topping. Therefore whip topping is used as an industrial input and cannot be directly used but for further processing as needed.

7. For better reappraisal of the case, it is expedient to extract entry 58 of Schedule B to the Punjab VAT Act, 2005 which reads as under:

Entry 58 of Schedule B	Industrial Inputs and Packing Materials (as per list appended to the schedule)

List of Industrial Inputs and Packing Materials

Sl. No.	**Heading No.**	**Description of goods**
2	15118.00.10	Animal or vegetable fats boiled, oxidized, dehydrated, sulphurised, blown, polymerized by heat in vacuum or in inert gas or otherwise chemically modified; inedible mixtures or preparations of fats and oils of this chapter

8. As per the applicant's version whip cream is a mere raw material and not a final product. Raw material in general sense would mean "any substance, in its natural unprocessed state that serves as the starting point for a production or manufacturing process".

9. I have carefully considered the submissions made by the applicant and am of the view that Whip Topping is an outcome of the process of emulsification, pasteurization, homogenization, chilling and ageing of the combination of the solution of sugar and hydrogenated vegetable oil. Manufacturing of whip topping involves a series of processes and is a combination of different ingredients, viz., water, edible vegetable fat, sugar emulsifiers etc. In view of the same, Whip Topping cannot be considered industrial input or a raw material rather it is a finished product.

10. Reliance is placed on the judgment of apex court while dealing with a similarly placed matter in A.P. Products v. State of A.P. [2007] 8 VST 373 (SC); [2007] 6 SCC 365. The relevant para is reproduced as:

> *"We have heard the learned counsel for the parties at length and carefully examined various judgments cited by the appellant and the respondents. It is an admitted position that the ingredients which are used in preparation of masala after grinding and mixing lose their own identity and character and a new product separately known to the commercial world comes into existence. According to the ratio in Pyare Lal Malhotra's case [1976] 37 STC 319 (SC); [1976] 1 SCC 834 the sales tax is intended to tax sales of different commercial commodities and not to tax the production or manufacture of particular substances out of which these commodities may have been made. Since separate commercial commodities emerge into existence, they become separately taxable goods or entities for the purpose of sales tax."*

Applying the principle laid by the Hon'ble Supreme Court of India, in the instant case it is clear that Whip Topping is not an industrial input but a separate commodity for the purpose of taxing statue.

11. The applicant in support of his contention has placed reliance on the Judgment of a single bench Judge of Hon'ble Allahabad High Court in case of Commissioner, Commercial Tax Vs M/s Rich Graviss Products Pvt Ltd. However in the similar case of the appellant it is has been held by the Double Bench of The Hon'ble High Court of Andhra Pradesh cited as **[2013] 57 VST 78 (AP)**, that Whip Topping fell under the residuary Schedule V to the Andhra Pradesh VAT Act and is taxable at 12.5%. The Hon'ble Court observed as under:

> *"Held, dismissing the petition that raw material means "any substance, in its natural unprocessed state that serves as the starting point for a production or manufacturing process". The product in question was a combination of different ingredients, viz., water, edible vegetable fat, sugar emulsifiers, and, soy-protein concentrates, stabilizers, acidity regulators, salt and also contained natural and artificial flavor substances. In view thereof, it could not be said that the product was a raw material or industrial input. Individually the ingredients of the product in question may fall under entry 100 of Schedule IV to the Act and to be eligible to be taxed at four percent, but when the ingredients were mixed together, the product in question which emerged and was a combination of the ingredients would not fall under Entry 100 of Schedule IV to the Act liable to be taxed at four per cent."*

12. As the product in question i.e. Whip Topping Cream and the relevant provisions under the Punjab VAT Act and the Andhra Pradesh VAT Act are similar, the observations of the Hon'ble Andhra Pradesh High Court applies on the instant case. Therefore, in light of the above, I am of the considered view that Whip Topping is an unspecified item which does not fall under Entry No. 58 of Schedule B to the Punjab VAT Act, 2005 i.e. Industrial Inputs and is thus taxable @ 14.30% (including surcharge).

The question is therefore determined accordingly.

CLARIFICATION (PUNJAB)

BEFORE SH. ANURAG VERMA, IAS,
EXCISE & TAXATION COMMISSIONER PUNJAB

Querist: SPEED CRAFT INDUSTRIES (H.P.)

1st April, 2015

Entry tax is leviable onV shape cross arm as it falls under the category of steel fabricated material

ENTRY TAX – STEEL FABRICATED MATERIAL – V SHAPE CROSS ARM – SINCE MANUFACTURING V SHAPE ARM INVOLVES ALL THOSE STEPS AS REQUIRED BY STEEL FABRICATED ITEM AND A NEW COMMODITY EMERGES, THEREFORE, ENTRY TAX IS LEVIABLE AS IT FALLS UNDER STEEL 'FABRICATED MATERIAL'.

A clarification is sought regarding levy of Entry tax on V shape cross arm. Since the manufacturing process involves same steps as those required for manufacturing steel fabricated material and a new commodity emerges in the process, therefore, entry tax is leviable as it falls under the category of steel fabricated material.

ORDER

1. M/s Speed Craft Industries, Plot No 37-38, Industrial Area, Tahliwal, District Una, Himachal Pradesh have submitted an application before the undersigned U/s 85 of the PVAT Act, 2005 seeking determination of a question.

2. The applicant is in the business of manufacturing of 'V Shaped Cross Arms' in Himachal Pradesh and are selling the same to Punjab State Power Corporation Limited.

3. The requisite fee has been deposited by the applicant in the government treasury. He has also certified that no proceedings relating to the issue involved in this question are pending at the level of the Designated Officer or at the appellate level.

4. The applicant has sought determination of the following question:

a) *"Whether V Shape Cross Arms is covered under the term Steel Fabricated Material and the same is liable to Entry Tax or Not?'*

b) *"Whether Entry Tax could be charged on the 'V Shape Cross Arms'?*

5. Sh Avneesh Jhingan Advocate of the firm appeared before the undersigned and submitted that the applicant is a manufacturer of V Shape cross arms in the State of Himachal Pradesh and are selling the same to Punjab State Power Corporation Ltd who is the sole purchaser in the State of Punjab.

6. He further stated that as per the clarification given by this office bearing no VAT-7-10/4472-2501 Patiala Dated 06/09/2010, it has been clarified that the entry tax on Steel Fabricated Material has been levied to protect the local transformer industry. The items

specified in the steel fabricated material included V Shape Cross Arms. The same clarification was later withdrawn on 18/03/2011. He also stated that as per the clarification the applicant is not liable to pay entry tax on V Shape Cross Arms as his entire sales are to PSPCL and entry tax is leviable only when the item sold is used for installation of transformers used in transmission lines. As the product under consideration is neither used in installation of transformers nor is used in any way in transmission of electricity and is an independent commodity therefore entry tax is not leviable on 'V Shape Cross Arms'. However relying on the Government of Punjab notification No. S.O. 272/9/2000/S.3-A/2010 dated 18th August, 2010, the Punjab State Power Corporation Limited has been retaining 12.5% on account of entry tax on purchase of V-shaped cross-arms from the payments to be made to the applicant.

7. To determine whether Entry Tax is applicable on the commodity 'V Shaped Cross Arm' it is pertinent to examine that whether the said commodity falls under the category of Steel Fabricated Material or not. 'V Shape Cross arm' is essentially an item that finds its application in electricity and telephone lines. It is used in 33 kV and 11 kV overhead power lines and used to support electric wires and is a vital component in electrical distribution/transmission. V Shape Cross arm is generally made out of MS channel, hot dip galvanization. The V-Shaped Cross Arm is designed to fit for the specified rail & PSC poles. The cross arms are of MS channel/Angle and the cross arms have suitable holes for fixing of pin insulators. The holes of particular size and spacing can also be provided for fixing of pole back clamp to suit the pole. The manufacturing of Cross Arm involves Cutting of angle, punching on Power Press, bending, welding and finishing on grinding machine, drilling holes on drill machine and galvanization.

8. Fabrication as per the Oxford dictionary means, "The action or process of manufacturing or inventing something". In the process of manufacturing of steel fabricated items the raw material i.e. steel, channel, sheet etc are cut, punched, bended, welded, grinded, galvanized etc. These steps amount to manufacturing of a new commodity which falls under the category of Steel fabricated items. Since V Shape Cross Arms undergo all these processes and is a new commodity therefore it falls under the category of Steel Fabricated Item and thus is liable to Entry Tax.

The question is thus answered accordingly.

CLARIFICATION (PUNJAB)

LIST OF TRANSFERS AND POSTINGS OF ETOs

PUNJAB GOVERNMENT
EXCISE & TAXATION DEPARTMENT
(EXCISE & TAXATION -1 BRANCH)

ORDER

Keeping in view the public interest and administrative grounds the following transfers and postings of Excise & Taxation officers are made :-

Sr.No.	Name of Officer Sarvshri/Smt	From	To	Remarks
1	Maninder Pal Singh	ETO (VAT) Ludhiana-1	ETO Mobile Wing, Patiala	In place of Sh Anish Sharma
2	Naresh Pathak	Available for posting	ETO ICC Shambhu Export	In place of Sh Vinod Kumar Shah
3	Sandeep Sharma	Available for posting	ETO (VAT) Jalandhar-2	In place of Sh Balwinder Singh
4	S.S.Ruby	ETO (VAT) Nawan Shahr	ETO (VAT) Kapurthala	Against vacant post
5	Supnandandeep Uppal	ETO (VAT) Gurdaspur	ETO (VAT) Amritsar-1	In place of Sh Madhur Bhatia
6	Joti Saroop Kang	Available for posting	ETO, Main Distilleries Distt.Patiala	In place of Sh Rajbir Singh Sidhu.
7	Jagdeep Singh Sandhu	ETO (VAT) Moga	ETO, Om Sons Market (P) Ltd Bathinda	Against vacant post
8	Ravinandan Sharma	ETO (VAT) Fazilka	ETO ICC Doomawali	In place of Sh Hitesveer Gupta
9	Jaspal Singh	ETO Mobile Wing, Jalandhar	ETO (Excise) Hoshiarpur)	In place of Sh Avtar Singh Kang
10	Sushil Sharma	ETO (VAT) Ferozepur	ETO (VAT) Amritsar-2	Against vacant post
11	Rohit Garg	ETO E.I.U. Head Office, Patiala	ETO (VAT) Sangrur	Against vacant post
12	Sukhjit Singh Chahil	ETO ICC Attari Border	ETO (VAT) Amritsar-1	Against vacant post
13	A.S.Kang	ETO (Excise) Hoshiarpur	ETO (Excise) Ludhiana-1	In place of Sh Parminder Singh
14	Rajeev Sharma	Available for posting	ETO ICC Lalru	In place of Sh Harpreet Singh
15	Malkiat Singh	ETO (Excise) Amritar-1	ETO (Excise) Gurdaspur	Against vacant post
16	Inder Singh	ETO (VAT) Shree Muktsar Sahib	ETO ICC Talwandi Sabo	In place of Sh Yash Gill
17	Hukam Chand Bansal	Available for posting	ETO (VAT) Mohali	Against vacant post
18	Surinderpal Bansal	ETO (VAT) Barnala	ETO (VAT) Bathinda	Against Sh Malvinder Singh Dhillon
19	Hiteshveer Gupta	ETO ICC Doomawali	ETO ICC Dhabi Gujjra & Addl Charge ICC Kaithal Road, Khanori	On taking additional charge from Rajvir Singh Sidhu and Raghbir Singh.
20	Vishwdeep Bhangu	ETO (VAT) Fatehgarh Sahib	ETO (VAT) Head Office, Patiala	
21	Randhir Singh	ETO ICC Chak Sadhu	ETO Mobile Wing Amritsar	Against vacant post
22	Chand Rani	Available for posting	ETO Piccaddaly Sugar & Allied Industries, Patra	Against vacant post
23	Manohar Singh	ETO E.I.U. Head Office, Patiala	ETO (VAT) Patiala	In place of Sh Jasvinder Singh
24	Narinder Kaur	ETO (VAT) Sangrur	ETO (VAT) Ludhiana-3	Against vacant post
25	Manjit Singh	ETO (VAT) Jalandhar	ETO (VAT) Amritsar-2	Against vacant post
26	Kulvinder Verma	ETO Mobile Wing, Bathinda	ETO (VAT) Bathinda	Against vacant post
27	Akashdeep Singh	ETO Mobile Wing , Bathinda	ETO (VAT) Bathinda	Against vacant post
28	Sat Pal Singh	ETO Mobile Wing Jalandhar	ETO (VAT) Jalandhar-1	In place of Sh Pawan
29	Navjit Singh	ETO Mobile Wing Ludhiana	ETO (VAT) Ludhiana	Against vacant post
30	Manmohan Singh	ETO Mobile Wing Ludhiana	ETO (VAT) Ludhiana	Against vacant post
31	Pritpal Singh	ETO Mobile Wing, Patiala	ETO (VAT) Ludhiaa	Against vacant post
32	Anish Sharma	ETO Mobile Wing, Patiala	ETO (VAT) Sangrur	In place of Narinder Kaur
33	Vikram Dev Thakur	ETO Mobile Wing, Patiala	ETO (VAT) Ferozepur and additional charge of Mobile Wing Fazilka	In place of Sh Ravinandan Sharma
34	Abhishek Duggal	ETO Mobile Wing, Chandigarh	ETO (Excise) Ludhiana01	In place of Sh Maninder Singh
35	Simrandeep Brar	ETO Mobile Wing Chandigarh	ETO (VAT) Mohali	Against vacant post
36	Gurjit Singh	ETO Mobile Wing, Amritsar	ETO (VAT) Amritsar-1	Against vacant post
37	Varun Nagpal	ETO ICC Kallarkhera & additional charge Mobile Wing, Fazilka	ETO (VAT) Fazilka	Against vacant post
38	Jasvinder Singh Waraich	ETO ICC Sambhu Import	ETO (VAT) Fatehgarh Sahib	In place of Sh Vishvdeep Singh Bhangu
39	Satish Kumar	ETO ICC Shambhu Import	ETO (VAT) Fatehgarh Sahib	In place of Sh Amardeep Nanda
40	Rajinder Pal	ETO ICC Sambhu Export	ETO (VAT) Ludhiana-1	Against vacant post
41`	Vinod Kumar	ETO ICC Sambhgu Export	ETO (VAT) Ropar	Againt vacant post
42	Ashwani Arora	ETO ICC Zirakpur	ETO (VAT) Mohali	Against vacant post
43	Varinderjit Singh	ETO ICC Dohni	ETO ICC Sambhu Export	In place of Sh Rajinderpal
44	Bhupinder Singh Saini	ETO ICC Nangal	ETO (VAT) Ludhiana	Against vacant post
45	Rajbir Singh	ETO Man Distillery Patiala & additional charge ETO ICC Dhabi Gujra	ETO (VAT) Mohali	Against vacant post
46	Manmohan Kumar	ETO ICC Dalhousie Road & additional charge ICC Kathlor	ETO Mobile Wing Jalandhar	In place of Sh Jaspal Singh
47	Amar Nath	ETO ICC Chullat Kalan	ETO Mobile Wing, Ludhiana	Against vacant post
48	Yash Gill	ETO ICC Talwandi Sabo	ETO Mobile Wing, Bathinda	In place of Sh Kulwinder Verma
49	Salinder Singh	ETO ICC Dhandari Kalan	ETO (VAT) Ludhiana-2	Against vacant post
50	Jaswinder Singh	ETO (Excise) Kapurthala	ETO Mobile Wing Jalandhar	In place of Sh Satpal Singh
51	Maninder Singh	ETO (Excise) Ludhiana-3	ETO Mobile Wingh Ludhiana	In place of Sh Navjit Singh
52	Balwant Rai	ETO (Excise) Moga	ETO (Excise) Ferozepur	In place of Sh H.S.Brar
53	H.S.Brar	ETO (Excise) Ferozepur	ETO (Excise) Shree Muktsar Sahib	In place of Balwinder Singh
54	Balwinder Singh	ETO (Excise) Shree Muktsar Sahib	ETO (Excise) Moga	In place of Sh Balwant Rai

55	Barinder Singh	ETO Hamira Distillery	ETO Mobile Wing, Amritsar	In place of Sh Gurjit Singh
56	Parmod Singla	ETO E.I.U. Head Office Patiala & additional charge ETO Mobile Wing Ludhiana	ETO Mobile Wing Patiala & additional charge ETO I.C.U. Head Office, Patiala	In place of Sh Pritpal Singh
57	Joti Walia	ETO E.I.U. Head Office, Patiala	ETO (VAT) Patiala	Against vacant post
58	Harinder Rawat	Available for posting	ETO E.I.U. Head Office	In place of Sh Narinder Kumar
59	Rishi Kumar	ETO (VAT) Sangrur	ETO ICC Ram Nagar	In place of Sh Inderjit Nagpal
60	Madhu Soodan	ETO ICC Chakki Bridge & additional charge Mobile Wing (VAT) Pathankot	ETO (VAT) Jalandhar02	Against vacant post
61	Inderjit Singh Napal	ETO ICC Ramnagar	ETO ICC Chullaru Kalan	In place of Sh Amar Nath
62	Vinod Pahuja	ETO Newway, Organic Natures India Ltd & addl.charge ETO Bottling Plants Mohali	ETO Bottling Plants, Dera Bassi, Distt.Mohali	On doing additional charge into full time charge
63	Anil Gupta	ETO Legal Cell & additional charge Bottling Plants, Dera Bassi, Mohali	ETO Legal Cell & additional charge Organic Natures Idia Ltd & additional charge Bottling PLlants, Dera Bassi	In place of Sh Vinod Pahuja
64	Ram Singh	ETO E.I.U. Head Office Patiala	ETO ICC Sambhu Export	Against vacant post
65	Sanjeev Madan	ETO (VAT) Mohali	ETO ICC Sambhu Import	In place of Sh Jasvinder Waraich
66	Amardeep Nanda	ETO (VAT) Fatehgarh Sahib	ETO ICC Sambhu Import	Against vacant post
67	Harpreet Singh	ETO ICC Lalru & additional charge Mobile Wing Chandigarh	ETO Mobile Wing Chandigarh and additional charge ICC Zirakpur	In place of Sh Ashwani Arora
68	Lavjinder Singh	Available for posting	ETO ICC Madhopur	In place of Sh Sukhchain Singh
69	Satvinder Singh	Available for posting	ETO ICC Sambhu Import	Against vacant post
70	Suresh Tandon	Available for posting	ETO ICC Kallar Khera	In place of Sh Varun Nagpal
71	Piara Singh	Available for posting	ETO (VAT) Mansa	Against vacant post
72	Malwinder Singh Dhillon	ETO (VAT) Bathinda	ETO Mobile Wing Bathida & additioal charge of ETO ICC Boha	In place of Sh Akashdeep Singh & Sh Inderjit Singh
73	Jaswinder Singh	ETO (VAT) Patiala	ETO E.I.U. Head Office Patiala and additional chargeof Mobile Wing Patiala	In place of Sh Ram Singh
74	Sukhchain Singh	ETO ICC Madhopur	ETO (Excise) Amritsar-1	In place of Sh Malkiat Singh
75	Ashok Kumar	ETO (VAT) Jalandhar-1	ETO Hamira Distillaries	In place of Sh Barinder Singh
76	Lakhbir Singh	ETO Rana Sugars Distillaries	ETO Khasa Distillaries	Against vacant post
77	Pawan	ETO VAT Jalandhar-1	ETO Dasuha Distillaries	On taking back additional charge from Sh Avtar Singh Kang
78	Balwinder Singh	ETO (VAT) Jalandhar-2	ETO A.B.Grain Distillaries	Against vacant post
79	Madhur Bhatia	ETO (VAT) Amritsar-1	ETO Rana Sugars Distillaries	In place of Sh Lakhbir Singh
80	Tirath Chand	ETO (VAT) Kapurthala	ETO Chadha Sugar & Distillary Kiri Afgana (Gurdaspur)	Against vacant post
81	Inderjit Singh	ETO ICC Boha	ETO BCL Infrastructure & Distillary Ltd Bathinda	On taking back additional charge from Kapil Jindal
82	Ramesh Kumar	Available for posting	ETO ICC Nangal	In place of Sh Bhupinder Singh
83	Sunil Gupta	-do-	ETO (Vat) Jalandhar-1	In place of Sh As Kumar
84	Mukti Gupta	-do-	ETO (Vat) Ludhiana-1	In place of Sh Maninderpal Singh
85	Anita Sodhi	-do-	ETO (Vat) Head Office Patiala	Against vacant post
86	Gagan Sharma	-do-	ETO (Vat) Amritsar-2	In place of Sh Gurmit Singh
87	Gurmit Singh	ETO (Vat) Amritsar-2	ETO Mobile Wing Amritsar	Against vacant post
88	Shakuntla Devi	Available for posting	ETO (Vat) Barnala	In place of Sh Surinderpal Bansal
89	Baljit Kaur	-do-	ETO (Vat) Kapurthala	In place of Sh Tirath Chand
90	Parminder Kaur	-do-	ETO (Vat) Amritsar-1	Against vacant post
91	Sunita Rani	-do-	ETO (Vat) Jalandhar-2	Against vacant post
92	Gagandeep Singh	-do-	ETO ICC Ghanaulli & additional charge ICC Kathlor	On taking back additional charge from Bhupinder Singh & in place of Sh Barinderjit Singh
93	Santokh Raj	-do-	ETO ICC Dalhousie Road & additional charge ICC Kathlor	In place of Sh Manmohan Kumar
94	Harpreet Singh	-do-	ETO ICC Chakki Brij	In place of Sh Madhu Soodan
95	Poonam Preet	ETO (Vat) Patiala	ETO (Vat) Head Office Patiala	Against vacant post
96	Upinderjit Singh Sodhi	ETO (Vat) Sangrur	ETO (Vat) Patiala	Against vacant post
97	Sandeep Kaur	ETO (Vat) Mohali	ETO (Vat) Fatehgarh Sahib	Against vacant post
98	Raghbir Singh	ETO ICC Kaithal Road Khanori	ETO Mobile Wing Patiala	In place of Sh Vikram Dev Thakur
99	Navreet Kaur	ETO (Vat) Patiala	ETO (Vat) Amritsar-1	
100	Romesh Kumar	ETO (Vat) Amritsar-1	ETO ICC Attari	In place of Sh Sukhjit Singh Chahil
101	Harminderbir Singh	ETO (Vat) Jalandhar-2	ETO (Vat) Amritsar-1	Against vacant post
102	Narinder Kumar	ETO E.I.U. Head Office	ETO Mobile Wing Ludhiana	In place of Sh Manmohan Singh
103	Amardeep Singh	ETO (Vat) Ludhiana-2	ETO ICC Dhandari Kalan	In place of Sh Salinder Singh
104	Sunil Kumar	ETO (Vat) Gurdaspur)	ETO (Vat) Gurdaspur and additional charge ICC Chak Sadhu	In place of Sh Ranbir Singh
105	Dharam Pal Singh	ETO (Vat) Patiala and additional charge of I.E.U. Head Office	ETO Mobile Wing Patiala and additional charge E.I.U. Head Office	Against vacant post
106	Jaswinder Pal	ETO ICC Talwara & additional charge ICC Moguwal	ETO (Vat) Hoshiarpur	In place of Sh Brij Mohan
107	Brij Mohan	ETO (Vat) Hoshiarpur	ETO ICC Talwara and additional charge ICC Moguwal	In place of Jaswinder Pal
108	Bhupinderpal Bhatia	ETO (Vat) Mohali	ETO (Vat) Mohali & additional charge ICC Mullanpur	Against vacant post
109	Sandeep Gupta	ETO (Vat) Jalandhar-2	ETO (Vat) Amritsar-2	Against vacant post
110	Parminder Singh	ETO (Excise) Ludhiana-1	ETO (Excise) Sangrur	In place of Sh Chander Mehta
111	Chander Mehta	ETO (Excise) Sangrur	ETO (Excise) Head Office Patiala	

These orders shall take effect immediately

Chandigarh, Dated
30.06.2015

D.P.Reddy
Financial Commissioner (Taxation) Punjab
Excise & Taxation Department

Endtt.No.1/7/2015-AC-1(1)/10827-32 Dated Chandigarh : 30/6/2015

A copy is forwarded to the following for information & necessary action :-

1 Principal Secretary/Deputy Chief Minister, Punjab, Chandigarh
2 Chief Parliamentary Secretary Excise & Taxation
3 Excise & Taxation Commissioner, Punjab, Patiala with the request that this order be served upon the concerned officers.
4 Accountant General (A&E) Punjab, Chandigarh
5 All Additional / Joint / Deputy / Assistant Excise & Taxation Commissioners
6 Concerned officer

Sd/-
Superintendent Grade I

Copy to :

1 Personal Secretary / Financial Commissioner Taxation
2 Personal Secretary / Financial Commissioner Excise & Taxation.

SGA
LAW OFFICES

NOTIFICATION (PUNJAB)

NOTIFICATION REGARDING AMENDMENT IN RULE 52-B

PUNJAB GOVT. GAZ. (EXTRA), MAY 26, 2015
(JYST 5, 1937 SAKA)

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

NOTIFICATION

The 25TH May, 2015

No. G.S.R.29/P.A.8/2005/S.70/Amd.(56)/2015.- In exercise of the powers conferred by sub section (1) of section 70 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 made the following rules further to amend the Punjab Value Added Tax Rules, 2005, namely:-

RULES

1. (1) These rules may be called the Punjab Value Added Tax (Third Amendment) Rules, 2015.
   (2) They shall come into force on and with effect from the date of their publication in the Official Gazette.

2. In the Punjab Value Added Tax Rules, 2005 in rule 52-B in sub-rule (i), for PART-II, and the entries relating there to, the following shall be substituted, namely:-

"PART-II

Points obtained by the business entity	Rating	Number of days within which refund is to be made	Penalty, if wrongly claimed by the business entity
10-20	2	45	75 percent
23-30	3	30	100 percent
30-40	4	25	125 percent
40 and above	5	15	150 percent"

ANURAG VERMA
Secretary to Government of Punjab,
Department of Excise and Taxation

NOTIFICATION (PUNJAB)

DRAFT RULES REGARDING VERIFICATION OF CERTIFICATE & PLACE OF PRACTICE

BAR COUNCIL OF INDIA

NOTIFICATION

New Delhi, the l2th January, 20l5

Extracts of' the minutes of the meeting of' General Council of Bar Council of India held on 29th/30th November, 2014.

Item No. 330/2014

The Council considered the Draft Rules with regard to verification of Certificate and Place of Practice of Advocates and to repeal the Bar Council of India Certificate of Practice and Renewal Rules, 20l4 and passed the following resolution:

Resolution No. 216/2014

(e) The Council resolves to modify the Resolution No. 169 of 20l4(Item No. 276/20l4) dated l7th October, 20l4. The Council further resolves that Draft Rules with regard to Verification of` Certificate and Place of Practice submitted by the sub-Committee be and is hereby approved. These new Rules shall be named as Bar Council of India Certificate and place of Practice (Verification) Rules 2015 depending on the year of its publication in the Gazette of India) and it shall come into force from the date of its publication in the Gazette of India. The Council further resolves to repeal Bar Council of` India Certificate of Practice and Renewal Rules, 20l4, accordingly the Bar Council of India Certificate of Practice Renewal Rules, 2014 stand repealed.

(f`) Bar Council of India Certificate and Place of Practice (Verification) Rules have been framed in exercise of powers conferred on Bar Council of India by section 49(l)(ag), 49(ah) and 49(i) of` the Advocates Act, l96l and in exercise of powers under Part-V Chapter l, Rule l(l) & 2 and Rule 2 of Bar Council of India Rules, Chapter III sub Rule 3, 4 and Part-IX Rule l7, l8(h), 20,22,24 of Bar Council of India Rules.

Bar Council of India Certificate and Place of Practice (Verification) Rules, 2015.

Statement of objects and reasons: (*Relevant extract*)

The Bar Council of India has also come to know that a number of fake (farzi) persons (without any Law Degree or enrolment certificate) are indulged in Legal practice and are cheating the Litigants, courts and other stake-holders; and neither-the Bar Associations nor the concerned State Bar Councils have any control over such fake persons. Shockingly, it has come to the notice of the Council that at some places, the office-bearers of Bar Associations or some vote-seekers knowingly make such people members and voters of their Associations with a motive to get their votes in the elections of Bar Associations or Bar Councils. Similarly, many persons, after getting enrolled as Advocates in any State Bar Council, get involve in Property-Dealings, contract or switch over to some other business, profession or job and have no more concern with the Legal profession. Such- "non-practicing, Advocates" are sometimes being used by some of the office-bearers/candidates for elections of Bar Associations or Bar Councils (only for their votes). But in fact, the Council has realized that such practice is degrading the standard of Legal profession, and this mal-practice has to be stopped.

Few of the office-bearers representatives of some of the Ban Associations had raised unnecessary objections and protests to these reformative steps. Such protests were/are only to serve their vested interests. Bar

Council of India has to maintain the dignity and standard of Legal profession, we shall have to oust fake people from the court-campus and we shall have to identify the “non-practicing Advocates", (who are involved: in other job, business or profession). We are to ensure that such Advocates do not involve in deciding the fate of our Associations and the Bar Councils; And such Advocates are not allowed to get any benefit of welfare schemes or to practice Legal profession so long they are in any other-business, job or profession.

It is due to these reasons, the Council has decided to make provisions for identification of such fake persons and non-practicing Advocates. And the Council has also felt it necessary to discourage those Advocates who raise unnecessary protests with an intent to keep and protect the fake and/or non-Practicing Advocates with an object to get their votes. Therefore, the Council has resolved to make suitable provisions in these Rules so that if any Advocate is found to be indulged in making deliberate effort to

(i) Protect fake people practicing legal profession illegally
(ii) to create any, hurdle, in identification of “non-Practicing Advocates and
(iii) create any objection in verification of the certificate of practice, credentials, place of Practice and details of Advocates, such Advocates would be debarred from contesting any election of Bar Association or Bar Council for a period of three years from the date of order to this effect.

Under the circumstances and for the above mentioned reasons, the Council has resolved to repeal the “Bar Council of India Certificate of Practice and Renewal Rules 2014” and has made and passed the new “ Bar Council of India Certificate and place of Practice (Verification) Rules 20l5”, and has decided to implement)

For detail see the website of Bar Council of India.

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PUBLIC NOTICE (HARYANA)

PUBLIC NOTICE
EXCISE AND TAXATION DEPARTMENT, HARYANA

REVISED PROCESS FOR REGISTRATION OF APPLICANTS

1.Applicant will fill the form online. Now, all Documents including photographs are non-mandatory in the system. The applicant will submit the hard copies of the documents alongwith one recent passport size coloured photograph to the AETO of the concerned district along with identity proof, which contains photograph of the applicant.

2. AETO will receive the hard copy of the documents and the photograph. AETO will approve the application in system based on hard copy submitted by applicant.

3. On Approval, System will generate confirmation receipt, AETO will print two copies of the confirmation receipt, one will be handed over to the applicant and second copy will be kept in records along with the documents submitted. The photo of the applicant should be affixed on the second copy of the confirmation receipt by the AETO.

Note: AETO will neither upload nor download any document.

Collector-cum-AETC (HQ)
for Excise and Taxation Commissioner,
Haryana, Panchkula.

NOTIFICATION (HARYANA)

NOTIFICATION REGARDING AMENDMENT IN SCHEDULE A

HARYANA GOVERNMENT
EXCISE AND TAXATION DEPARTMENT

NOTIFICATION

The 31st March, 2015

No.4/ST-1/H.A.6/2003/S.59/2015. – Whereas, the State Government is satisfied that circumstances exist, which render it necessary to take immediate action in public interest;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 59 read with the proviso to said sub-section of the Haryana Value Added Tax Act, 2003 (6 of 2003), the Governor of Haryana hereby makes the following amendment in Schedule A appended to the said Act, by dispensing with the condition of previous notice, namely:-

Amendment

In the Haryana Value Added Tax Act, 2003 (Act 6 of 2003), in Schedule A, against serial number 10, under column 3, for the figure, sign and words "**4% inclusive of surcharge, if any**" the figure and signs "**8%**" shall be substituted with effect from 1st day of April, 2015.

Roshan Lal,
Additional Chief Secretary to Government,
Haryana, Excise and Taxation Department.

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LAW OFFICES

NEWS OF YOUR INTEREST

CAR DEALER EVADES RS4 CR VAT

A car dealer alleged pocketed Rs4 crore VAT by showing bogus transfer of cars to two firms in Jammu and Kashmir even as he sold the cars in the state.

These two firms shown as car dealers were in fact dealing in stationery items and ayurvedic medicines.

The Excise and Taxation Department has detected the bogus transfers of cars worth more than Rs32 crores to Jammu. Anurag Verma, Excise and Taxation Commissioner, said M/s Macro Venture Pvt Ltd, Zirakpur, a dealer of Tata cars, had shown transfers of cars worth more than Rs20 crore to M/s Vinayak Enterprises, Jammu and another transfer of cars worth Rs12 crore to M/s Pioneer Sales Network, Jammu.

"In case of stock transfer to another state, the tax liability in the state of Punjab is reduced to zero. Suspicion arose because these transactions were not reflected at Information Collection Centre (ICC), Madhopur", Verma said.

On further enquiry, it was found that both Jammu firms were not authorised dealers of Tata Motors. Therefore, it was suspected that cars had been sold in Punjab and VAT was collected from customers, but to evade its payment, bogus transfers and interstate sales were shown by Zirakpur firm.

"A physical verification of the Jammu dealers found that none had any stock transfer or interstate purchase from Macro Venture Pvt Ltd. It thus has emerged that the Zirakpur firm collected about Rs4 crores VAT from customers and did not deposit it in the treasury," an official said.

"Provisional assessment proceedings have been initiated and Rs60 lakh has been recovered till now," the officer said.

Verma said Macro Venture had also shown stock transfer of Rs7 crore to Chandigarh. Verification in this regard was also on, he added.

Courtesy: Times of India

30th June, 2015

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

ORDINANCE TO EXTEND LIMIT OF SOME VAT SECTIONS APPROVED

The Haryana cabinet approved promulgation of an ordinance to extend the limit period under Sections 15A, 16, 17 and 34 of the Haryana Value Added Tax (HVAT) Act, 2003.

Section 15A provides for provisional assessment of a dealer, Section 16 provides for assessment of unregistered dealers liable to tax, Section 17 provides for re-assessment of tax and Section 34 provides for revision of any order passed by any taxing authority or appellate authority other than the Tribunal to remove the illegality or impropriety.

The amendment in section 15 A will enable a taxing authority to frame provisional assessment even increases where the financial year has ended.

The amendment in section 15 will enable the assessing authority to fully and properly assess the tax liability of unregistered dealers whose liability of tax has arisen in view of the Supreme Court judgment by extending the limitation period to six years.

Extension of limitation period to three years in section 17 will enable the taxing authorities to reassess cases where some definite information has come into the possession of an assessing authority where the dealer has been under-assessed or some turnover has escaped assessment.

The extended limitation period from three years to six years under section 34 will enable the revisional authority to revise those cases wherein some illegality or impropriety pre-judicial to the interest of the revenue of the state is noticed.

It will also enable the revisional authority to revise the cases of those builders and developers whose assessment was not framed in accordance with the law declared by the Supreme Court in the case of Larsen and Toubro (L&T) Limited. The Supreme Court in its judgment in the case of L&T Limited vs State of Karnataka, laid down a clear position by holding that once the developer or the builder enters into an agreement to sell the property with the prospective buyers before completion of construction, the construction activity carried out after such agreement become a works contract and such developer/builder needs to be assessed as a works contractor

Courtesy: Hindustan Times

1st July, 2015

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

VAT POLICY WILL PUSH US TO BRINK: STEEL INDUSTRY

The steel industry in the state is up in arms against the Punjab Excise and Taxation Department for allegedly "backing out" of the promises made to it for bringing out a lump sum VAT policy for steel units.

The policy, which has been notified by the state government now, has fixed the VAT liability of the steel rolling mills at Rs 2.82 per unit of electricity consumed in the month.

This liability will have to be paid in two ways — Rs 0.50 per unit has to be paid per unit of electricity consumed along with the power bill; and Rs 2.32 per unit of electricity consumed will have to be paid by the steel unit by way of advance tax on imports of raw material made directly by the unit.

Under the new policy, credit for VAT paid on purchase of consumables from within Punjab will be allowed to steel units.

The steel industry in the state, which has been reeling under a crisis with 30 per cent units in the steel town of Mandi Gobindgarh closing down over the past two years, feels that they have been short-changed.

"In January, deputy chief minister Sukhbir Singh Badal had made the announcement regarding the new lump sum VAT policy for the steel industry," said Mahinder Pal Gupta, president, Furnace Association, Mandi Gobindgarh.

"He had announced that steel units will have to pay VAT at 50 paisa per unit consumed, besides paying tax at the rate of 2 per cent at the stage of import or first purchase instead of an advance tax of 3.5 per cent.

"But the VAT levied on us in the notification is Rs 2.82 per unit. The state has small steel rolling mills that work on very small profit margins. The increase in VAT (of Rs 0.32 as against what was announced) will push the steel industry to the brink," said Mahinder Pal Gupta.

The new policy has also made it mandatory for the steel units to start branding their products. This too has not gone down too well with the industry.

Rajan Garg, vice-president of Small Scale Steel Re-Rollers Association of Mandi Gobindgarh, said that these small units cannot bear the cost of branding the steel products. "30 per cent of the 650 steel units have closed down since 2013. The remaining units are functioning on 50 per cent of their production capacity. The new policy, instead of giving relief as promised, will lead to the closing down of more units."

Courtesy: The Tribune

3rd July, 2015

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LAW OFFICES

NEWS OF YOUR INTEREST

PUNJAB BRACES FOR RS 4,465-CR GST BLOW

The Punjab government fears Rs 4,465 crore direct hit to its already pale financial health if the Centre rolls out the Goods and Services Tax (GST). This has set alarms bells ringing and prompting state finance minister Parminder Singh Dhindsa to seek clarification from the Union finance ministry.

By imposing cess and surcharge, the state government had collected Rs 4,465 crore in the last fiscal. This tax does not form part of the state's consolidated fund. Now, the state finance department mandarins have woken up from their slumber realising that in the "objective" of the Constitution amendment bill on the GST, it has been mentioned that "cesses and surcharges" related to the supply of goods will be subsumed in the GST. The government is anxious that if the GST bill is implemented in the current form, the state will have to bear a major financial blow.

Government sources say soon after realising that the Centre had retracted from its commitment, finance minister Dhindsa on June 29 dispatched an urgent letter to the Union ministry of finance, reminding the Centre that it had assured that "such levies", which Punjab also imposes, will not be subsumed in the GST.

"It was also reiterated by the minister of state for finance vide his demi-official letter dated February 21, 2014, that such levies shall not be subsumed in the GST. But now, it has been mentioned in the objective of the 122nd Constitution amendment bill that cesses and surcharges in relation to supply of goods are to be subsumed in the GST," Dhindsa stated in his two-page letter.

The finance minister has requested the union finance ministry to "clarify" whether these cesses and surcharges levied on sale and purchase will be subsumed in the GST. "If these are to be subsumed in the GST, then clarify whether losses on this account will be compensated," Dhindsa has demanded.

The GST bill proposes to subsume various central indirect taxes, including the central excise duty, service tax, value added tax (VAT), entry tax, etc. The tax collected would be divided between the Centre and states in a manner to be provided by Parliament on the recommendations of the GST council.

Though Punjab has been supporting the GST, the state government has been raising concerns for compensating the state against likely revenue losses.

Under Punjab Municipal Fund, 11% of the total VAT collected was credited directly to this account to compensate municipalities. In 2014-15 financial year, Punjab collected Rs 1,407 crore under this component. "But this does not form part of the consolidated fund of the state," Dhindsa informed the Centre.

Similarly, Rs 228 crore was collected under the Punjab Infrastructure Development Fund, while Rs 1,200 crore was collected under Punjab Infrastructure Development Fee. Punjab imposes 3% fee on the purchase of wheat and paddy, Rs 2 per litre on petrol sale and Rs 1 per litre on diesel sale that is collected directly from the oil companies.

Also, the state imposes 2% market fee and 2% rural development fee (RDF) on the purchase of agricultural produce like wheat, paddy and cotton. This is collected by arhtiyas. "This also does not form part of the consolidated fund. In 2014-15, we collected Rs 1,630 crore under the RDF component," Dhindsa informed the Centre.

Courtesy: Hindustan Times

4th July, 2015

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

HC STAYS TERMINATION OF EXCISE INSPECTORS' SERVICES

Less than three months after Excise and Taxation Inspectors were issued show-cause notice for the termination of their services, the Punjab and Haryana High Court today directed the State of Punjab and other respondents not to dispense with their services till further orders. The case will now come up on August 5.

The directions by Justice Arun Palli came on petitions filed by Yogesh Mittal and other petitioners who were issued the notices for not clearing the departmental examination within the two-and-a-half years.

Their counsel senior advocate Gurminder Singh assisted by Jatinder Gill contended that the petitioners were appointed in 2012, but were issued show-cause notice for termination of their services without awaiting the result of departmental examination taken by them in May 2015.

They added that the petitioners had cleared six papers, and had appeared in the examination in an attempt to clear a remaining paper.

Dubbing the action of the respondent as totally "arbitrary and illegal", they added that other similarly situated persons at the same time were given five chances to clear the exam regardless of the two-and-a-half-year deadline.

Moreover, the department has not conducted the requisite exam within the stipulated period in November 2014.

"There are earlier instances where some of the employees of the department have also been given special chances to clear the departmental exam, whereas the petitioners have only been given four chances," they said.

Courtesy: The Tribune

7th July, 2015

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LAW OFFICES

NEWS OF YOUR INTEREST

INDIRECT TAX COLLECTIONS UP

Indirect tax revenues grew 37.5 per cent to nearly Rs 1.54 lakh crore in the first quarter of the current fiscal signaling a growth momentum in the economy.

Helped by good growth in excise and service tax collections, indirect tax collections in April-June increased to Rs 1.54 lakh crore from Rs 1.12 lakh crore in the year-ago period, a Finance Ministry statement today said.

In the period under review, Central excise collections stood out, rising a smart 81 per cent to Rs 61,661 crore, from Rs 34,067 crore a year earlier.

The statement said: "These collections indicate that the underlying momentum in the economy is improving across all sectors, including manufacturing, reflected in healthy excise tax collections." — TNS.

Courtesy: The Tribune

11th July, 2015

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

HC DIRECTS ETO TO REFUND RS 3 LAKH TO COMPANY

Eager to meet targets at the end of financial year, Excise & Taxation Officer, Mobile Wing, Ludhiana, took two cheques of Rs 3 lakh each from a firm without any assessment before encashing these in discharge of anticipated liability.

Taking serious note of the "arbitrariness and highhandedness", the Punjab and Haryana High Court has not only passed strictures, but also directed refund of the amount. Directions were also issued to recover Rs 10,000 from the officer for his arbitrary action.

The directions by the Division Bench of Acting Chief Justice Shiavax Jal Vazifdar and Justice GS Sandhawalia came on a petition filed by Sumit Agencies against the State of Punjab and other respondents.

The petitioners, through counsel Aman Bansal, had challenged the Taxation Officer's action of taking two cheques without liability and notice. Directions were sought for ordering an independent and impartial inquiry on the ground that cheques could not have been taken in the absence of liability. The petitioner told the court that it was engaged in the business of supplying cigarette, biddi, pan masala etc. The firm was duly registered under the Punjab Value Added Tax Act, 2005, but was not a defaulter.

The officer came to the firm's premises on February 16 and demanded exorbitant amounts after threatening it. The cheques were taken "under the threat of coercion on account of completion of target of revenue before March 31. The officer even took the petitioner's signatures on blank papers before encashing one of the cheques. Taking up the matter, the Bench asserted: "The procedure smacks of arbitrariness and highhandedness of the authorities on the face of the record itself, which cannot be appreciated, in any manner. Before parting with the orders, the Bench directed the respondents to refund Rs 3,10,000. The assessment proceedings were also directed to be conducted by an officer not associated with the inspection.

Courtesy: The Tribune

13th July, 2015

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

EXCISE AND TAXATION DEPT TO TAKE ON TAX EVADERS

The Excise and Taxation Department, Chandigarh, as a fresh initiative to safeguard its revenue, has geared itself to take on tax evaders/avoiders by making use of the technology available at their disposal.

In a recent move, the claims of fake input tax credits made by unscrupulous dealers are being verified diligently by the officers of the department. The mismatch software developed by the computer wing of the department is now being used to cross-match the returns of the purchasing dealer with that of the selling dealers. This software immediately provides the department with the complete details of the fake ITCs being claimed by a particular dealer.—TNS

Courtesy: The Tribune

14th July, 2015

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

GST BILL FACES CONG ROADBLOCK

The Congress is all set to dissent on the crucial Goods and Services Tax (GST) Bill currently being debated in the Select Committee of Rajya Sabha. The committee has to submit its report on the tax reform law in the forthcoming Monsoon Session of Parliament starting July 21.

Indications that Congress members in the panel will submit dissenting notes to the report on the Constitutional Amendment (122nd) Bill (GST Bill) came after party president Sonia Gandhi today chaired a high-level meeting of the Congress parliamentary strategy group at her residence.

The meeting was attended by Congress vice-president Rahul Gandhi, former PM Manmohan Singh, Sonia's political secretary Ahmad Patel, leaders of Congress in the Lok Sabha and the Rajya Sabha Mallikarjun Kharge and Ghulam Nabi Azad, respectively, Deputy leader of the Opposition in the Rajya Sabha Anand Sharma, among others.

The leaders reportedly discussed major legislative and policy issues before Parliament, including Congress' stand on the GST Bill report and the land Bill being reviewed by the Joint committee of Parliament.

If the Congress dissents on the GST Bill, the government, in minority in the Rajya Sabha, will find it hard to get the law passed by the Upper House. The passage of a constitutional amendment Bill requires a two-thirds majority. Addressing the Congress CMs conclave recently, Manmohan had also red-flagged the GST Bill saying he wasn't sure if it "was the best route forward".

On the land Bill, too, the Congress is heading for confrontation by instructing its CMs not to attend the meeting called by Prime Minister Narendra Modi to discuss the matter.

Courtesy: The Tribune

14th July, 2015