SGA LAW OFFICES

Issue 16
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NOMINAL INDEX

NOTICE & NOTIFICATION

U.T. Chandigarh

Haryana

NEWS OF YOUR INTEREST

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SUBJECT INDEX

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PUNJAB & HARYANA HIGH COURT

CWP NO. 21811 OF 2014

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AMRIT BANASPATI COMPANY LIMITED
Vs
STATE OF PUNJAB AND OTHERS

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

7th August, 2015

HF ▶ Revenue

Assessment for those years can be framed after the amendment Act whose period of limitation has not expired as per amending Act if provided under the statute.

ASSESSMENT – LIMITATION – CONSTITUTIONAL VALIDITY – AMENDMENT -EXTENSION OF LIMITATION PERIOD FOR THREE YEARS TO SIX YEARS THROUGH AMENDMENT IN THE ACT – AMENDMENT ALSO PROVIDING FOR FRAMING OF ASSESSMENT FOR THE YEAR 2006-07 UPTO 20/11/2014 – AMENDMENT IS RETROSPECTIVE IN OPERATION THOUGH COMMENCING FROM THE DATE OF AMENDMENT – ALSO APPLICABLE FOR THE ASSESSMENT YEARS WHOSE PERIOD OF SIX YEARS NOT EXPIRED – AMENDMENT NOT ARBITRARY OR UNCONSTITUTIONAL - AMENDING ACT IS NOT OVERRULING A JUDGEMENT OF COURT BUT REMOVES THE BASIS OF THE EARLIER JUDGEMENT – EXPIRY FOR PERIOD FOR MAINTENANCE OF BOOKS MAY BE A DIFFICULTY FACED BY THE ASSESSE BUT THE SAME WOULD NOT RENDER THE AMENDMENT UNCONSTITUTIONAL – ASSESSING AUTHORITY CANNOT DRAW ADVERSE INFERENCE FOR NON-PRODUCTION OF BOOKS BEYOND THE PERIOD PRESCRIBED UNDER THE ACT – PETITIONS DISMISSED – PETITIONERS RELEGATED TO THE APPROPRIATE REMEDY UNDER THE ACT ON ALL OTHER ISSUES – *SEC. 29(4), 29(10-A) OF PVAT ACT, ARTICLES 14 & 19 OF CONSTITUTION*

The petitioners had challenged the constitutional validity of amendment made to Sec 29(4) of PVAT Act whereby the period of three years prescribed for framing the assessment had been increased to six years with its applicability to the periods for which the said period of six years has not expired. For the year 2006-07 , the last date for framing the assessment had been prescribed as 20/11/2014.Further the challenge was also made to Explanation 2 and subsection 29(10-A) validating the previous actions of Commissioner to extend the period of limitation beyond the period of three years without granting proper opportunity of hearing.

Rejecting the challenge the court held :

1) *The contention of the petitioners that the amendment Act is prospective is misconceived as the commencement of the Act is different from the operation of the Act. Even though in the present case the amendment is applicable from 15/11/2013 but the same is*

operational even for the periods prior thereto. A combined reading of the amendment shows along with the explanations that the Legislature has made its intentions very clear when Explanation 1 provides for the applicability of extended period even to those cases where the aforesaid period of six years has not expired. Moreover, for the year 2006-07 a special proviso has been added to allow the framing of the assessment upto 20/11/2014. The amendment, therefore, has the retrospective effect and all the contentions are examined in the light of this presumption.

2) *There is no dispute to the proposition that the amendment of law to nullify a judgement is valid only if the basis of judgement itself is altered so fundamentally that in the altered circumstances the judgement could not have been delivered. There is no reason in principle that if an ineffective statute can be validated retrospectively why an invalid action taken under a valid statute cannot be validated by a retrospective legislation, provided, of course the amendment should be valid in all other respects. In the present case , the legislature has given its own meaning and interpretation of Sec 29 prior to the amendment by way of Explanation 2 to Section 29(4) and by Sec 29(10-A). This has been done to neutralize the basis of the judgement in the case of A.B. Sugars Ltd. V/s State of Punjab 2010(29)VST 538 (P&H). Explanation 2 is a clarificatory amendment to remove the basis on which the judgement was delivered. This does not mean that the judgement of this court has been reversed. In any case even if the Explanation 2 and Subsection (10-A) are held unconstitutional it would not make any difference since the opening part of Sec29(4) operates retrospectively.*

3) *The contention that Explanation 2 being contrary to rule of natural justice is constitutionally invalid will not make any difference as the opening part of Sec 29 (4) is retrospective and therefore, it would not make any difference to the right of department to complete the assessment within the time specified as per amended Section 29(4).*

4) *Explanation 2 has been introduced with a need to validate an Act or the acts perform thereunder. And, therefore, there is a need to have such provision under the law even if the amendment does not have a substantive provision for which Explanation has been provided. The present case is an unusual one where the substantive provision was removed by the amendment but an Explanation was necessary in respect of the original substantive provision.*

5) *The provisions of the Amendment Act are not unreasonable, excessive or harsh so as to be struck down as violative of Articles 14 & 19 of the Constitution. Even though the period for maintenance of books might have expired for the years 2006-07 and 2007-08 and therefore, it may result in a difficulty for an assessee. It is, however, not an insuperable difficulty so as to render the enactment unconstitutional. It would however be open to the assesse to take this factor as a defence and a justification for not having preserved the books. In such a case, an adverse inference cannot be drawn against the assesse.*

5) *The proviso to the amended section 29(4) is not contrary to the main section and is thus neither illegal nor void. The proviso does not take away any right given by these provisions as it merely grants for the time for making an assessment in respect of the year 2006-07.The proviso carves out an exception to the main provision itself and is , therefore, perfectly valid.*

6) *There is nothing wrong with the amendment in so far as it extends the period of limitation even where the original period for assessment has expired. The amendment clearly shows its intention of having retrospective operation which is neither prohibited nor unconstitutional.*

7) The petitions were accordingly dismissed relegating the petitioners to the appropriate remedy under the law keeping all the contentions open except the grounds already dealt with in the judgement. The petitioners are granted a period of four weeks to enable them to avail appropriate remedy where the orders have been passed. Recovery by coercive steps shall not be taken uptill 21.09.2015

Cases referred:

- *A.B.Sugars Limited v. The State of Punjab and others 2010(29) VST 538 (P&H).*
- *State of Punjab through Commissioner, Bathinda v. Olam Agro India Ltd. 2013(46) PHT 194 (P&H).*
- *Shreyans Industries Ltd. v. State of Punjab and others, (2008) 18 VST 493 (P&H),*
- *Patel Gordhandas Hargovindas v. Municipal Commissioner, Ahmedabad 1964(2) S.C.R. 608*
- *Municipal Corporation of the City of Ahmedabad and another v. The New Shrock SPG. and WVG Co. Ltd. 1970(2) Supreme Court Cases 280*
- *Mahal Chand Sethia v. State of West Bengal, Cr.A.No. 75 of 1969 decided on 10.09.1969*
- *D.Cawasji and Co., Mysore v. State of Mysore and another 1984 (Supp.) Supreme Court Cases 490*
- *Delhi Cloth & General Mills Co. Ltd. and another v. State of Rajasthan and others 1996(2) Supreme Court Cases 449*
- *Indian Aluminium Co. etc. v. State of Kerala 1996(7) SCC 637*
- *National Agricultural Cooperative Marketing Federation of India Ltd. and another v. Union of India and others* (2003) 5
- *Commissioner of Income Tax (Central)I, New Delhi v. Vatika Township Private Limited, 2015(1) Supreme Court Cases 1*
- *CED v. M.A. Merchant 1989 Supp (1) SCC 499*
- *S.T.Sadiq v. State of Kerala and others 2015 SCC online 99*
- *Cauvery Water Disputes Tribunal, 1993 Supp (1) SCC 96*
- *Union of India v. Tulsiram Patel and others 1985(3) SCC 398*
- *Sulochana Amma v. Narayanan Nair 1994(2) SCC 14*
- *R.C.Tobacco (P) Ltd. and another v. Union of India and another (2005) 7 Supreme Court Cases 725*
- *J.K.Industries Ltd. and others v. Chief Inspector of Factories and Boilers and others, 1996(6) Supreme Court Cases 665*:
- *Haryana Organics etc. v. State of Haryana 2003(1) Punjab Law Reporter 265*
- *Binani Industries Ltd. Kerala v. Assistant Commissioner of Commercial Taxes VI Circle Banglore and others 2007(15) SCC 435*
- *Dharappa v. Bijapur Cooperative Milk Producers Societies Union Ltd. 2007(9) SCC 109*
- *T.Kaliamurthi and another v. Five Gori Thaikal Wakf and others, 2008(9) SCC 306*

Cases relied upon:

- *Additional Commissioner (Legal) and another v. Jyoti Traders and another 1999(2) SCC 77*
- *Shri Prithvi Cotton Mills Ltd. and another v. Broach Borough Municipality and others, 1969(2) Supreme Court Cases 28*

Cases Distinguished:

- *S.S.Gadgil v. Messrs. Lal and Co. AIR 1965 SC 171*
- *J.P.Jani, Income Tax Officer, Circle IV, Ward G, Ahmedabad and another v. Induprasad Devshanker Bhatt, AIR 1969 SC 778,*
- *State of Tamilnadu v. Star Tobacco Co. 1974(3) S.C.C. 249*
- *CED v. M.A. Merchant 1989 Supp (1) SCC 499*
- *K.M.Sharma v. Income Tax Officer, Ward 13(7), New Delhi, 2002(4) Supreme Court Cases 339*
- *Bharat Petroleum Corporation Ltd. v. State of Punjab and another, 2010(3) VST, 201*

Present: Mr. Ashwani Kumar Chopra, Senior Advocate with Ms. Rupa Pathania, Advocate, for the petitioner.

Mr. Jagmohan Bansal, Addl. Advocate General, Punjab, for the respondent State of Punjab and also for the appellants in VAT Appeal No. 71 of 2014.

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S.J. VAZIFDAR, A.C.J.

The petitioners have challenged the constitutional validity of the amendment to section 29 of the Punjab Value Added Tax Act, 2005 (hereinafter referred to as the PVAT Act) by the Punjab Value Added Tax Act, 2013 ((hereinafter referred to as the Amendment Act). They have also sought a writ of certiorari to quash a notice dated 23.09.2014.

The challenge before us was restricted to the constitutional validity of Section 29 as amended. There were several connected petitions. It was agreed that the result in those petitions would follow the result of this petition. We, therefore, also heard all the counsel who appeared in the connected petitions. As all the petitioners restricted the challenge to the constitutional validity of the amended section 29, it is, necessary to refer to the facts only briefly. We will for convenience refer to the facts from this Civil Writ Petition No. 21811 of 2014.

2. The petitioners had set up a plant for manufacturing vanaspati and other edible oils in the State of Punjab. It is registered under the PVAT Act'. Prior thereto the petitioner was also registered under the Punjab General Sales Tax Act, 1948 (PGST Act) and the Central Sales Tax Act, 1956. The PVAT Act was enacted *interalia* to provide for the levy and collection of Value Added Tax (VAT) and turnover tax on the sales or purchases of goods and for the repeal of the PGST Act. Upon the PVAT Act coming into force, the petitioner made an application for a registration certificate under that Act which was granted. The petitioner is registered as a "Taxable Person/Registered person" under the provisions of the PVAT Act for the manufacture and sale of its products. It also continues to be registered under the Central Sales Tax Act, 1966 and the rules framed thereunder.

3. The petitioner was issued the impugned notice dated 23.09.2014 for framing the assessment for the assessment year 200607 under section 29 of the PVAT Act and under section 9(2) of the Central Sales Tax Act, 1966 by the Excise and Taxation Officer. The facts leading to the issuance of the impugned notice are as follows.

A notice dated 12.08.2011 was addressed to the petitioner by the Excise and Taxation Inspector under Section 29(2) of the PVAT Act and under Section 9(2) of the Central Sales Tax Act stating that upon examination of the petitioner's tax return for the accounting year 200607, it was found that the returns were incorrect and incomplete; that there were definitive reasons to believe that the petitioner was liable to pay tax but that it had failed to do so; that it had availed input tax credit which it was not eligible for and that there was mismatch of the data. The notice further states that it was, therefore, intended to frame the assessment under section 29(2) of the PVAT Act and 9(2) of the Central Sales Tax Act for the accounting year 200607 to determine the petitioner's tax liability for the said period.

According to the petitioner, the Excise & Taxation Inspector-cum-Designated Officer realized that the assessment could not be made for the accounting year 200607 as it was beyond the period of three years after the date when the annual statement was filed and that there was no extension of time to make the assessment granted by the Commissioner. The officer, therefore, did not pursue the matter any further. The petitioner contends that it has in any event been paying the tax in accordance with law. We are, however, not concerned with the merits in this petition. We confine ourselves to the challenge to the constitutional validity of Section 29. By the impugned notice dated 23.09.2014, the respondents have sought to open the assessment for the year 200607.

4. The Department of Legal and Legislative Affairs, Punjab, notified the Punjab Value Added Tax (Second Amendment) Act, 2013 (Amendment Act) on 15.11.2013. By Section 6 of the Amendment Act, Section 29 of the PVAT Act was amended. The Notification dated 15.11.2013 was issued stating that the Amendment Act received the assent of the Governor of Punjab on 15.11.2013. Section 1(2) states that "it shall come into force on and with effect from the date of its publication in the Official Gazette". It was published in the official gazette on 15.11.2013.

5. (A) It would be convenient to juxtapose section 29 as it originally stood and as amended with effect from 15.11.2013:

Before amendment on 15.11.2013 Section 29(4)	Amendment from 15.11.2013 Section 29(4)
*An assessment under sub section (2) or sub-section (3) may be made within **(three)** years, after the date when the annual statement was filed or due to be filed whichever is later.* *PROVIDED THAT where circumstances so warrant, the Commissioner may by an order in writing, allow assessment of a taxable person or a registered person after three years, but not later than six years, from the date, when annual statement was filed or due to be filed by such person, whichever is later.*	*An assessment under sub-section (2) or sub-section (3), may be made within **(six)** after the date when the annual statement was filed or due to be filed whichever is later.* *PROVIDED THAT the assessment under sub section (2) or sub-section (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.* ***EXPLANATION:*** *(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 e expired.* *(2) It is clarified that prior to commencement of the Punjab Value Added Tax (Second Amendment) Act, 2013, the Commissioner was not required to issue any notice to the concerned person before extending the limitation period of assessment.* ***29(10A)*** *Notwithstanding anything to the contrary contained in any judgment, decree or order of any Court, tribunal or other authority, an order passed by the Commissioner under sub-section (4) prior to commencement of the Punjab Value Added Tax (Second Amendment) Act, 2013, shall not be invalid on the ground of prior service of notice or communication of such order to the concerned person."*

It is pertinent to note that there is no provision in the amended section 29(4) corresponding to the proviso to section 29(4) prior to the Amendment Act.

(B) The statement of objects and reasons in respect of the said amendment reads as follows:

> ***"Amendment in Section 29 of the Punjab VAT Act, 2005:-***
>
> *Due to the provision of selfassessment in Punjab Value Added Tax Act, 2005, cases are selected by the Departmental Officers for the assessment on the basis of certain risk parameters or in which revenue is involved. According to Section 29(4), the assessment of a case has to be framed within 3 years of filing the Annual Statement. It is pertinent to mention here that due to heavy work load and shortage of staff in the Department, by the time the Designated Officer detects a tax due in a particular case, the limitation period of 3 years is near to end. The Commissioner has the power to extend the period of assessment upto 6 years. By exercising this power, limitation periods were extended by the Commissioner in respect of various years which led to a lot of litigation. The Hon'ble High Court and the Hon'ble VAT Tribunal have quashed many such extension orders on technical ground of no prior service of notice to the concerned person before passing an order of such extension of limitation period and not passing individual orders, resulting in a huge revenue loss. Therefore, in order to safeguard the Revenue on account of cases becoming time barred and to undo the effect of the judgment dated 01.09.2009 of the Hon'ble High Court in case of A.B.Sugars Ltd. it has become*

necessary and expedient to amend sub Section 4 of Section 29 and insert sub section (10A) in Section 29 of the Punjab VAT Act, 2005."

6. The petitioner contends that under the unamended Section 29(4), the assessment would have been barred by limitation whereas if the amendment is held to have retrospective effect it would not be barred by limitation. The petitioner has, therefore, challenged the constitutional validity of the amendment introduced by section 6 of the Amendment Act. This brings us to the grounds of challenge to section 29(4) as amended by the Amendment Act.

I. The first contention is that section 29(4) as amended and sub section (10A) of section 29 are prospective and not retrospective. In the alternative, assuming they are retrospective, the following contentions were raised on behalf of the petitioners:-

II. The amendments do not cure or remove the defects and do not validate the defective action and are, therefore, unconstitutional.

III. The amendments to section 29(4) and the newly added sub section (10A) to Section 29 reverse/over rule the judgments of this Court and are, therefore, unconstitutional.

IV. Explanation (2) is contrary to the Rules of natural justice and is, therefore, constitutionally invalid and void.

V. Explanation (2) has no relevance to the main section and is, therefore, invalid.

VI. The amendment is harsh, unfair, arbitrary and is excessively and unreasonably retrospective and is, therefore, violative of Articles 14 and 19 of the Constitution.

VII. The proviso to the amended section 29(4) is contrary to the main section and, therefore, illegal and void.

VIII. The amendment is invalid as it extends the period of reassessment even where the original period for assessment has expired.

IX. Explanation (1) makes the old proviso redundant and is, therefore, invalid and irrational.

7. As the statement of objects and reasons candidly state, the object of the amendment is, *interalia*, to undo the effect of the judgment passed by a Division Bench of this Court in *A.B.Sugars Limited v. The State of Punjab and others 2010(29) VST 538 (P&H)*. It would be convenient, therefore, before dealing with the submissions, to first refer to that judgment and to two other related judgments.

A.B.Sugars Ltd. v. The State of Punjab and others was a case under the PGST Act. Under Section 11(3) of the PGST Act, the assessment of a dealer could be framed within three years from the last day prescribed for filing the returns. The Assistant Excise and Taxation Commissioner issued a notice to frame the assessment. The petitioner contended that the matter had become time barred. The assessment, however, was framed. The Assessing Authority observed that in exercise of the powers under Section 11(10) of the PGST Act, an extension had already been granted to frame the assessment. The petitioner challenged the notice on the ground that the Assessing Authority was required to finalize the assessment within three years from the last date prescribed for furnishing the last return in respect of any

period. The respondents contended that under Section 11(1) of the PGST Act, the Commissioner was empowered to extend the period of three years for passing an order of assessment for such further period as he deemed fit. Section 11(10) of the PGST Act reads as under:

> *"Section 11 Assessment of Tax*
>
> *(1) to (9)* ----------
>
> *(10) The Commissioner may for reasons to be recorded in writing, extend the period of three years, for passing the order of assessment for such further period as he may deem it."*

The Division Bench held that although the Commissioner was empowered to extend the period of limitation, he had to record the reasons for passing the order granting extension of time and he could not arrive at valid and acceptable reasons unless he afforded the assessee an opportunity of being heard. The Division Bench read into the provision the principles of natural justice as the provision itself was silent on the issue. The Division Bench found that there was no intendment to exclude the principles of natural justice and therefore, it followed that the principles of natural justice are inherent and must be read in Section 11(10) of the PGST Act. As in that case, the assessee had not been afforded an opportunity of being heard, it was held that the order extending the period of limitation could not be relied upon by the respondent department. The impugned notice and the order extending the time were, therefore, set aside.

Although the judgment in *A.B.Sugars Ltd.* (supra) was under the PGST Act, the provisions are similar to Section 29(4) of the PVAT Act. The PGST Act stands repealed by the PVAT Act. The ratio, therefore, would apply to the cases under Section 29(4). It was to undo the effect of this judgment that Section 29(4) was amended.

8. It would also be convenient at this stage to refer to the judgment of another Division Bench of this Court in the case of *State of Punjab through Commissioner, Bathinda v. M/s Olam Agro India Ltd. 2013(46) PHT 194 (P&H).* That was a case under Section 29(4) of the PVAT Act allowing the respondents' appeal and setting aside the orders passed by the Assessing Authority and Deputy Excise & Taxation Commissioner (Appeals). A large number of cases were selected for reassessment by invoking Section 29(4) of the PVAT Act. As the period of three years provided for reassessment had expired, it was proposed to invoke the extended period of three years in exercise of the powers under the proviso. This was done by a public notice uploaded on the website of the department informing the assessees in general that the department proposed to invoke the extended period of three years. As no objections were received, notices were issued to the assessees for framing assessments for the financial years concerned therein. Admittedly, individual notices were not served upon the assessees.

The Division Bench noted the judgment in *A.B.Sugars Ltd.* (supra) where it was held that power of extension cannot be invoked without affording the assessee an opportunity of being heard. The Division Bench referred to Rule 86 of the Punjab Value Added Tax Rules, 2005 which provided the manner of serving notices namely, by hand and through courier to the addressee or to any agent duly authorized by him or to a person regularly employed by the addressee in connection with the business in respect of which he is registered as a person and by *email*. The Division Bench held that the rule did not envisage the service of a general notice or by publication on the website of the Department. The Division Bench held that the extension of time in that case was contrary to the judgment in *A.B.Sugars Ltd. case* (supra) and could not be taken note of. The assessment orders being barred by limitation were quashed.

9. A Division Bench of this Court in *Shreyans Industries Ltd. v. State of Punjab and others, 2008 18 VST 493 (P&H),* considered a case under section 11(3) of the PGST Act which

stands replaced by the PVAT Act. Section 11 of the PGST Act dealt with the assessment of tax. Sub section 3 required an order of assessment to be passed within a period of three years from the last date prescribed for furnishing the last return in respect of any period. Sub section (10) of Section 11 of the PGST Act entitled the Commissioner, for reasons to be recorded in writing to extend the period of three years, for passing the order of assessment for such further period as he may deem fit. The Division Bench held that the power of extension of time for completing assessment has to be exercised before the assessment becomes time barred.

10. The provisions of section 29(4) prior to the amendment and as interpreted in the above judgments had not been complied with at least in most cases. Therefore, as a result of these judgments, the period prescribed under Section 29 of the PVAT Act would have expired in several cases. According to the respondents, it was to undo the effect of the judgments that the amendment was introduced.

Whether sub section (10A) of section 29 and the amendment to section 29(4) are retrospective.

11. The first submission of the learned counsel on behalf of the petitioners is that the opening part of Section 29(4) is prospective and not retrospective. This is clearly not so.

The opening part of section 29(4) as amended read by itself would suggest that the provision is not retrospective and is only prospective. The opening part, however, cannot be read alone. The entire section must be read and so read it is clear beyond doubt and for more than one reason that the section is retrospective.

12. Firstly, the proviso establishes this. It infact goes a step further and provides that the assessment under sub sections (2) or (3) in respect of which the annual statement for the assessment year 2006-07 had already been filed, can be made till 20.11.2014. Thus, the proviso, therefore, permits an additional period for the assessment year 200607. The proviso, does deal with the right to make the assessment for the period 2006-07 till 20.11.2014. It, however, far from negates the right to make an assessment for any other period. There is no reason why the legislature intended by the amendment to extend the date for making the assessment only in respect of the assessment year 2006-07. There was nothing special about the assessment year 2006-07. Obviously, therefore, the opening part of the section applied also to the years 2007-08 onwards. Thus the proviso itself establishes that the opening part of section 29(4) is retrospective.

13. This becomes clearer with the first explanation which provides that the limitation period of six years for an assessment under sub sections (2) or (3) is also applicable to those cases in which 'the aforesaid period of six years has not yet expired'. The words "aforesaid period of six years" obviously refer to the period of six years mentioned in the opening part of the section. Had it been the intention of the legislature to make Section 29(4) only prospective, it would have been entirely unnecessary to have the proviso or explanation (1). To construe the opening part of section 29(4) as being prospective would render the proviso and explanation (1) otiose.

14. Faced with this, it was submitted that the opening part of Section 29(4) is prospective and that the proviso and explanation (1) relate only to Section 29(4) prior to the amendment.

15. The submission is unsustainable as it would render the words 'the aforesaid period of six years' in explanation (1) meaningless. There was no period of six years in Section 29(4) as it originally stood. The period of six years is mentioned only in the amended Section 29(4). The word 'aforesaid' is usually a reference to something named or referred to in an earlier part

of the same document. In this case, it is a reference to the period of six years mentioned in the same section.

It can hardly be suggested that the six year period refers to the combined period under the main part of the unamended section and the extension provided therein. The extended period under the unamended section was not as of right. It was dependent upon the exercise of discretion by the Commissioner and in the manner provided therein. More important, the word 'aforesaid' can only refer to the section in which it is used which is the amended section. It is inconsistent with anything but the section in which it is used.

16. In support of the contention that the amendment to Section 29(4) operates only prospectively, learned counsel for the petitioner then relied upon Section 1 of the Amendment Act which reads as under:

> *"1. (1) This Act may be called the Punjab Value Added Tax (Second Amendment) Act, 2013*
>
> *(2) It shall come into force on and with effect from the date of its publication in the Official Gazette;*
>
> *Provided that the amendment of subsection (1) of section 13 shall come into force on and with effect from the Ist day of April, 2014 and omission of subsection (1A) of section 13 shall be deemed to have come into force on and with effect from the 4th day of October, 2013."*

It was contended that Section 1 itself made the amendment prospective and not retrospective as sub section (2) of Section 1 expressly states that it shall come into force on and with effect from the date of its publication in the official gazette i.e. 15.11.2013.

17. This argument is misconceived. It confuses the date on which the Amendment Act comes into force for the date with effect from which it comes into force. It confuses the date of the enactment or the date of the commencement of the enactment with the date of the operation thereof. Sub section (2) of Section 1 of the Amendment Act only specifies the date the Amendment Act came into force. It does not deal with the question as to whether the amendment is to operate prospectively or retrospectively. Even a retrospective amendment must come into force on the date on which the amending act comes into force but as stipulated in the amending Act. That is an entirely different thing from the date on which the amendment takes effect or operates. The date on which an Act or an amending Act is enacted is different from the date from which it operates. Thus, the Punjab Value Added Tax (Second Amendment) Act, 2013 came into force to wit it was enacted on 15.11.2013 but with retrospective effect. The extent to which it is retrospective must be determined in terms of the provisions of the Amendment Act.

18. In *Additional Commissioner (Legal) and another v. Jyoti Traders and another, (1999) 2 SCC 77*, it was held:

> *"Commencement of the Act can be different than the operation of the Act though sometimes, both may be the same. The proviso now added to subsection (2) of Section 21 of the Act does not put any embargo on the Commissioner of Sales Tax not to reopen the assessment if the period, as prescribed earlier, had expired before the proviso came into operation. One has to see the language of the provision. If it is clear, it has to be given its full effect. To reassure oneself, one may go into the intention of the legislature in enacting such provision. The date of commencement of the proviso to Section 21(2) of the Act does not control its retrospective operation. Earlier the assessment/reassessment could have been completed within four years of that particular assessment year and now by the amendment adding the proviso to Section 21(2) of the Act it is eight*

> *years. The only safeguard being that it is after the satisfaction of the Commissioner of Sales Tax. The proviso is operative from 1921991 and a bare reading of the proviso shows that the operation of this proviso relates and encompasses back to the previous eight assessment years."* …(emphasis supplied).

This judgment answers the issue raised on behalf of the petitioner. It draws a distinction between the commencement of the Act and the operation of the Act. It was contended that as the amending Act stated that it came into force on 15.11.2013, it must be held that the amendment had no retrospective effect and came into operation only on that day. As we have already held there is a difference between the date on which the Act came into force and the date with effect from which the provisions thereof operate. As held in this judgment, the date of commencement does not control its retrospective operation.

19. It was then contended that the proviso to sub Section (2) of Section 1 of the Amendment Act made it clear that when the legislature wanted to make the enactment retrospective it did so specifically. Section 5 of the Amendment Act was relied upon to illustrate this point as it specifies the date from which it is to operate. Section 6 of the Amendment Act which amended Section 29(4) did not specify the date from which it is to operate. It was submitted that the amendment is, therefore, retrospective.

20. The position is infact quite the contrary. The Amendment Act, 2013 introduced several amendments, each of which operated from a particular date. Section 5 of the Amendment Act which amended Section 13 of the Act did not stipulate when it was to comes into effect. The proviso obviously, therefore, made it retrospective but only from a particular date. That does not imply that every other provision/amendment operates only prospectively. Each provision must be examined to determine the date from which it operates.

21. The contention that the Section applies only prospectively and in any event applies only in respect of the assessment years in respect whereof the period of limitation for making the assessment under the unamended section has not expired, is, therefore, rejected.

22. The submissions on behalf of the petitioner which we will now deal with proceed on the basis that Section 29 was amended retrospectively.

23. It is well established that the Legislature has the power to enact the laws, including laws dealing with taxation, with retrospective effect.

II. ***The amendments do not cure or remove the defects and do not validate the defective action and are, therefore, unconstitutional.***

III. ***The amendments to section 29(4) and the newly added sub section (10A) to Section 29 reverse/over rule the judgments of* this Court and are, therefore, unconstitutional.**

24. It was contended, however, that Section 29 as amended is unconstitutional for it permits the reopening of time barred assessments. It is also submitted that assuming that it is permissible by legislation to reopen time barred assessments by enacting a retrospective law, the same can be done only by curing the defect. The amendment to section 29(4) does not cure the defect and infact over rules the judgments of this Court which is impermissible. It is submitted that the proviso and the explanations to Section 29(4) and sub section (10A) of Section 29 have the effect of overruling the judgments of this Court including the judgment in *A.B.Sugars Limited v. The State of Punjab and others (supra),* without removing the defect.

25. The judgments relied upon on behalf of the petitioners, which we will now refer to, deal with validating statutes as well as the power of the legislature in respect of judgments of

Courts. It is important, however, at the outset to note that the amendment to Section 29 does not validate an invalid statute. Section 29(4) prior to the amendment had never been struck down as being invalid on any ground whatsoever. It had been interpreted in the judgments which we have already referred to. It was held that the power to extend the time under the proviso could not be exercised after the expiry of the period of three years; that the rules of natural justice must be read into the unamended Section and that individual notice to an assessee was mandatory and that a general notice on the website of the department did not meet the requirements of the proviso to Section 29(4) prior to the amendment. The authorities under the PVAT Act had in most cases overlooked these requirements. It is their acts, therefore, which were quashed. The amendment, therefore, does not seek to validate the Act but the manner in which it was implemented.

26. We will presume that the ratio of the judgments on validating Acts apply equally to the amendments/legislation that validate retrospectively the acts of the authorities pursuant to and in implementation of the Act. We will assume, therefore, that even such amendments/legislation would be valid only if the basis of the judgments that quashed such acts is altered so fundamentally that in the altered circumstances the judgment could not have been delivered.

Indeed if an ineffective statute can be validated retrospectively, we see no reason in principle why an invalid action taken under a valid statute cannot be validated by a retrospective legislation. Such legislation must ofcourse be valid in all other respects. For instance, it must be within the powers of the legislature to enact such an amendment and the amendment must also meet all other tests stipulated in respect of retrospective legislation. We will deal with the parameters for challenging a retrospective legislation taken while considering the submission that the amendments are excessive and unreasonable.

27. This brings us to a consideration of the judgments on validating Acts and in respect of the power of the legislature to over rule judgments of Courts. We will refer to all the judgments in considerable detail, though the ratio of these judgments is clear as the petitioners emphasized the importance of each of them in support of their contentions at considerable length. On the question of validating statutes, the general principle is that the legislature has the power to amend even retrospectively a statute but the validity of such a law depends *interalia* upon it removing the defect or lacuna which the Courts had found in the existing law. The Amending Act must so fundamentally alter or change with retrospective effect the conditions on which a judgment was based that in the altered circumstances the judgment would never have been delivered. Further, the legislature cannot by mere declaration overrule a judicial decision. It can, however, render the same ineffective by enacting a valid law within its legislative field fundamentally altering or changing its character retrospectively. As noted in the judgment we will refer to, a changed or altered condition must be such that the previous decision would not have been rendered by the Court if those conditions had existed at the time of declaring a law as invalid. The amendments to Section 29 are not contrary to the ratio of any of these judgments.

28. In *Shri Prithvi Cotton Mills Ltd. and another v. Broach Borough Municipality and others, 1969(2) Supreme Court Cases 283,* the Gujarat Imposition of Taxes by Municipalities (Validation) Act, 1963, was passed because of the decision of the Supreme Court in *Patel Gordhandas Hargovindas v. Municipal Commissioner, Ahmedabad 1964(2) S.C.R. 608.* Rule 350A was called in question for rating open lands which provided that the rate on the area of open lands shall be levied at 1 per centum on the valuation based upon capital value. It was held that the word 'rate' meant a tax for local purposes imposed by the local authorities. The rule was declared *ultra vires* the Act itself. The legislature of Gujarat passed the Validation Act seeking to validate the imposition of the tax as well as to avoid any future interpretation of the

Act on the lines on which the Rule was construed. Paragraph 4 of the aforesaid judgment reads as under:

> *"**4.** Before we examine Section 3 to find out whether it is effective in its purpose or not we may say a few words about validating statutes in general. When a Legislature sets out to validate a tax declared by a court to be illegally collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition, of course, is that the Legislature must possess the power to impose the tax, for, if it does not, the action must ever remain ineffective and illegal. Granted legislative competence, it is not sufficient to declare merely that the decision of the Court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the Legislature does not possess or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Ordinarily, a court holds a tax to be invalidly imposed because the power to tax is wanting or the statute or the rules or both are invalid or do not sufficiently create the jurisdiction. Validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal. Sometimes this is done by providing for jurisdiction where jurisdiction had not been properly invested before. Sometimes this is done by reenacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the reenacted law. Sometimes the Legislature gives its own meaning and interpretation of the law under which tax was collected and by legislative fiat makes the new meaning binding upon courts. The Legislature may follow any one method or all of them and while it does so it may neutralise the effect of the earlier decision of the court which becomes ineffective after the change of the law. Whichever method is adopted it must be within the competence of the legislature and legal and adequate to attain the object of validation. If the Legislature has the power over the subjectmatter and competence to make a valid law, it can at any time make such a valid law and make it retrospectively so as to bind even past transactions. The validity of a Validating Law, therefore, depends upon whether the Legislature possesses the competence which it claims over the subjectmatter and whether in making the validation it removes the defect which the courts had found in the existing law and makes adequate provisions in the Validating Law for a valid imposition of the tax."*
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> (emphasis supplied).

29. As we mentioned earlier, the validity of a validating law was held to depend interalia upon whether in making the validation it removes the defect which the Courts had found in the existing law and makes adequate provisions in the validating law for a valid imposition of the tax. We will apply the ratio of this judgment to the case before us after referring to the other judgments on this point.

30. In *Municipal Corporation of the City of Ahmedabad and another v. The New Shrock SPG. and WVG Co. Ltd. 1970(2) Supreme Court Cases 280,* the Supreme Court while dealing with the validity of Section 152A(3) of the Bombay Provincial Municipal Corporation Act, 1949, held that the section commanded the Corporation to refuse to refund the amount illegally collected despite the orders of the Court and the High Court. It was held that the provision attempted to make a direct inroad into the judicial powers of the State that the legislature can remove the basis of a decision rendered by the competent Court thereby rendering the decision ineffective but the legislature does not have the power to ask the instrumentalities of the State to disobey or disregard the decisions given by the Courts. The judgment refers to the observations of the Supreme Court in *Mahal Chand Sethia v. State of West Bengal, Cr.A.No. 75 of 1969 decided on 10.09.1969* that a Court of law can pronounce upon the validity of any law and declare the same to be null and void and can also strike down

or declare invalid any Act or direction of a State Government which is not authorized by law. It was further observed that the position of a Legislature is different in that it cannot declare any decision of a Court of law to be void or of no effect.

31. In *D.Cawasji and Co., Mysore v. State of Mysore and another 1984 (Supp.) Supreme Court Cases 490,* the Supreme Court held:

> *"**17.** In view of the aforesaid judgment and order passed by the High Court amounts collected by the State by way of sales tax on items of excise, health cess and education cess on arrack or special liquor from the appellant became refundable to the appellant. The impugned amendment has been passed, as the Statement of Objects which we have earlier set out clearly indicates to override the judgment of the High Court and to enable the State to hold on to the amount collected as sales tax on excise duty, health cess and education cess, if any, on arrack or special liquor. It has to be noted that the said judgment of the High Court in the earlier case had become final and conclusive inasmuch as the special leave petition filed against the judgment by the State was withdrawn. The State instead of seeking to test the correctness and effect of the judgment and order of the High Court thought it fit to have the judgment and order nullified by introducing the impugned amendment. The amendment does not proceed to cure the defect or the lacuna by bringing in an amendment providing for exigibility of sales tax on excise duty, health cess and education cess. The impugned amending Act may not, therefore, be considered to be a Validating Act. A Validating Act seeks to validate the earlier Acts declared illegal and unconstitutional by courts by removing the defect or lacuna which led to invalidation of the law. With the removal of the defect or lacuna resulting in the validation of any Act held invalid by a competent court, the Act may become valid, if the Validating Act is lawfully enacted. But the question may still arise as to what will be the fate of acts done before the Validating Act curing the defect has been passed. To meet such a situation and to provide that no liability may be imposed on the State in respect of such acts done before the passing of the Validating Act making such act valid, a Validating Act is usually passed with retrospective effect. The retrospective operation relieves the State of the consequences of acts done prior to the passing of the Validating Act. The retrospective operation of a Validating Act properly passed curing the defects and lacuna which might have led to the invalidity of any act done may be upheld, if considered reasonable and legitimate.*
>
> ***18.** In the instant case, the State instead of remedying the defect or removing the lacuna has by the impugned amendment sought to raise the rate of tax from 6 per cent to 45 per cent with retrospective effect from April 1, 1966 to avoid the liability of refunding the excess amount collected and has further purported to nullify the judgment and order passed by the High Court directing the refund of the excess amount illegally collected by providing that the levy at the higher rate of 45 per cent will have retrospective effect from April 1, 1966. The judgment of the High Court declaring the levy of sales tax on excise duty, education cess and health cess to be bad become conclusive and is binding on the parties. It may or may not have been competent for the State Legislature to validly remove the lacuna and remedy the defect in the earlier levy by seeking to impose sales tax through any amendment on excise duty, education cess and health cess; but, in any event, the State Government has not purported to do so through the Amending Act. As a result of the judgment of the High Court declaring such levy illegal, the State became obliged to refund the excess amount wrongfully and illegally collected by virtue of the specific direction to that effect in the earlier judgment. It appears that the only object of enacting the amended provision is to nullify the effect of the judgment which became conclusive and binding on the parties to enable the State Government to retain the amount wrongfully and illegally collected as sales tax and this object has been sought to be achieved by the impugned amendment which does not even purport or seek to remedy or remove the defect and lacuna but merely raises the rate of duty from 6 per cent to 45 per cent and further proceeds to nullify the judgment and order of the High Court. In our opinion, the enhancement of*

> *the rate of duty from 6 per cent to 45 per cent with retrospective effect is in the facts and circumstances of the case clearly arbitrary and unreasonable. The defect or lacuna is not even sought to be remedied and the only justification for the steep rise in the rate of duty by the amended provision is to nullify the effect of the binding judgment. The vice of illegal collection in the absence of the removal of the illegality which led to the invalidation of the earlier assessments on the basis of illegal levy, continues to taint the earlier levy. In our opinion, this is not a proper ground for imposing the levy at the higher rate with retrospective effect. It may be open to the Legislature to impose the levy at the higher rate with prospective operation but levy of taxation at higher rate which really amounts to imposition of tax with retrospective operation has to be justified on proper and cogent grounds. This aspect of the matter does not appear to have been properly considered by the High Court and the High Court in our view was not right in holding that "by the enactment of Section 2 of the impugned Act the very basis of the complaint made by the petitioner before this Court in the earlier writ petition as also the basis of the decision of this Court in Cawasji case [(1969) 1Mys LJ 461 : (1968) 16 Law Rep 641] that the State is collecting amounts by way of tax in excess of what was authorised under the Act has been removed". We, accordingly, set aside the judgment and order of the High Court to the extent it upholds the validity of the impugned amendment with retrospective effect from April 1, 1966 and to the extent it seeks to nullify the earlier judgment of the High Court. We declare that Section 2 of the impugned amendment to the extent that it imposes the higher levy of 45 per cent with retrospective effect from April 1, 1966 and Section 3 of the impugned Act seeking to nullify the judgment and order of the High Court are invalid and unconstitutional."*

It would be necessary, therefore, to test whether the Amendment Act validates the acts declared illegal by removing the basis on which the judgments were delivered and the basis on which the actions were declared or were liable to be declared as illegal.

32. In *Delhi Cloth & General Mills Co. Ltd. and another v. State of Rajasthan and others 1996(2) Supreme Court Cases 449,* the Supreme Court reiterated the aforesaid principles.

33. In *Indian Aluminium Co. etc. v. State of Kerala 1996(7) SCC 637,* the Supreme Court held:

> *"**36.** The validity of the Validating Act is to be judged by the following tests: (i) whether the legislature enacting the Validating Act has competence over the subjectmatter; (ii) whether by validation, the legislature has removed the defect which the court had found in the previous law; (ii) whether the validating law is inconsistent (siccon sistent) with the provisions of Chapter III of the Constitution. If these tests are satisfied, the Act can confer jurisdiction upon the court with retrospective effect and validate the past transactions which were declared to be unconstitutional. The legislature cannot assume power of adjudicating a case by virtue of its enactment of the law without leaving it to the judiciary to decide it with reference to the law in force. The legislature also is incompetent to overrule the decision of a court without properly removing the base on which the judgment is founded.*
>
> ***40.** In Govt. of A.P. v. Hindustan Machine Tools Ltd.. AIR 1975 SC 2037 the respondent had constructed its factory and other buildings within the limits of Gram Panchayat 'K', without its permission. Gram Panchayat passed a resolution to collect permission fee from the respondent on the capital value of the factory building at a specified rate. They also imposed house tax and demanded payment for the period 1966 to 1969. The writ petition was filed challenging the power to levy house tax and other fees. The A.P. High Court issued a mandamus prohibiting the Gram Panchayat from collecting the amounts. The High Court had held that as per the definition of the house under the Act, the factory and other building was not a house. Against the judgment an appeal was filed in this Court. Pending appeal, the legislature amended the definition of 'house' with retrospective effect so as to eliminate the impediment on which the High*

Court rested its judgment. It also made validation of the actions by Section 4 of the Validation Act with retrospective effect. On that basis when it was contended in this Court for the respondent that the legislature had overruled or set aside the judgment of the High Court and it was constitutionally impermissible, a Bench of three Judges had held that the State Legislature had not overruled or set aside the judgment of the High Court. It had amended the definition of the house by substituting a new section in the place of an old one, providing a new definition which had retrospective effect, notwithstanding anything contained in any judgment, decree or order of the court or other authority. In other words, this Court had held that the legislature removed the basis of the decision rendered by the High Court so that the decision could not have been given in the altered circumstances.

41. *In I.N. Saksena v. State of M.P. (1976) 3 SCR 237, the State Government amended its memorandum to compulsorily retire a government servant on attaining the superannuation age of 58 years. However, it empowered the Government to retire a government servant on his attaining the age of 55 years. Subsequently, statutory rules under proviso to Article 309 of the Constitution were framed. However, the clause to retire a government servant on attaining the age of 55 years was not incorporated, though the superannuation was retained at 58 years. The appellant judicial officer was compulsorily retired on his completion of 55 years. He successfully challenged the order of retirement which was upheld by this Court. A Constitution Bench of this Court had held that the distinction between legislative act and judicial act is well known. The adjudication of the rights of the parties is a judicial function. The legislature has to lay down the law prescribing the norms or conduct which will govern the parties and transactions to require the court to give effect to that law. Validating legislation which removes the norms of invalidity of action or providing remedy is not an encroachment on judicial power. Statutory rule made under the proviso to Article 309 was upheld. The legislature cannot by a bare declaration, without anything more, directly overrule, reverse or override a judicial decision at any time in exercise of the plenary power conferred on the legislature by Articles 245 and 246 of the Constitution. It can render a judicial decision ineffective by enacting a valid law on a topic within its legislative field, fundamentally altering or changing with retrospective, curative or nullifying effect, the conditions on which such a decision is based. In Hari Sing h v . Military Estate Officer, 197 2 RC R (Rent) 50 8 (SC) ; (1973) 1 SC R 515 , prior to 1958 two alternative modes of eviction under Public Premises Act were available. When the eviction was sought of an unauthorised occupant by summary procedure the constitutionality thereof was challenged and upheld. The Act was subsequently amended in 1958 with retrospective operation from 1691958. Thereunder only one procedure for eviction was available. It was contended to be a legislative encroachment of judicial power. A Bench of three Judges held that the legislature possessed competence over the subjectmatter and the Validation Act could remove the defect which the court had found in the previous case. It was not the legislative encroachment on judicial power but one of removing the defect which the court had pointed out with a deeming date.*

46. *…….. It was open to the legislature under the constitutional scheme within certain limits, to amend the provisions of the Act retrospectively and to declare what the law shall be deemed to have been. But it was not open to the legislature to say that the judgment of the court properly constituted and rendered, shall be deemed to be ineffective and "the interpretation of the law shall be otherwise than as declared by the court."*

56. *From a resume of the above decisions the following principles would emerge:*

(1) The adjudication of the rights of the parties is the essential judicial function. Legislature has to lay down the norms of conduct or rules which will govern the parties and the transactions and require the court to give effect to them;

(2) The Constitution delineated delicate balance in the exercise of the sovereign power by the legislature, executive and judiciary;

(3) In a democracy governed by rule of law, the legislature exercises the power under Articles 245 and 246 and other companion articles read with the entries in the respective lists in the Seventh Schedule to make the law which includes power to amend the law.

(4) Courts in their concern and endeavour to preserve judicial power equally must be guarded to maintain the delicate balance devised by the Constitution between the three sovereign functionaries. In order that rule of law permeates to fulfil constitutional objectives of establishing an egalitarian social order, the respective sovereign functionaries need free play in their joints so that the march of social progress and order remains unimpeded. The smooth balance built with delicacy must always be maintained;

(5) In its anxiety to safeguard judicial power, it is unnecessary to be overzealous and conjure up incursion into the judicial preserve invalidating the valid law competently made;

(6) The court, therefore, needs to carefully scan the law to find out: (a) whether the vice pointed out by the court and invalidity suffered by previous law is cured complying with the legal and constitutional requirements;(b) whether the legislature has competence to validate the law; (c) whether such validation is consistent with the rights guaranteed in Part III of the Constitution.

(7) The court does not have the power to validate an invalid law or to legalise impost of tax illegally made and collected or to remove the norm of invalidation or provide a remedy. These are not judicial functions but the exclusive province of the legislature. Therefore, they are not encroachment on judicial power.

(8) In exercising legislative power, the legislature by mere declaration, without anything more, cannot directly overrule, revise or override a judicial decision. It can render judicial decision ineffective by enacting valid law on the topic within its legislative field fundamentally altering or changing its character retrospectively. The changed or altered conditions are such that the previous decision would not have been rendered by the court, if those conditions had existed at the time of declaring the law as invalid. It is also empowered to give effect to retrospective legislation with a deeming date or with effect from a particular date. The legislature can change the character of the tax or duty from impermissible to permissible tax but the tax or levy should answer such character and the legislature is competent to recover the invalid tax validating such a tax on removing the invalid base for recovery from the subject or render the recovery from the State ineffectual. It is competent for the legislature to enact the law with retrospective effect and authorise its agencies to levy and collect the tax on that basis, make the imposition of levy collected and recovery of the tax made valid, notwithstanding the declaration by the court or the direction given for recovery thereof.

(9) The consistent thread that runs through all the decisions of this Court is that the legislature cannot directly overrule the decision or make a direction as not binding on it but has power to make the decision ineffective by removing the base on which the decision was rendered, consistent with the law of the Constitution and the legislature must have competence to do the same."

34. In *National Agricultural Cooperative Marketing Federation of India Ltd. and another v. Union of India and others* (2003) 5 Supreme Court Cases 23, the Supreme Court held:

> *"**19.** In making this change, the legislature does not "statutorily overrule" this Court's decision in Kerala State Coop. Marketing Federation Ltd. [(1998) 5SCC 48, as has been contended by the appellant. Overruling assumes that a contrary decision is given on the same facts or law. Where the law, as in this case, has been changed and is no longer the same, there is no question of the legislature overruling this Court.*
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> ***20.** As has been held in Ujagar Prints (II) v. Union of India [(1989) 3 SCC 488 at p. 517, para 65:*
>
> > *"A competent legislature can always validate a law which has been declared by courts to be invalid, provided the infirmities and vitiating infractors noticed in the declaratory judgment are removed or cured. Such a validating law can also be made retrospective. If in the light of such validating and curative exercise made by the legislature — granting legislative competence — the earlier judgment becomes irrelevant and unenforceable, that cannot be called an impermissible legislative overruling of the judicial decision. All that the legislature does is to usher in a valid law with retrospective effect in the light of which earlier judgment becomes irrelevant."*

35. In *Commissioner of Income Tax (Central)I, New Delhi v. Vatika Township Private Limited, 2015(1) Supreme Court Cases 1,* the Supreme Court held:

> ***32.** Let us sharpen the discussion a little more. We may note that under certain circumstances, a particular amendment can be treated as clarificatory or declaratory in nature. Such statutory provisions are labelled as "declaratory statutes". The circumstances under which provisions can be termed as "declaratory statutes" are explained by Justice G.P. Singh in the following manner:*
>
> "*Declaratory statutes*
>
> *The presumption against retrospective operation is not applicable to declaratory statutes. As stated in CRAIES and approved by the Supreme Court. For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a Preamble, and also the word "declared" as well as the word "enacted".' But the use of the words 'it is declared' is not conclusive that the Act is declaratory for these words may, at times, be used to introduced new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective. I determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is 'to explain' an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. The language 'shall be deemed always to have meant' is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the preamended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law which the Constitution came into force, the amending Act also will be part of the existing law."*

> *The above summing up is factually based on the judgments of this Court as well as English decisions.*
>
> ***34.*** *It would also be pertinent to mention that assessment creates a vested right and an assessee cannot be subjected to reassessment unless a provision to that effect inserted by amendment is either expressly or by necessary implication retrospective. (See CED v. M.A. Merchant 1989 Supp (1) SCC 499.*
>
> ***35.****We would also like to reproduce hereunder the following observations made by this Court in Govind Das v. ITO (1976) 1SCC 906, while holding Section 171(6) of the Income Tax Act to be prospective and inapplicable for any assessment year prior to 141962, the date on which the Income Tax Act came into force: (SCC p. 914, para 11)*
>
> > ***"11.*** *Now it is a wellsettled rule of interpretation hallowed by time and sanctified by judicial decisions that, unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure. The general rule as stated by Halsbury in Vol. 36 of the Laws of England (3rd Edn.) and reiterated in several decisions of this Court as well as English courts is that*
> >
> > *'all statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence are prima facie prospective and retrospective operation should not be given to a statute so as to affect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only. (emphasis supplied)"*

36. In *Controller of Estate Duty v. M.A.Merchant and others 1989(1) SCC 499,* the Supreme Court reiterated the same principle with the same qualification. Paragraph8 of the judgment relied upon by the petitioners reads as follow:

> ***"8.*** *The new Section 59 came into force from 171960. Much earlier, on 2621960 the assessment on the accountable person had already been completed. There is a well settled principle against interference with vested rights by subsequent legislation unless the legislation has been made retrospective expressly or by necessary implication. If an assessment has already been made and completed, the assessee cannot be subjected to reassessment unless the statute permits that to be done. Reference may be made to Controller of Estate Duty, West Bengal v. Smt Ila Das[(1981) 132 ITR 720 (Cal HC)] , where an attempt to reopen the estate duty assessment consequent upon the insertion of the new Section 59 of the Estate Duty Act was held infructuous." (*emphasis supplied).
>
> The sentence emphasized illustrates our observation.

37. In *S.T.Sadiq v. State of Kerala and others 2015 SCC online 99,* the Supreme Court held that it is settled law that the legislature cannot directly annul a judgment of a Court and that the legislative function consists in 'making' a law and not in 'declaring' what the law shall be. In the words of R.F.Nariman J.:

> *'If the legislature were at liberty to annul judgments of courts, the ghost of bills of attainder will revisit us to enable legislatures to pass legislative judgments on matters which are interparties. Interestingly, in England, the last such bill of attainder passing a legislative judgment against a man called Fenwick was passed as far back as in 1696. A century later, the US Constitution expressly outlawed bills of attainder [see: Article 1 Section 9].*

> *It is for this reason that our Constitution permits a legislature to make laws retrospectively which may alter the law as it stood when a decision was arrived at. It is in this limited circumstance that a legislature may alter the very basis of a decision given by a court, and if an appeal or other proceeding be pending, enable the Court to apply the law retrospectively so made which would then change the very basis of the earlier decision so that it would no longer hold good. However, if such is not the case then legislation which trenches upon the judicial power must necessarily be declared to be unconstitutional."*

38. The Supreme Court also referred to the judgment in re; *Cauvery Water Disputes Tribunal, 1993 Supp (1) SCC 96,* where it was held that the legislature cannot setaside an individual decision interparties and affect their rights and liabilities alone and that such an act on the part of the legislature amounts to exercising the judicial power of the State and to the functioning as an Appellate Court or Tribunal. The emphasis on behalf of the petitioners on these observations was unnecessary for it is not even the petitioner's case that the amendment seeks to set aside an individual decision interparties or that it seeks to affect their rights and liabilities alone. In the case before the Supreme Court it was found that the provisions impugned therein aimed only on directly upsetting a final judgment of the Supreme Court interparties.

39. Relying upon these judgments, several submissions were made to challenge the amendment to Section 29(4).

40. It was contended that the amendments tantamount to reversing the decision of this Court in exercise of judicial powers which the legislature does not possess. It was further submitted that the ineffective or invalid clause had not been removed and therefore, the validation of the acts which would have been illegal in view of the said judgments cannot be said to have been validated.

41. In *Prithvi Cotton Mills Ltd.* (supra), it was observed that sometimes the legislature gives its own meaning and interpretation of law under which the tax was collected and by legislative fiat makes the new meaning binding on Courts. It was held that this was one of the methods that the legislature may follow to neutralize the effect of the earlier decision of the Court which becomes ineffective after the change of the law. By providing its own meaning and interpretation of the law, the legislature does not say what the provision meant when the Court had interpreted it by the judgment and said what is meant. What the legislature does by the amendment is to say now i.e. on the enactment of the amendment, what the section means and how it is to be interpreted and to make that meaning or interpretation applicable retrospectively. In doing so the legislature does not reverse the judgment. It removes the basis on which it was pronounced by legislative fiat and not de hors legislative fiat.

42. This resolves an apparent conflict with the rule that once the legislation leaves Parliament it is the Courts and the Courts alone that can interpret the provisions thereof. This rule is not inconsistent with what we have just said. Parliament cannot interpret the legislation except by exercising its legislative powers. Interpreting legislation is the domain of the Courts and to enact laws is that of Parliament. Thus Parliament cannot interpret the law enacted by it except by legislative fiat. There is, therefore, no conflict between the two principles. Infact, when the Parliament gives its own meaning or interpretation to a provision it does not encroach upon the Courts' domain to interpret the laws enacted by it but infact interprets the provisions by giving it its own meaning by legislative fiat. Parliament could have done so originally. It can do so subsequently by an amendment both prospective and retrospective.

43. This method has been adopted in the present case. The original proviso was construed by this Court as requiring a notice to be served upon the assesse for the Commissioner to decide whether or not to allow assessment of a taxable person or a registered

person after three years from the date when the annual statement was filed or was due to be filed by the assessee. The basis of this judgment has been neutralized. The legislature has given its own meaning and interpretation of Section 29 prior to the amendment. This it has done by explanation (2) to sub section (4) of Section 29 and by sub section (10A) of Section 29.

44. Explanation (2) clarifies that prior to the commencement of the Amendment Act, the Commissioner was not required to issue notice to the concerned person before extending the limitation period of assessment. We do not read this clarification as a declaration that the judgments were wrong. The legislature has by legislative fiat given its own interpretation of the law and made it binding upon the Courts. It was sufficient for the legislature to enact only a clarificatory amendment. By doing so, the legislature has not overruled the judgments of this Court. It has removed the basis on which the judgments were delivered.

45. In *A.B.Sugars Ltd. case* (supra), the Division Bench held that the rules of natural justice must be read into the proviso to Section 29. This was in view of the fact that the proviso was silent on the issue and the rules of natural justice were not excluded either expressly or by necessary intendment. By explanation (2) and sub section (10A) of the amended Section, the basis of the judgment has been nullified by providing that it was not necessary for the Commissioner to give any notice to extend the time for making the assessment.

The legislature has given its own meaning or interpretation of the original proviso. By doing so it has not merely declared that the decisions of this Court shall not bind the parties concerned. By giving its own meaning or interpretation to section 29, the legislature does not merely state that the section did not mean what the Courts said it meant but has furnished its own meaning and interpretation of the section and has made that meaning and interpretation applicable retrospectively. By virtue of the amendment, therefore, the judgments of this Court have not been reversed. The basis on which the judgments were delivered has, however, been removed.

46. Explanation (2) could have been enacted in the original section itself if the legislature had contemplated the ratio of the said judgment. It could have been enacted in the original section itself that a notice for extension was not necessary. The clarificatory amendment in explanation (2) was probably necessary as although the proviso to the unamended section had been done away with in the amended section, the effect of the judgment remained. The legislature obviously wanted to do away with the same.

47. What is even more important is this. We have already held that the opening part of Section 29(4) as amended operates retrospectively. Thus, the period for making an assessment within six years after the date when the annual statement was filed or due to be filed whichever is later stands extended under the opening part of the section itself as it is retrospective. We held that it was retrospective in view of the proviso and explanation (1) to the amended Section. Thus, in any event, the period of six years under the amended section was to apply retrospectively. Explanation (2) is, therefore, merely clarificatory. Even if Explanation (2) and subsection (10A) are held to be unconstitutional it would make no difference. They in any event indicate the intention or object of the legislature that the amended provisions are with retrospective effect. There is no reason why a provision which is held to be invalid cannot be an aid to ascertaining the object or the intention of the legislature. The intention of the legislature is one thing and the legality of a legislation is another. The intention or object of the legislature may be valid but the mode or manner of enacting it may not be. The invalid mode of implementing the object does not even reflect adversely upon the legality and validity of the intention or the object. Even if the enactment is invalid it can nevertheless disclose the object of the legislation. In that event the purpose would be equally served by the opening part of section 29(4) as amended and by Explanation (1).

48. It was contended that sub section (10A) of section 29 is nothing but a validating provision though it is not stated to be so in as many words. It was contended that sub section (10A) has the effect of overruling the said judgments without curing the defects pointed out therein.

We do not agree. We will assume sub section (10A) conveys such an impression. That, however, is only if sub section is read by itself. Reading it by itself would be incorrect. It must be read alongwith the rest of the section. So read it is clear that the defect in the actions i.e. the manner in which the proviso to the unamended section 29(4) was implemented is removed. Explanation (2) removes the defect as by legislative fiat the legislature provided that the Commissioner was not required to issue any notice to the concerned person before extending the limitation period of assessment prior to the commencement of the amendment Act. Further, as we have also held the opening part of section 29(4) is itself retrospective in any event.

49. It is also contended that time for making the assessment under the old proviso could be extended by three years *interalia* only upon the order for the same being communicated. This requirement has not been taken care of by the amendment.

50. This argument overlooks subsection (10A) of section 29. It also overlooks the fact that the opening part of the amended section 29(4) is itself retrospective as is the explanation (1) thereto.

IV. Explanation (2) is contrary to the Rules of natural justice and is, therefore, constitutionally invalid and void.

51. Relying upon the judgment of the Supreme Court in *Union of India v. Tulsiram Patel and others 1985(3) SCC 398*, it was contended that the explanation (2) being contrary to the rule of natural justice is constitutionally invalid. Even assuming this to be so, it would make no difference. As we mentioned earlier, even the opening part of the amended section 29(4) is retrospective. In the result, it would make no difference to the respondent's right to complete the assessment within the time specified in the amended section 29(4). The opening part of the amended section 29(4) does not require an extension. It provides a period of six years.

V. Explanation (2) has no relevance to the main section and is, therefore, invalid.

52. It was contended on behalf of the petitioner that explanation (2) has no relevance to the main section and is, therefore, invalid. It was contended that an explanation must be in respect of an existing substantial provision.

53. A retrospective amendment does not necessitate the continued existence of the old law in the same terms. There may yet arise the need to validate an Act or the acts performed thereunder. The need to do so may well be the same as the need that exists where the original provision is retained.

In the present case, for instance, the legislature decided against permitting any extension of time to make the assessment. The question of the original proviso continuing in the amended provision, therefore, did not arise. It was necessary to introduce the explanation nevertheless with respect to acts already done or performed prior to the amendment. It is for this reason also that it was found necessary to issue a clarification which the legislature did by enacting explanation (2). If the explanation had been enacted prior to the amendment and if it had been valid, which we think it would have been, there is no reason for it not to be valid merely because the legislature has decided against such a proviso in the amended statute.

54. Learned counsel for the petitioners relied upon the following observation of the Supreme Court in *Sulochana Amma v. Narayanan Nair 1994(2) SCC 14:*

> *"**8.** It is settled law that explanation to a section is not a substantive provision by itself. It is entitled to explain the meaning of the words contained in the section or clarify certain ambiguities or clear them up. It becomes a part and parcel of the enactment. Its meaning must depend upon its terms. Sometimes it would be added to include something within it or to exclude from the ambit of the main provision or some condition or words occurring in it. Therefore, the explanation normally should be so read as to harmonise with and to clear up any ambiguity in the same section."*

These observations are in the context of an enactment where there is a substantive provision and an explanation. The case before us is an unusual one where the substantive provision was removed by the amendment but an explanation was necessary in respect of the original substantive provision.

VI. The amendment is harsh, unfair, arbitrary and is excessively and unreasonably retrospective and is, therefore, violative of Articles 14 and 19 of the Constitution.

55. It was contended that the amendment must be struck down as unconstitutional on the ground that it is unreasonable, excessive and harsh. In support of this contention, two judgments were relied upon on behalf of the petitioners which we will now refer to.

56. In *National Agricultural Cooperative Marketing Federation of India Ltd. and another v. Union of India and others* (2003) 5 Supreme Court Cases 23, the Supreme Court held:

> *"**27**. The main thrust of the appellant's argument has been to the constitutionality of the amendment. The substitution in 1998 of the phrase "grown by" in Section 80P(2)(a)(iii) of the Act to operate from 1968, it is argued, amounts to a new levy and an unforeseen financial burden imposed on apex societies like the appellant with effect from the past 30 years. If this were so doubtless the Court may have considered the amendment to be excessively and unreasonably retrospective violating the appellant's fundamental rights under Articles 19(1)(g) and 14 of the Constitution. But in fact the grievance is unfounded. (emphasis supplied."*

57. In *R.C.Tobacco (P) Ltd. and another v. Union of India and another (2005) 7 Supreme Court Cases 725*, the Supreme Court held:

> *"**21.** A law cannot be held to be unreasonable merely because it operates retrospectively. Indeed even judicial decisions are in a sense retrospective. When a statute is interpreted by a court, the interpretation is, by fiction of law, deemed to be part of the statute from the date of its enactment. The unreasonability must lie in some other additional factors. The retrospective operation of a fiscal statute would have to be found to be unduly oppressive and confiscatory before it can be held to be so unreasonable as to violate constitutional norms:*
>
> *"Where for instance, it appears that the taxing statute is plainly discriminatory, or provides no procedural machinery for assessment and levy of the tax, or that it is confiscatory, courts would be justified in striking down the impugned statute as unconstitutional. In such cases, the character of the material provisions of the impugned statute is such that the court would feel justified in taking the view that, in substance, the taxing statute is a cloak adopted by the legislature for achieving its confiscatory purposes." (See Rai Ramkrishna v. State of Bihar [(1964) 1SCR 897 : AIR 1963 SC 1667] , SCR p. 910.)*

> *The question to be answered therefore is whether Section 154, which is in terms retrospective, is ex facie discriminatory, or so unreasonable or confiscatory that it violates Articles 14 and 19 of the Constitution. (emphasis supplied).*
>
> ***22.*** *The factors which are generally considered relevant in answering this question are: (i) the context in which retrospectivity was contemplated, (ii) the period of such retrospectivity, and (iii) the degree of any unforeseen or unforeseeable financial burden imposed for the past period." (emphasis supplied).*

The validity of the amendment Act, therefore, must be tested on the basis of the tests laid down in the above judgments. We will presume, therefore, that if an amendment is found to be excessive and unreasonably retrospective, unduly oppressive and confiscatory, plainly discriminatory, violating the appellant's fundamental rights, it would be open to challenge. As we will demonstrate, the amendment cannot by any stretch of imagination be held to be so unreasonable or excessive as to warrant it being declared invalid.

58. In support of this contention, firstly detailed tables were prepared to indicate the last dates for filing the last quarterly returns, the last dates for filing the annual statements and the last dates for assessment. The table also indicates the date upto which the accounts are to be retained, the date upto which the audit can be conducted and the date upto which the assessment can be framed both before and after the Amendment Act of 15.11.2013 in respect of the assessment years 200607, 200708 and 2008-09. The said dates were also stated in respect of the year 200910. The dates were based on Sections 28(3), 29(4), 44 of the Punjab Value Added Tax Act, 2005, Rules 36(1),41 and 47 of the Punjab Value Added Tax Rules, 2005 and Rule 6 of the Central Sales Tax (Punjab) Rules, 1957.

59. It is not necessary to set out the accurate, illustrative and well prepared table. Nor is it necessary to set out the provisions of the PVAT or the Punjab Value Added Tax Rules, 2005 and the Central Sales Tax (Punjab) Rules, 1957, as contended by the petitioner. They indeed provide that an assessee was bound to keep and maintain its books of account for a period beyond the last date of assessment as per the unamended section. However, the last date of assessment as per the amended section is well beyond the last date upto which the assesse was bound to keep and maintain its books of account under the unamended section.

For the year 200607, the assessee is not bound to keep the books after 31.03.2013. The amendment, however, extends the period of assessment to 20.11.2014. For the year 200708, the assessee is bound to keep the books upto 31.03.2014. The amendment, however, extends the period of assessment to 20.11.2014. Thus, if a notice under Section 29(2) is given even on the basis of the amendment before 31.03.2014, an assessee would have kept the books but if it is given after 31.03.2014 it is possible that the assessee would not have preserved the books. For the years 200809 and 200910, this situation would not arise as everything would be back in place. For instance, under Rule 47 of the PVAT Rules, 2005, the notice for the purpose of provisional assessment must provide a time period of not less than 10 days for production of such accounts and documents as may be specified in the notice and a person who has been served such a notice is required to produce on the specified date and time accounts and documents as mentioned in the notice.

The petitioners contend that for the years 200607 and 200708 it is possible that the assessee may not have preserved the books beyond the period that they were statutorily bound to. The petitioner in this petition for instance submits that it had sold its edible oil business and the manufacturing facility to another entity as an inseparable whole and as a going concern on slump sale basis with effect from 10.02.2012. The reference pertains to the assessment year 200607. It would, therefore, be very difficult for it to locate the original records pertaining to this period. The amendment, however, extends the date for completing the assessment, beyond the period for which the books were to be preserved statutorily. Thus, if in respect of these

assessment years, a notice is given for assessment, such assessees would be prejudicially affected for they would be unable to produce the books. In that event, they may be subjected to a best assessment for no fault of theirs. This, it is contended, is unfair, arbitrary and unduly excessive.

60. This may well be a difficulty in the way of an assessee. It is not, however, such an insuperable difficulty as to render the enactment unconstitutional. If the books are not available because they were destroyed or are otherwise unavailable to the assessee prior to the amendment, it would always be open to the assessee to bring this to the notice of the Assessing Authority who must take the same into consideration. It would be open to the assessee to take this factor as a defence and a justification for not having preserved the books. Obviously, in such cases, an adverse inference cannot be drawn against the assessee. The validity of the amendment, therefore, cannot be struck down on the ground that it is unconstitutional for this reason.

VII. The proviso to the amended section 29(4) is contrary to the main section and, therefore, illegal and void.

61. It was contended on behalf of the petitioner that the proviso introduced by the amendment is contrary to the main section and is therefore, illegal and unconstitutional. In support of this contention, the petitioners relied upon the following observation of the Supreme Court in *J.K.Industries Ltd. and others v. Chief Inspector of Factories and Boilers and others, 1996(6) Supreme Court Cases 665*:

> ***"33.*** *A proviso to a provision in a statute has several functions and while interpreting a provision of the statute, the court is required to carefully scrutinize and find out the real object of the proviso appended to that provision. It is not a proper rule of interpretation of a proviso that the enacting part or the main part of the section be construed first without reference to the proviso and if the same is found to be ambiguous only then recourse may be had to examine the proviso as has been canvassed before us. On the other hand an accepted rule of interpretation is that a section and the proviso thereto must be construed as a whole, each portion throwing light, if need be, on the rest. Aproviso is normally used to remove special cases from the general enactment and provide for them specially.*
>
> ***34.*** *Aproviso qualifies the generality of the main enactment by providing an exception and taking out from the main provision, a portion, which, but for the proviso would be a part of the main provision. Aproviso must, therefore, be considered in relation to the principal matter to which it stands as a proviso. Aproviso should not be read as if providing something by way of addition to the main provision which isforeign to the main provision itself.*
>
> ***35.*** *Indeed, in some cases, a proviso, may be an exception to the main provision though it cannot be inconsistent with what is expressed in the main provision and if it is so, it would be ultra vires of the main provision and struck down. As a general rule in construing an enactment containing a proviso, it is proper to construe the provisions together without making either of them redundant or otiose. Even where the enacting part is clear, it is desirable to make an effort to give meaning to the proviso with a view to justify its necessity.*
>
> ***36.*** *While dealing with proper function of a proviso, this Court in CIT v. Indo Mercantile Bank Ltd. [AIR 1959 SC 713 : (1959) 36 ITR 1] opined:*
>
> > *"The proper function of a proviso is that it qualifies the generality of the main enactment by providing an exception and taking out as it were, from the main enactment, aportion which, but for the proviso would fall within the main enactment. Ordinarily it is foreign to the proper function of a proviso to read it*

> *as providing something by way of an addendum or dealing with a subject which is foreign to the main enactment."*
>
> *This view has held the field till date."*

62. We do not see how this judgment supports the petitioner's contention. It infact militates against it. As held in paragraph 33, a section and the proviso must be construed as a whole and the proviso is used to remove special cases from the general enactment and provide for them specially. The reliance upon the last sentence in paragraph 34 is also not well founded. In the present case, the proviso qualifies the situation that would arise out of the main section. Though an assessment under sub sections (2) and (3) of Section 29 may be made within six years, this would not be so in respect of the assessment year 200607. For the assessment year 200607, the assessment can be made till 20.11.2014. It is not foreign to the main provision. It is infact directly in respect thereof. But for the proviso the main section could not have operated in respect of the assessment year 2006-07. By virtue of the proviso, the assessment can also be made in respect of the assessment year 200607 till 20.11.2014. There is no inconsistency between the main provision and the proviso. The proviso merely grants a further period for making the assessment in respect of the year 200607. The proviso does precisely what the judgment says it must it removes the special case viz. the assessment year 200607 from the general enactment which provides for the other assessment years and provides for this assessment year specifically.

63. The judgment of a Division Bench of this Court in *M/s Haryana Organics etc. v. State of Haryana 2003(1) Punjab Law Reporter 265* is of no assistance to the petitioner either. Paragraph 35 which is relied upon reads as under:

> *"**35.** I have considered the rival contentions and have perused the authorities cited before me. On the basis of the authoritative pronouncements of the Supreme Court as noticed above, it is clear that the entry in the Notification has to be interpreted on the basis of the plain language used in the same without having any recourse to any assumptions or presumptions or intendment. Each word has to be given a meaning and can not be considered to be superfluous or unnecessary. If the interpretation on the basis of the plain language used in this entry leads to some difficulty, it is for the legislature or the rule making authority to take the corrective measures. The courts can not give it an interpretation on equitable considerations or presumptions or assumptions in order to make up the deficiencies therein to overcome such difficulty. It is also well settled that an exception or a proviso must, prima facie, be read and considered in relation to the principal matter to which it is a proviso or an exception. It cant not be considered as separate or independent provision. A proviso can not take away specific rights given by the main provision. The proper function of an exception is to except and deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case only. In other words, an exception takes out a portion which, but for such exception, would fall within the main provision. The controversy in the present petition has, therefore, to be considered in the light of the aforesaid settled rules of construction."*

64. The proviso does not take away any right given by the main provision. There is no right given in respect of the assessment year 2006-07 in the main provision which is taken away by the proviso. The proviso merely grants further time for making an assessment in respect of the year 2006-07. The proviso is infact an exception to the main section. But for this exception an assessment in respect of the year 200607 could not have been made by 20.11.2014.

65. Paragraph 15 of the judgment of the Supreme Court in *Binani Industries Ltd. Kerala v. Assistant Commissioner of Commercial Taxes VI Circle Banglore and others 2007(15) SCC 435* does not carry the petitioner's case further either. It reads as under:

> ***"15.*** *The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. As was stated in Mullins v. Treasurer of Survey [(1880) 5 QBD 170: 42 LT 128] (referred to in Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subhash Chandra Yograj Sinha [AIR 1961 SC 1596] andCalcutta Tramways Co. Ltd. v. Corpn. of Calcutta [AIR 1965 SC 1728]) when one finds as proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subjectmatter of the proviso. The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case. It is a qualification of the preceding enactment which is expressed in terms too general to be quite accurate. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general rule.*
>
> > *"If the language of the enacting part of the statute does not contain the provisions which are said to occur in it you cannot derive these provisions by implication from a proviso."*
>
> *said Lord Watson in West Derby Union v. Metropolitan Life Assurance Society[1897 AC 647 : 77 LT 284 (HL)] . Normally, aproviso does not travel beyond the provision to which it is a proviso. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. (See A.N. Sehgal v. Raje Ram Sheoran [1992 Supp (1) SCC 304, Tribhovandas Haribhai Tamboli v. Gujarat Revenue Tribunal, (1991) 3 SCC 442 and Kerala State Housing Board v.Ramapriya Hotels (P) Ltd. (1994) 5 SCC 672).*
>
> *"This word (proviso) hath divers operations. Sometime it worketh a qualification or limitation; sometime a condition; and sometime a covenant." (Coke upon Littleton, 18th Edn., p. 146)*
>
> > *"If in a deed an earlier clause is followed by a later clause which destroys altogether the obligation created by the earlier clause, the later clause is to be rejected as repugnant, and the earlier clause prevails…. But if the later clause does not destroy but only qualifies the earlier, then the two are to be read together and effect is to be given to the intention of the parties as disclosed by the deed as a whole" (per Lord Wrenbury in Forbes v. Git [(1922) 1AC 256 : 1921 All ER Rep Ext 770 (PC)."*

66. The extended period for making the assessment in respect of the year 200607 is not by implication from the proviso. It arises from the plain and clear language of the proviso. The proviso clearly carves out an exception to the main provision itself. The judgment infact supports the respondents' case. The proviso is in terms of this judgment as but for the proviso the enacting part of the section would have included the subject matter of the proviso by disallowing the assessment in respect of the year 200607. The proviso was enacted to take this part out of the purview of the main/enacting part of the section. The proviso expressly qualified the enacting part of the section and created an exception to it.

VIII. <u>The amendment is invalid as it extends the period of reassessment even where the original period for assessment has expired</u>.

67. The next question is whether by an amendment the legislature is entitled to extend the period for assessment even though the original period for assessment has expired. The judgment of the Supreme Court in *Additional Commissioner (Legal) and another v. Jyoti Traders and another 1999(2) SCC 77* supports the respondents' case that it can. In that case, the assessment in respect of one of the parties for the year 198586 under the U.P.Trade Tax Act, 1948 was completed on 27.11.1989 and in respect of the other party was completed on

28.02.1990. The period for assessment or reassessment which was four years under Section 21 of that Act for the said assessment expired on 31.03.1990. Section 21 of the Act underwent an amendment and the provision in that respect came into force with effect from 19.02.1991. The amendment prescribed the period of eight years. Taking advantage of the amendment, the authorities issued notices to the parties for reassessment. Paragraph25 of the judgment reads as under:

> ***"25.*** *The two decisions in the cases of Ahmedabad Manufacturing & Calico Printing Co. Ltd. (1963) 48 ITR 154] and Biswanath Jhunjhunwalla [(1996) 5 SCC 626] are more closer to the issue involved in the present case before us. They laid down that it is the language of the provision that matters and when the meaning is clear, it has to be given full effect. In both these cases, this Court held that the proviso which amended the existing provision gave it retrospectivity. When the provision of law is explicit, it has to operate fully and there could not be any limits to its operation. This Court in Biswanath Jhunjhunwalla case [(1996) 5SCC 626] said that if the language expressly so states or clearly implies, retrospectivity must be given to the provision. Under Section 34 of the Income Tax Act, 1922, it is the service of the notice which is the sine qua non, an indispensable requisite, for the initiation of assessment or reassessment proceedings where income had escaped assessment. That is not so in the present case. Under subsection (1) of Section 21 of the Act before its amendment, the assessing authority may, after issuing notice to the dealer and making such inquiry as it may consider necessary, assess or reassess the dealer according to law. Subsection (2) provided that except as otherwise provided in this section, no order for any assessment year shall be made after the expiry of 4 years from the end of such year. However, after the amendment, a proviso was added to subsection (2) under which the Commissioner of Sales Tax authorises the assessing authority to make assessment or reassessment before the expiration of 8 years from the end of such year notwithstanding that such assessment or reassessment may involve a change of opinion. The proviso came into force w.e.f. 1921991. We do not think that subsection (2) and the proviso added to it leave anyone in doubt that as on the date when the proviso came into force, the Commissioner of Sales Tax could authorise making of assessment or reassessment before the expiration of 8 years from the end of that particular assessment year. It is immaterial if a period for assessment or reassessment under subsection (2) of Section 21 before the addition of the said proviso had expired. Here, it is the completion of assessment or reassessment under Section 21 which is to be done before the expiration of 8 years of that particular assessment year. Read as it is, these provisions would mean that the assessment for the year 198586 could be reopened up to 3131994. Authorisation by the Commissioner of Sales Tax and completion of assessment or reassessment under subsection (1) of Section 21 have to be completed within 8 years of the particular assessment year. Notice to the assessee follows the authorisation by the Commissioner of Sales Tax, its service on the assessee is not a condition precedent to reopen the assessment. It is not disputed that a fiscal statute can have retrospective operation. If we accept the interpretation given by the respondents, the proviso added to subsection (2) of Section 21 of the Act becomes redundant. Commencement of the Act can be different than the operation of the Act though sometimes, both may be the same. The proviso now added to subsection (2) of Section 21 of the Act does not put any embargo on the Commissioner of Sales Tax not to reopen the assessment if the period, as prescribed earlier, had expired before the proviso came into operation. One has to see the language of the provision. If it is clear, it has to be given its full effect. To reassure oneself, one may go into the intention of the legislature in enacting such provision. The date of commencement of the proviso to Section 21(2) of the Act does not control its retrospective operation. Earlier the assessment/reassessment could have been completed within four years of that particular assessment year and now by the amendment adding the proviso to Section 21(2) of the Act it is eight years. The only safeguard being that it is after the satisfaction of the Commissioner of Sales Tax. The proviso is operative from 19-2-1991 and a bare reading of the proviso shows that the*

> *operation of this proviso relates and encompasses back to the previous eight assessment years. We need not refer to the provisions of the Income Tax Act to interpret the proviso to Section 21(2) the language of which is clear and unambiguous and so is the intention of the legislature. We are, thus, of the view that the High Court was not right in quashing the sanction given by the Commissioner of Sales Tax and notices issued by the assessing authority in pursuance thereof."*

The Supreme Court held that the proviso shall operate from 1991. A bare reading of the proviso shows that the operation thereof relates and encompasses back to previous eight assessment years. As we noted earlier, the assessment year in the case before the Supreme Court was 1985-86. The amendment came into force in the year 1991. The four year period originally prescribed would have expired prior to the date of the amendment. Despite the same, the Supreme Court held that the amendment was applicable to the respondents.

68. On behalf of the petitioners, several judgments were cited in support of their submission that if the assessment period is over, the assessee acquires a vested right which cannot be disturbed by retrospective amendment which extends the period for assessment or reassessment after the original period of assessment or reassessment has expired. The judgments do not support the submission made in such unqualified term. Each of the judgments which we will now refer to qualifies this proposition to the effect that it is subject to the provisions providing to the contrary.

69. In *S.S.Gadgil v. Messrs. Lal and Co. AIR 1965 SC 171*, the Supreme Court dealt with the case of *Tomlinson v. Bullock, (1879) 4QBD 230* and *English v. Cliff, 19142 Ch 376.* In paragraph6, the Supreme Court observed that if the right to act under the earlier statute had come to an end it could not revived by the subsequent amendment which extended the period of limitation unless otherwise provided. The operative words are 'unless otherwise provided'. In other words, it was not held that even if it was otherwise provided, the principle would apply.

70. In *J.P.Jani, Income Tax Officer, Circle IV, Ward G, Ahmedabad and another v. Induprasad Devshanker Bhatt, AIR 1969 SC 778,* the Supreme Court held that it was not permissible to construe section 297(2)(d)(ii) of the Income Tax Act, 1961 as reviving the right of the Income Tax Officer to reopen an assessment which was barred under the old Act, for that would tantamount to giving a retrospective operation to the section which was not warranted by the express language of the section or by necessary implication of the section. The Supreme Court applied the well known rule of interpretation that unless the terms of the statute expressly so provide or unless there is a necessary implication, retrospective operation should not be given to the statute so as to affect, alter or destroy any right already acquired or to revive any remedy already lost by efflux of time. These observations do not support the submission that Parliament is incompetent to introduce such an amendment. The judgment only holds that such an interpretation ought not to be placed upon the provision unless the express language thereof warrants it or it is warranted by necessary implication.

71. Paragraph 5 of the judgment of the Supreme Court in *State of Tamilnadu v. Star Tobacco Co. 1974(3) S.C.C. 249* is not relevant to the point at all. The question was whether the jurisdiction to reopen the assessment was a question of procedure or power. The question was as to who had the jurisdiction to reopen the assessments. It was held that such a question cannot be considered as a question of procedure.

72. Mr. Mittal relied upon paragraph8 of the judgment of the Supreme Court in *Controller of Estate Duty, Gujarat I, Ahmedabad v. M.A.Merchant, Accountable person of late Shri A.G.Merchant, Majirawadi Road, Bhavnagar and others, 1989 Supp.(1) Supreme Court Cases 499,*which reads as under:

> ***"8.*** *The new Section 59 came into force from 171960. Much earlier, on 2621960 the assessment on the accountable person had already been completed. There is a well settled principle against interference with vested rights by subsequent legislation unless the legislation has been made retrospective expressly or by necessary implication. If an assessment has already been made and completed, the assessee cannot be subjected to reassessment unless the statute permits that to be done. Reference may be made to Controller of Estate Duty, West Bengal v. Smt Ila Das[(1981) 132 ITR 720 (Cal HC)] , where an attempt to reopen the estate duty assessment consequent upon the insertion of the new Section 59 of the Estate Duty Act was held infructuous."* (emphasis supplied).

The amendment to Section 29 clearly is retrospective. Our earlier observation based on the words emphasized by us, therefore, apply in respect of this judgment as well.

73. Paragraphs 14 and 15 of the judgment of the Supreme Court in *K.M.Sharma v. Income Tax Officer, Ward 13(7), New Delhi, 2002(4) Supreme Court Cases 339,* cited on behalf of the petitioners also infact support the respondents' case. Paragraphs 14 and 15 read as follows:

> ***"14.*** *A fiscal statute, more particularly, on a provision such as the present one regulating period of limitation must receive strict construction. Law of limitation is intended to give certainty and finality to legal proceedings and to avoid exposure to risk of litigation to a litigant for an indefinite period on future unforeseen events. Proceedings, which have attained finality under existing law due to bar of limitation cannot be held to be open for revival unless the amended provision is clearly given retrospective operation so as to allow upsetting of proceedings, which had already been concluded and attained finality. The amendment to subsection (1) of Section 150 is not expressed to be retrospective and, therefore, has to be held as only prospective. The amendment made to subsection (1) of Section 150 which intends to lift the embargo of period of limitation under Section 149 to enable the authorities to reopen assessments not only on the basis of orders passed in the proceedings under the IT Act but also on order of a court in any proceedings under any law has to be applied prospectively on or after 141989 when the said amendment was introduced to subsection (1). The provision in subsection (1) therefore can have only prospective operation to assessments, which have not become final due to expiry of period of limitation prescribed for assessment under Section 149 of the Act.*
>
> ***15.*** *To hold that the amendment to subsection (1) would enable the authorities to reopen assessments, which had already attained finality due to bar of limitation prescribed under Section 149 of the Act as applicable prior to 141989, would amount to giving subsection (1) a retrospective operation, which is neither expressly nor impliedly intended by the amended subsection."*

Our aforesaid observations apply equally to this judgment. In this case, it was held that a retrospective operation of the amended sub section was neither expressly nor impliedly intended. Infact it was held that the proceedings which have attained finality under the existing law due to a bar of limitation cannot be held to be open for revival 'unless the amended provision is clearly given retrospective operation so as to allow upsetting of proceedings which had already been concluded and attained finality'.

The principle, therefore, is that the proceedings which have attained finality under the existing law due to a bar of limitation cannot be held to be open for revival 'unless the amended provision is clearly given retrospective operation so as to allow upsetting of proceedings, which had already been concluded and attained finality'.

74. The judgment of the Supreme Court in *Dharappa v. Bijapur Cooperative Milk Producers Societies Union Ltd. 2007(9) SCC 109,* is not relevant to the issue. The Supreme Court held where the right to file an action has come to an end on expiry of the period of limitation and thus becomes barred by limitation, it does not revive by a later limitation Act,

even if it provides a longer period of limitation. Even as regards this rule, the Supreme Court held that it was subject to any express statutory provisions to the contrary.

75. In *T.Kaliamurthi and another v. Five Gori Thaikal Wakf and others, 2008(9) SCC 306*, the Supreme Court dealt with the Wakf Act, 1954 and the Wakf (Amendment Act) 1984. The Supreme Court observed that although it is true that under Section 6 of the General Clauses Act, the repeal of an enactment will not affect any right, privilege, obligation or liability acquired or incurred under the repealed enactment, this provision cannot be resorted to if a different intention appears and therefore, Section 6 cannot be applied to every repealed provision or enactment regardless of the intention of the legislature and the language used in the repealing provision. We do not see how these observations can be of any assistance to the petitioners.

76. In *Bharat Petroleum Corporation Ltd. v. State of Punjab and another, 2010(3) VST, 201,* a Division Bench of this Court framed the following question:

> *"(B) Whether the rights vested in the assessee acquired on 30.4.2005 would extinguish by an amendment made by Act No. 10 of 2005 w.e.f. 12.5.2005 although the amendment has not been given retrospective effect or could the time barred assessment be reopened on the basis of statutory extension of time."*

Thus the parties proceeded on the basis that the amendment had not been given retrospective effect. The judgment does not support the petitioners' submission.

IX. Explanation (1) makes the old proviso redundant and is, therefore, invalid and irrational.

77. It was contended that if the amendment is given effect to from 01.04.2006 as is sought to be done by the proviso and explanation (1) to the amended section, the proviso in the unamended section becomes redundant. The amendment, therefore, is contrary to the law in so far as it seeks to operate from a date prior to 15.11.2013.

78. The purpose and the effect of the entire amendment was to obviate the consequences of the proviso to the unamended section. The old proviso in so far as it required, as interpreted by the said judgment, the issuance of a notice and the extension to be within the original period of assessment was rendered redundant.

79. Mr. Bansal submitted that the amendment was curative. He submitted that under section 28 an audit and examination can be carried out within six years from the date of furnishing of the accounts under the unamended section 29, the assessment was to be done within three years. Under the old proviso, the time could be extended by another three years but only after complying with the certain conditions as held in the said judgments. If those provisions were not complied with, the extension could not be granted. Thus, according to him, the amendment would bring the section 29(4) inconformity with section 28.

We will assume that the requirements are as submitted by Mr. Bansal. If, however, the amendments were unconstitutional and illegal for any reason, this purported endeavour would not have rendered the amendment valid.

80. In the circumstances, the petition is dismissed.

81. We mentioned at the outset that in several connected writ petitions, the counsel agreed that the result of those writ petitions would follow the result of this writ petition. However, in some of those writ petitions, the challenge is also to the show cause notices issued and/or assessment orders made. It is clarified that all the contentions onmerits are kept open and the petitioners concerned in all the connected writ petitions are relegated to the appropriate remedy in respect thereof except on the grounds already dealt with in this judgment. All the petitioners concerned in the connected writ petitions are granted four weeks time from today to

enable them to adopt the appropriate proceedings. In cases where the assessment orders have already been passed, coercive steps shall not be taken upto and including 21.09.2015.

PUNJAB & HARYANA HIGH COURT

CWP NO. 16213 OF 2014

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HARYANA VANASPATI & GENERAL MILL
Vs
STATE OF HARYANA & ANR.

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

7th August, 2015

HF ▶ Assessee petitioner

Interest @ 12% on refund allowed from the date of deposit in absence of any bar under the statute.

REFUND – INTEREST – WHETHER INTEREST IS PAYABLE ON REFUND FROM THE DATE OF DEPOSIT – ADDITIONAL DEMAND RAISED – ENTIRE AMOUNT INCLUSIVE OF TAX, INTEREST AND PENALTY DEPOSITED FOR HEARING OF APPEAL DURING APRIL 1995 TO AUG 1996 – MATTER REMITTED BY TRIBUNAL FOR FRESH ASSESSMENT – REFUND GRANTED VIDE ORDER DATED MAY 2009 – INTEREST CLAIMED BY ASSESSEE ON AMOUNT OF REFUND FROM DATE OF DEPOSIT BUT GRANTED ONLY FOR FOUR MONTHS FROM AUG 2009 TO DEC 2009 – WRIT FILED – NO JUSTIFICATION FOR DENYING INTEREST TO ASSESSEE FOR THE PERIOD BENEFITED BY REVENUE WITH THE AMOUNT IT WAS NOT ENTITLED TO – PETITIONER'S CLAIM ESTABLISHED ON EQUITY – NO EXPRESS BAR IN SEC 43 OR RULE 35 ON PAYMENT OF INTEREST FOR PRIOR PERIOD – PREVIOUS JUDGEMENTS OF THE COURT ALLOWING INTEREST FROM DATE OF DEPOSIT FOLLOWED – RESPONDENTS DIRECTED TO PAY INTEREST @12% PER ANNUM ON THE AMOUNT DEPOSITED FROM THE DATES ON WHICH DEPOSOITS WERE MADE TILL PAYMENT – WRIT DISPOSED OF – *SEC 43 OF HGST ACT, 1973 ;, RULE 35 OF HGST RULES*

Facts:

An additional demand was raised vide assessment order dated 31/8/1994 including tax, interest and penalty. Entire amount was deposited by the appellant during the period April1995-August 1996 for hearing of appeal. The Tribunal allowed the appeal remitting the matter for framing fresh assessment on 5/12/2008. As per the fresh assessment order passed on 28/5/2009, the assessee was entitled to refund along with interest for only four months from 15/8/2009 to December 2009.The petitioner had however claimed interest from the date of deposit. On further appeal, the interest from the date of deposit was disallowed but allowed interest on delayed payment of refund w.e.f. the date of order of Tribunal i.e. 28/5/2009 till date for refund. A writ is filed seeking interest from the date of deposit.

Held:

It is held that the entire tax, penalty and interest has been enjoyed by the revenue from the date of deposit to which it was not entitled. There is no justification for denying a successful assessee interest upon the amount to be refunded for the period which the revenue has the benefit there from. The petitioner's claim is established in equity.

Also, there is no bar as per sec 43 and Rule 35(1)(b) for the payment of interest for the period prior thereto.

Following the earlier judgements passed by the Hon'ble High court of Punjab and Haryana, it is held that the interest is payable from the date of deposit. Therefore, the writ is disposed of by modifying the impugned order by directing the respondents to pay interest @ 12% per from the dates on which deposit were made till actual payment.

Cases referred:

State of Haryana and another Vs Ambika Oil & Soap Industries, Rohtak, 103 STC 190
Khem Ram Devi Sahai Vs State of Haryana, [2004] 23 PHT 330 (P&H)
Saurabh Kumar & Bros. Vs State of Punjab and others, [2002] 127 STC 556 (P&H)
State of Gujarat Vs Doshi Printing Press, (2015) 82 VST 384 (Guj)
Commissioner of Central Excise, Hyderabad Vs ITC Limited, 2005 (13) SCC 689

Cases followed:

Sonu Rice Mills, Ellanabad, Sirsa Vs State of Haryana and others, STI 2000 (P&H)
Sagar Motor Company Vs State of Haryana and another (CWP23721994)

Present: Mr. Sandeep Goyal, Advocate, for the petitioner.

Ms. Mamta Singla Talwar, Deputy Advocate General, Haryana.

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S.J. VAZIFDAR, A.C.J.

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

2. The assessment order dated 31.08.1994 was made in respect of the assessment year 19891990 under the Haryana General Sales Tax Act, 1973 (hereinafter referred to as the HGST Act) and under the Central Sales Tax Act, 1956 raising a tax demand of Rs. 14,17,071/ on the ground that the goods which had been purchased from within the State of Haryana had been sold on a consignment basis and stock transfer basis. A demand for interest was also raised. Penal action under Section 47 was directed to be taken separately. Under the Central Sales Tax Act, 1956, a demand of only Rs. 44/was made.

The appeal against this order was dismissed by an order dated 29.07.2002 of the Joint Excise and Taxation Commissioner (A), Rohtak. It is important to note that the entire tax demanded had been paid by the petitioner to the respondents as a condition precedent to the maintainability of the appeal. The amounts had been paid between April, 1995 to August, 1996.

However, the petitioner's appeal was allowed by an order dated 05.12.2008 passed by the Haryana Value Added Tax Tribunal. The Tribunal set aside the order and remanded the matter to the assessment authority for assessment following the decision of this Court in the

case of *State of Haryana and another Vs M/s Ambika Oil & Soap Industries, Rohtak*, 103 STC 190.

3. The Excise and Taxation OfficercumAssessing Authority accordingly passed a fresh order dated 28.05.2009 holding that the petitioner was entitled to a refund of Rs. 11,47,390/. This amount was paid in December, 2009, but without interest as demanded by the petitioner. Interest was paid only for a period of four months from 15.08.2009 to December, 2009. On 15.06.2009, the petitioner applied for the refund. The assessing authority referred the case to the Excise and Taxation Commissioner for approval, as required by Rule 36, which was granted by a letter dated 29.12.2009. The assessing authority refunded the amount as recorded in a letter dated 04.01.2010. As the payment of refund was made late, interest for five months amounting to Rs. 80,314/was also allowed. The same was, however, not paid as the matter was referred to the Excise and Taxation Commissioner for approval.

4. The petitioner filed an appeal before the first Appellate Authority claiming interest for the earlier period as well. The first Appellate Authority, however, merely directed the assessing authority to pay interest of Rs. 80,314/within 30 days from the receipt of its order dated 23.10.2012. The petitioner challenged this order before the Tribunal. It must be noted that the petitioner's contention before the Tribunal was that it was entitled to interest from 05.12.2008 i.e. the date of the order of the Tribunal setting aside the assessment order creating the additional demand of tax. Contending that the amount was refunded on 04.01.2010, the petitioner claimed interest from 05.12.2008 to 04.01.2010. The Tribunal, however, held that the assessing authority should have issued the refund voucher alongwith the fresh assessment order dated 28.05.2009 in view of Rule 35(1)(a). The Tribunal held that the petitioner was entitled to interest on the delayed payment of refund with effect from 28.05.2009 till the date of refund i.e. 04.01.2010. The Tribunal relied upon the judgement of this Court in the case of *M/s Khem Ram Devi Sahai Vs State of Haryana*, [2004] 23 PHT 330 (P&H).

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

6. Sections 25(5), 39(5) and 43 of the HGST Act in so far as they are relevant read as under:

> *"**25(5)** If any dealer fails to pay tax as required by subsection (2A) or by subsection (3), he shall be liable to pay in addition to the tax payable, simple interest on the amount of tax remaining unpaid at one per cent per month from the date commencing with the date following the last date for the payment of tax, for a period of one month and at one and a half per cent per month thereafter during the period he continues to make default in the payment:*
>
> *Provided that where the amount of tax not paid as required under subsection (2A) or subsection (3) does not exceed five hundred rupees, the interest payable thereon shall not exceed the amount of tax not so paid:*
>
> *Provided further that for the purposes of calculation of interest, a period of fifteen days or more shall be deemed to be one month and the amount of fifty rupees or more but less than one hundred rupees shall be deemed to be one hundred rupees and a period of less than fifteen days and an amount of less than fifty rupees shall be ignored.*
>
> ***39(5)** No appeal shall be entertained unless it is filed within sixty days from the date of the order appealed against and the appellate authority is satisfied that the amount of tax assessed and the penalty and interest, if any, recoverable from the person has been paid.*
>
> ***43.** Refund*

(1) The assessing authority or a person appointed to assist the Commissioner under subsection (1) of section 3, as the case may be shall, in the prescribed manner, refund to a dealer or to any other person the amount of tax or penalty or interest paid by him in excess of the amount due from him under this Act, either by a refund voucher, or at the option of the dealer by adjustment of the amount so paid against the amount due from him in respect of any other period;

Provided that the assessing authority or a person appointed to assist the Commissioner under subsection (1) of Section 3, as the case may be, shall first adjust the amount to be refunded towards the recovery of any amount due, on the date of adjustment from the dealer and shall then refund the balance, if any.

(2) Where an amount required to be refunded by the assessing authority to any person by virtue of an order issued under this Act is not so refunded to him within the period as may be prescribed, the dealer shall be entitled to interest at such rates and on such terms and conditions as may be prescribed."

7. Rules 35 1(a) and (b) and 38 of the Haryana General Sales Tax Rules, 1975 in so far as they are relevant read as under:

*"**35 1(a)** While framing the assessment of a dealer, the assessing authority shall, after such scrutiny of its record and after making such enquiries as it considers necessary, determine the amount paid by him, in excess, if any, and thereafter direct the refund of such amount as may remain after deducting any amount due from him. The assessing authority shall then issue to the dealer at his option a refund payment in form S.T.R. 34 prescribed under the Punjab Subsidiary Treasury Rules or refund adjustment order in form S.T. 34 and send it alongwith the assessment order.*

(b) Where a refund of any amount paid by any dealer or other person becomes payable as a result of the order of any appellate or revisional authority or any court and the same is not the subject matter of any further proceedings, the dealer or such other person shall make an application to the assessing authority concerned alongwith the original order or the copy thereof duly attested by the dealer, which constitutes the basis for refund, the assessing authority shall order the refund of excess amount in the manner specified in clause (a) within ninety days of the receipt of such application failing which interest shall be payable to the dealer or other person at the rate specified in subsection (5) of Section 25 of the Act, unless the Commissioner for reasons to be recorded in writing condones the delay.

38. Order Sanctioning Interest on Delayed Refunds

(1) Where a refund payment order or a refund adjustment order is issued the authority issuing such order shall simultaneously record an order sanctioning the interest payable if any on such refunds, specifying therein, the amount of refund, the payment of which was delayed, the period of delay for which such interest is payable and the amount of interest payable by the State Government , and shall communicate the same to the dealer to whom the interest is payable and also to the Commissioner stating briefly the reasons for the delay in allowing the refund.

(2) Where an order for the payment of interest on delayed refunds under sub-rule (1) has been made, the sanctioning authority shall issue to the dealer interest payment order in form S.T. 35."

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

the tax assessed and the penalty or interest, if any, recoverable in order to have an appeal under sub section (1) entertained.

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

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

10. Before referring to the binding judgements supporting the claim for interest, we will deal with the respondents' contention against the grant thereof.

11. Ms. Mamta Singla Talwar, learned Deputy Advocate General, Haryana submitted that there is an implied bar on the payment of interest in view of sub section (2) of Section 43. The submission is not well founded.

Section 43(2) entitles an assessee to interest in certain circumstances. Sub section (1) of Section 43 merely requires the assessing authority to refund in the prescribed manner the person concerned the amount of penalty, tax or interest paid by him in excess of the amount due from him under the HGST Act either by a refund voucher or at the option of the assessee, by adjustment. There is no implied, much less an express, bar on the payment of interest on the amount liable to be refunded.

Sub section (2) entitles the dealer to interest at such rates and on such terms and conditions as may be prescribed in cases where the amount required to be refunded by the assessing authority by virtue of an order issued under the HGST Act is not so refunded to him within the period as may be prescribed. On behalf of the respondents, we are invited to read Section 43 (2) with Rule 35(b). Clause (b) of sub rule (1) of Rule 35 entitles the assessee to interest at the rate specified in Section 25(5) of the HGST Act, where there is a failure to refund any amount ordered by the Appellate or Revisional Authority within ninety days of the receipt of an application by the assessee for the same. The revenue is not bound to wait for an application before refunding amounts adjudicated by the Appellate or the Revisional Authority to be due from it to any person. The revenue is bound to refund the amount forthwith subject of course to any challenge to the order. Rule 35(1)(b) only provides a higher rate of interest, namely, that specified in Section 25(5) of the HGST Act in the event of there being a delay in the payment of the refund even after a period of ninety days of an application for the same by the assessee. Section 25(5) stipulates interest at the rate of 1% per annum for a period of one month and thereafter at the rate of 18% per annum during the period of the default. It is an additional benefit or safeguard and in fact a minimal guarantee to the assessee who has been kept out of his money despite an order of the Appellate or Revisional Authority and the expiry of a period of ninety days from the date of an application by the assessee for refund in

accordance with the order of the Appellate or Revisional Authority. Neither Section 43, nor Rule 35(1)(b) bars the payment of interest for the period prior thereto.

12. We are invited to exercise our extraordinary jurisdiction under Article 226 of the Constitution of India and not jurisdiction in any other proceeding such as in a Civil Suit or even in arbitration proceedings. The judgements of this Court in similar matters have upheld the right of assesses to interest in such circumstances.

13. Mr. Goyal relied upon the judgement of a Division Bench of this Court in *M/s Sonu Rice Mills, Ellanabad, Sirsa Vs State of Haryana and others*, STI 2000 PB&HN (High Court) 13. The appeal filed by the petitioner against the assessment was allowed on 11.06.1999 with the direction that the amount paid by the petitioner to the department be refunded immediately. After waiting for four months, the petitioner therein submitted an application to the assessing authority for refund of the amount. The amount was, however, not refunded. Following a judgement dated 05.09.1994 passed by the Division Bench of this Court in CWP23721994 titled as *Sagar Motor Company Vs State of Haryana and another*, the Division Bench directed the respondents to refund the amount with interest at 12% per annum from the date of the deposit till the date of payment.

14. In *Sagar Motor Company Vs State of Haryana and another (CWP23721994)*, the Excise and Taxation Officer imposed a penalty. The assessee deposited the amount of penalty and filed an appeal before the Joint Excise and Taxation Commissioner (Appeals). The appeal was allowed. The authorities, however, failed to refund the amount leading the petitioner to file the writ petition for the refund alongwith interest. The Division Bench by an order and judgement dated 05.09.1994 held:

> *"Inspite of notice and sufficient time allowed to the respondents, they have not filed any reply.*
>
> *Admittedly, the appeal has been allowed and the petitioner has become entitled to the refund of the amount deposited by it. Consequently, we dispose of the writ petition with a direction to the respondents to refund the amount of penalty deposited by the petitioner alongwith interest at the rate of 12% per annum from the date of deposit till the date of payment."* (emphasis supplied)

15. In *M/s Khem Ram Devi Sahai Vs State of Haryana*, (2004) 23 PHT 330 (P&H) relied upon by the Tribunal, the petitioner's assessment was finalized by an assessment order dated 26.03.2003 and the petitioner was found entitled to a refund of Rs. 85,175/. It is important to note that the petitioner restricted his claim for interest from 26.03.2003 which was granted. The Court held:

> *"Having heard the counsel for the parties, we are satisfied that the petitioner deserves to succeed in its claim for interest. In the case of Saurabh Kumar & Bros. [2002] 127 STC 556; (2001) 18 PHT 336, this Court had noticed rule 35 of the Rules (sic) and held that if the refund is not issued with the assessment order, the department is liable to pay interest. Thus, it has been correctly claimed that the department was liable to issue refund on March 26, 2003. It has also been correctly pointed out that the subsequent order dated December 19, 2003 did not absolve the department of its liability to issue refund as no demand can be created from a retrospective date. This issue stands settled in the case of Saurabh Kumar & Bros. [2002] 127 STC 556 (P&H); (2001) 18 PHT 336, where under identical circumstances the dealer was held to be entitled to interest. In that case, a penalty of Rs. 50,000/had been imposed by the Assessing Authority on May 3, 1994. This order was challenged in appeal which was allowed on November 26, 1997. However, on acceptance of appeal, the amount deposited was not refunded. Since the representations of the petitioner yielded no result, the petitioner approached the High Court. The department had taken the stand that the appellate authority while cancelling the penalty on November 26, 1997 had remanded the matter to the Assessing*

> *Officer for fresh consideration. The Assessing Officer vide his order dated June 25, 2001, had again imposed the penalty of Rs. 50,000/and, thus, it was contended that no refund of interest was due to the petitioner in that writ petition. This contention was negatived by this Court on the ground that the dealer had become entitled to refund on November 26, 1997 when the penalty had been cancelled and matter remanded. It was further held that the subsequent order dated June 25, 2001 could not impose penalty from a retrospective date."*

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

16. *M/s Khem Ram Devi Sahai Vs State of Haryana's* judgement followed a decision of the Division Bench of this Court in *Saurabh Kumar & Bros. Vs State of Punjab and others, [2002] 127 STC 556 (P&H).* In *Saurabh Kumar & Bros. Vs State of Punjab and others*, penalty was imposed by the assessing authority. The petitioner paid the penalty and filed the appeal. The appeal was allowed on 26.11.1997. The amount deposited was, however, not refunded. The petitioner submitted a representation on 06.06.1998 requesting for refund, but did not receive the same leading the petitioner to file the writ petition. Interest was granted on the basis of Section 12 of the Punjab General Sales Tax Act, 1948 which is not the same as the HGST Act which is involved in the case before us. Section 12(3) of the Punjab General Sales Tax Act, 1948, is, however, similar to Section 25(2) of the HGST Act and reads as under:

> *"12(3) Where any amount required to be refunded by the assessing authority to any person by virtue of an order issued under this Act is not refunded to him within ninety days of the date of the order, the dealer shall be entitled to get simple interest on such amount at the rate of one percentum per month from the date immediately following the date of expiry of the said period for a period of one month and thereafter at the rate of one and a half percentum per month till the refund is made;*
>
> *Provided that for the purpose of calculation of the interest , par t of a month shall be considered as one month and any amount less than one hundred rupees shall be considered as one hundred rupees."*

It does not appear to have been contended in this case either, that interest is payable even for the period prior to the date of the order granting the refund. The Division Bench did not hold that interest from the date of the deposit is not payable.

17. We are, therefore, bound by the aforesaid judgements of this Court in *M/s Sonu Rice Mills, Ellanabad, Sirsa Vs State of Haryana and others* and *Sagar Motor Company Vs State of Haryana and another.* Interest is payable from the date of the deposit.

18. In this view of the matter, it is not necessary to consider Mr. Goyal's submission based on Rule 38 and the judgement of the Gujarat High Court relied upon by him in the case of *State of Gujarat Vs Doshi Printing Press*, (2015) 82 VST 384 (Guj).

19. Ms. Talwar relied upon the following order of the Supreme Court in *Commissioner of Central Excise, Hyderabad Vs ITC Limited*, 2005 (13) SCC 689:

> *"Order*
>
> *1. The issue in this appeal and in several other appeals is whether the predeposit made as a precondition for the hearing of the appeal under the Central Excise Tariff Act, 1985 was, on the assessee being ultimately successful, refundable to the assessee with interest. The learned Solicitor General has taken instructions and has stated before this Court that the Central Board of Excise and Customs proposes to issue a circular in connection with the payment of interest on all such predeposits. A draft copy of the proposed circular has been handed over to this Court. Having regard to the contents of*

the draft circular we direct compliance with the final order impugned before us and payment of interest in terms of the draft circular. The draft circular shall be appended to and the contents form part of this order. The appeal is disposed of. In view of this order any judgement of any High Court holding to the contrary will no longer be good law."

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

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

SGA
LAW OFFICES

PUNJAB & HARYANA HIGH COURT

CWP NO. 15900 OF 2015

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GARG CONSTRUCTION CO.
Vs
STATE OF HARYANA AND ANOTHER

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

5th August, 2015

HF ▶ Petitioner- Assessee

The respondents are directed to refund the amount to the assessee alongwith interest, if any, consequent to passing of Assessment order.

REFUND – ASSESSMENT – ASSESSMENT ORDER PASSED - PETITIONER ENTITLED TO REFUND – REFUND DEMANDED THROUGH LETTER- NO PROCESSING OF LETTER BY DEPARTMENT- WRIT FILED – RESPONDENTS DIRECTED TO REFUND THE AMOUNT IF APPLICATION FOUND IN ORDER ALONGWITH INTEREST, IF ANY, BY THE DATE SPECIFIED – WRIT DISPOSED OF – *SEC 20 OF HVAT ACT*

The assessee was entitled to refund. The amount of refund was demanded through an application dated 8/6/2015 which was not processed by the department. A writ is filed before High court. The respondents are directed by the Hon'ble Court to consider the application and if found in order, to refund the amount alongwith interest, if any, by 30/9/2015.

Present: Mr. Rishab Singla, Advocate, for the petitioner.

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S.J. VAZIFDAR, A.C.J.

Issue notice of motion.

Service is waived, as Ms. Mamta Singla Talwar, learned Deputy Advocate General, Haryana accepts notice on behalf of the respondents.

2. The assessment order has been made. The petitioner is entitled to refund therein. The petitioner by a letter dated 08.06.2015 (Annexure P-3) demanded the refund. The application has not even been processed.

3. The writ petition is disposed of by directing the respondents to take a decision on the petitioner's application for refund and, if found in order, to refund the amount(s) forthwith alongwith interest, if any, as per law. The same shall be done latest by 30.09.2015.

SGA
LAW OFFICES

PUNJAB & HARYANA HIGH COURT

CEA NO. 80 OF 2014

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COMMISSIONER OF CENTRAL EXCISE
Vs
NEXO PRODUCTS (INDIA)

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

7th August, 2015

HF ▶ Assessee

Clandestine removal of goods cannot be established in absence of any physical inventory having been made.

EXCISE DUTY – INSPECTION – PENALTY – REMOVAL OF GOODS – INSPECTION CONDUCTED AT BUSINESS PREMISES – SHORTAGE OF AROUND 14 LAC PIECES OF NUTS AND BOLTS SUSPECTED -CLANDESTINE REMOVAL OF GOODS (PIECES OF NUTS AND BOLTS) WITHOUT ISSUING INVOICE ALLEGEDLY ADMITTED BY APPELLANT – SUBSEQUENT RETRACTION AT FIRST STAGE ITSELF - HUGE AMOUNT COLLECTED FROM MANUFACTURER AND ENCASHED BEFORE CONFIRMATION OF DEMAND- IMPOSITION OF PENALTY - ON APPEAL BEFORE HIGH COURT BY REVENUE HELD THAT CONFESSIONAL STATEMENT WHICH WAS RETRACTED AT FIRST STAGE SHOULD NOT FORM THE BASIS OF PENALTY – NO PHYSICAL INVENTORY MADE BY OFFICERS TO FIND THE SHORTAGE – NO CORROBORATIVE EVIDENCE FOUND TO PROVE CLANDESTINE REMOVAL – PENALTY LEVIED ARBITRARILY – APPEAL DISMISSED – *SEC 11-A OF CENTRAL EXCISE ACT, 1944*

The business premises of the manufacturer of fasteners i.e. nuts and bolts, washers, rivets etc were inspected. It was alleged that the proprietor admitted during inspection that the quantity of 14,25,900 pieces were cleared on cash sale basis without any invoice issued and without payment of central excise duty. Amount of 14 lacs was taken on the same day and encashed by the department. Subsequently, notice was issued on account of shortage of 14,25,900 pieces of nuts and bolts stating penal action was liable to be imposed for the clandestine removal of goods. It was replied by the assessee that they were maintaining RG-I Register for all accounts and nuts and bolts. No physical verification of the stock was done by the officers and that it had retracted from the statement at the first stage.

The appeal preferred by the manufacturer was allowed holding that the confessional statement could not be the sole basis for making a case against a person who had retracted from the statement at the first stage of the case as there were no corroborative evidence of clandestine removal.

On appeal before High court by revenue it is held that no effort was made by the officers to segregate the nuts and bolts into various sizes and to find the shortage by comparing the same

with the recorded balance. With a huge stock of 91 lac pcs, shortage of 14,25,900 pcs. could not be concluded. No corroborative evidence has been shown to prove the case. The demand was confirmed and penalty was imposed even before meeting the defence of the manufacturer. The retraction was made at the earliest by the manufacturer. Thus levy of such a huge amount on the appellant is arbitrary. The appeal preferred by revenue is dismissed and orders passed by the authorities below are upheld.

Present: Mr. Kamal Sehgal, Advocate, for the appellant.

Mr.Sudip Singh, Advocate, for the respondent.

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S.J. VAZIFDAR, A.C.J.

1. The present appeal has been preferred by the Revenue under Section 35G of the Central Excise Act, 1944 (for short the 'Act'), aggrieved against the orders passed by the Commissioner (Appeals) Central Excise, Jalandhar dated 24.08.2007 (Annexure A3) and the Customs, Central Excise & Services Tax Appellate Tribunal, New Delhi dated 21.02.2014 (Annexure A4) wherein the demand and penalty of ₹14,76,183/dated 17.07.2006, imposed by the Adjudicating Authority under Section 11A of the Act was set aside.

2. The appellant Revenue has raised the following substantial questions of law:

"i) Whether the Hon'ble Tribunal is justified in rejecting the appeal of the Department without discussing the arguments put forth in the ground of appeal duly supported by relevant citations of Hon'ble Supreme Court of India & Tribunal?

ii) Whether the department is expected to prove the case of clandestine removal with mathematical precision even after voluntary admission by the party in written statement to this effect?

iii) Whether the order of the Tribunal is perverse on account of not having considered and given reasons in relation to the appellant's submission?"

3. The respondent assessee, who is manufacturer of fasteners i.e., nuts and bolts, washers, rivets etc., was issued a show cause notice dated 25.04.2006 on account of the inspection on the premises dated 19.12.2005. At the time of inspection and after making physical verification in the presence of the Proprietor and the Production Manager, shortage of 14,25,900 pieces of nuts and bolts valued at ₹14,76,183/ was detected which involved evasion of tax to the tune of ₹24,26,480/. Notice was issued on the basis of admission made by the Proprietor that the said quantity of finished goods were cleared on cash sale basis, without issuance of any invoice and without payment of Central Excise Duty and without the names and addresses of the buyers. That payment of the appropriate Central Excise Duty having not been made and was, accordingly, recoverable on account of the removal of the goods in a clandestine manner and penal action was also liable to be imposed.

4. The respondent submitted his reply that they were maintaining RG-I Register for all accounts and nuts & bolts and no separate account had been maintained as per the size of the nuts, bolts and washers. No physical verification of the stock was made and the whole case was made for coercing the Proprietor to give the statement which was, accordingly, retracted and withdrawn. Plea taken was that it was not possible to segregate nuts and bolts and find the sizes by comparing with the recorded balance as they had stock of approximately 91 lacs pieces of various sizes of nuts and bolts and it was impossible to find a shortage from such a huge quantity. The daily stock account which is the photocopy register was also attached in respect of the defence and the plea taken was that they were exporting those items and it was not possible for them to sell such a huge quantity in the Indian market and even otherwise, they

were hot dipped galvanized nuts and washers which are consumed by industrial consumers and cannot be sold in the open market. For production of such huge quantity, various kinds of chemicals, electricity, labour and wages would have been required and to substantiate the allegation, the Department was bound to further show some evidence. It was also pointed out that the entire account of duty had already been deposited on the same date of the visit and the show cause notice was of the same amount and it was not required to be issued and no penalty could be imposed, in such circumstances as the payment had been made prior to the notice being issued. Without meeting any of the contentions which were raised in the show cause notice, the Adjudicating Authority, however, confirmed the demand and also directed that interest be paid along with penalty of the equal amount, both upon the manufacturer and the Proprietor, separately, vide order dated 17.07.2006.

5. The manufacturer preferred an appeal which was allowed by holding that the confessional statement/admission could not be made the sole basis for a case against a person who had retracted from the statement at the first stage of the case as there were no other corroborative evidence of clandestine removal.

6. As noticed, the demand, penalty etc. were set aside vide order dated 24.08.2007. In the appeal filed by the Revenue, the plea that the assessee was manufacturing different varieties of nuts and bolts and was maintaining RG-I register for making entries was also taken into consideration to come to a conclusion that it was impossible for the visiting Officers to detect the shortage on variety basis and no inventory had been prepared. The sole statement of the Proprietor could not be a valid ground to impose the demand and penalty and the appeal of the Revenue was, accordingly, dismissed on 21.02.2014.

7. Counsel for the Revenue has laid much stress on the fact that it was a case of clandestine removal and it was virtually impossible for the Department to verify the true facts.

8. The said submission is without any merit. Specific defence had been taken by the manufacturer that no effort had been made to segregate the nuts and bolts into various sizes and to find the shortage by comparing the same with the recorded balance and there was huge stock of 91 lacs pieces of various sizes of nuts and bolts and it was impossible for the Department to come to a conclusive factual finding that there was shortage of 14,25,900 pieces of particular size and if they were all mixed together. The onus would lie upon the Department to undertake the said exercise which was not possible in such a short period due to the large number of inventory which was there at the site. Nothing was brought on record, in any manner, to show that to manufacture such a large amount of 14,25,900 pieces, there was material which had been consumed since neither any relevant record had been shown to show that electricity had been consumed or labour had been utilized to manufacture the said quantity. Neither the fact of purchase of raw material from the vendors or the sale to the consumers was brought on record. In the absence of any corroborative evidence, the levy of such a huge demand was, thus, totally arbitrary and has been rightly set aside.

9. It is apparent that the demand was raised and a sum of ₹14 lacs was taken on the same day and in order to justify the said demand which had been encashed, a show cause notice was issued on 25.04.2006 thereafter. Thus, not only the demand was confirmed but even the penalty had been imposed, which was without any basis. The confirmation is not only on the manufacturer but also on the Proprietor. Such action which had illegally created the demand without even meeting the defence of the manufacturer, has, thus, been rightly set aside by the Commissioner (Appeals) and upheld by the Tribunal. The retraction was made at the earliest, the moment the show cause notice was served and in such circumstances, the questions of law which have been raised by the appellant are answered against the appellant Revenue and the appeal is, accordingly, dismissed.

SGA
LAW OFFICES

PUNJAB & HARYANA HIGH COURT

CEA NO. 23 OF 2015

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HR ENTERPRISES / HVR INDUSTRIES PVT. LTD
Vs
COMMISSIONER OF CENTRAL EXCISE, ROHTAK AND ANR.

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

7th August, 2015

HF ▶ Assessee

Tribunal directed to pass fresh order in predeposit matter where financial hardship not considered.

APPEAL – PREDEPOSIT – ENTERTAINMENT OF – APPLICATION FILED BEFORE TRIBUNAL FOR WAIVER OF CONDITION OF PREDEPOSIT – VIOLATION OF NATURAL JUSTICE ON ACCOUNT OF LACK OF SUPPLY OF DOCUMENTS BASED ON WHICH DUTY WAS IMPOSED AS WELL AS DEPRIVATION FROM OPPORTUNITY TO CROSS EXAMINE - PRESUMPTION REGARDING PAYMENT SOME DUTY AMOUNT WOULD BE STILL PAYABLE – NO PRIMA FACIE FINDING GIVEN TO REACH THE CONCLUSION – FINANCIAL HARDSHIP OF ASSESSEE NOT CONSIDERED – ASSESSEE DIRECTED TO PAY THE AMOUNT OF PREDEPOSIT FOR MAINTAINABILITY OF APPEAL – APPEAL BEFORE HIGH COURT – ISSUES OUGHT TO HAVE BEEN CONSIDERED BY TRIBUNAL – MATTER REMANDED FOR FRESH CONSIDERATION ON THE QUESTION OF PREDEPOSIT – *SEC 35F OF CENTRAL EXCISE ACT, 1944.*

An application was filed before Tribunal to waive off the condition of predeposit for hearing of appeal. The Tribunal expressly recorded that there had been violation of principles of natural justice as the appellant was neither allowed to cross examine the customers whose statements had been relied upon nor the documents on the basis of which duty was demanded were supplied. However, it was presumed without any base that there would yet be some duty amount to be paid by assessee. No prima facie finding was given for reaching the conclusion. The financial hardship of the appellant assessee was not considered. On filing of appeal, the High Court has remanded the matter for fresh consideration on the question of predeposit after considering the issues raised by appellant.

Present: Mr. Prabhat Kumar, Advocate, for the appellant.

Mr. Sukhdev Sharma, Advocate, for the respondents.

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S.J. VAZIFDAR, A.C.J.

1. This is an appeal against the order of the CESTAT dated 16.03.2015 directing the appellant to deposit an amount of ₹ 1.50 crores as a condition precedent to the maintainability of the appeal.

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

(i) *Whether the Tribunal is justified in not considering even the prima facie merit of the case at the time of deciding the application for waiver of pre-deposit?*

(ii) *Whether the learned Tribunal is justified in not considering the acute financial hardship mentioned in the application in terms of Section 35F of the Central Excise Act, 1944?*

(iii) *Whether the Tribunal was justified in coming to the conclusion that some amount is due and would be payable without recording any prima-facie finding in support thereof?*

3. The Tribunal has expressly recorded that there was a breach of the principles of natural justice inasmuch as the documents on the basis of which the duty had been quantified had not been supplied to the appellant and that the appellant had not even been permitted to cross-examine the customers whose statements had been relied upon. The Tribunal, however, observed that though there appears to be a violation of the principles of natural justice, there would still be some duty demand which ultimately would be confirmed against the assessee. The order does not disclose even a prima-facie finding on the basis of which such a conclusion was arrived at. To come to such a conclusion, there ought to be at least some prima-facie finding. This is especially in view of the fact that the Tribunal has found that there was a complete violation of the principles of natural justice.

4. Further, the Tribunal has not even considered the issue of financial hardship which was specifically raised by the appellant in the application for exemption from depositing any amount as a condition precedent to the maintainability of the appeal. The application for exemption had expressly averred that the profit of only about ₹ 5 lacs had been made by the appellant and that the appellant had a liability of more than ₹ 2 crores. There was no affidavit in reply. The issue ought to have been considered by the Tribunal.

5. The substantial questions of law are, therefore, decided in favour of the appellant.

6. In these circumstances, the impugned order is quashed and set aside. The matter is, however, remanded for a fresh consideration on the application for waiver of the pre-deposit.

SGA
LAW OFFICES

PUNJAB & HARYANA HIGH COURT

CWP NO. 7211 OF 2015

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AJAY YADAV
Vs
UNION OF INDIA & ANOTHER

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

30th July, 2015

HF ▶ Assessee

Rendering of taxable service by assessee cannot be presumed on his not proving the negative.

SERVICE TAX – ONUS OF PROOF – DEMAND RAISED FOR THE YEAR 2011-2012- ABSENCE OF RENDERING ANY SERVICE LEVIABLE TO TAX SERVICE DURING THE YEAR IN QUESTION - ACCOUNT BOOKS NEVER DEMANDED BY RESPONDENTS BEFORE CREATING DEMAND – PENALTY LEVIED ON NOT PROVING THE NEGATIVE – WRIT FILED – PETITIONER WILLING TO PRODUCE DOCUMENTS RELATING BUSINESS ACTIVITIES – MATTER REMANDED FOR FRESH CONSIDERATION – PETITIONER DIRECTED TO PRODUCE DOCUMENTS IF REQUIRED BY RESPONDENTS FAILING WHICH INFERENCE TO BE DRAWN AGAINST IT- WRIT DISPOSED OF – CONTENTION KEPT OPEN INCLUDING ONUS OF PROOF

A demand of service tax was raised alongwith interest and penalty for the year 2011-2012. The petitioner contended that he did not carry out any work in the year in question. A certificate in this regard issued by the Housing board was produced showing that the petitioner had completed his work by 2009 itself. The account books showing the absence of work could have been produced on demand but were never sought by the department. A writ is filed against the levy of service tax.

It is contended that the petitioner is willing to produced documents relating to his business activity, whether it relates to service tax or not. Disposing of the writ petition, the matter is remanded for fresh consideration and petitioner is directed to produce documents if required by respondents. He is entitled to produce any further evidence. Failure to produce the requisite documents would lead to adverse inference against the petitioner. Contentions regarding burden of proof and onus kept open.

Present: Mr.Sandeep Goyal, Advocate, for the petitioner.

Mr.Sunish Bindlish, Advocate, for the respondents.

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S.J. VAZIFDAR, A.C.J.

1. The petitioner has challenged the order dated 16.10.2014 (Annexure P16), passed by the Commissioner, Central Excise, Delhi-I, confirming the demand of service tax amounting to about ₹5.21 crores, for the period 2011-12, together *inter alia* with interest and penalty.

2. The petitioner contends that he did not carry on any work which attracted service tax during the period 2011-12. The petitioner relies *inter alia* on the certificate issued by the Housing Board, Haryana, confirming that the works allotted by the Housing Board had been completed by the petitioner by 31.05.2009, i.e., before the relevant accounting year.

3. The respondents, however, contend that the petitioner did not submit the details of the service rendered during that period.

4. The petitioner is, therefore, actually penalised for not having proved the negative. It is true that the petitioner could have produced his books of account which would show the absence of any business activity. However, the respondents never sought his books of account in order to contend that the petitioner refused to produce the books of account, though asked for. Reliance upon the communication dated 09.07.2012 (Annexure P9) is of no assistance to the respondents. Vide that communication, the respondents called upon the petitioner to furnish the details of any account of which he had not been paying the service tax. It is possible that the petitioner did not quite understand what was meant by this request.

5. Be that as it may, Mr.Goyal states that the petitioner is willing to furnish any document(s) pertaining to his business activities, whether the same attracts service tax or not, if called upon.

6. Considering the facts of this case, we are of the view that the petitioner must be afforded an opportunity of producing the relevant document(s) in support of his case.

7. The petition is, therefore, disposed of by setting aside the impugned order dated 16.10.2014 (Annexure P16) and the matter is remanded for fresh consideration. The petitioner shall be entitled to rely upon any further document or evidence. The statement on behalf of the petitioner that he will produce any document(s) pertaining to any of his business activities, irrespective of whether it attracts service tax or not, if called upon by the respondents, be complied with. Failure to do so would entitle the respondents to draw an adverse inference. It is clarified that this order is entirely without prejudice to the rights of the parties including the legal contentions as regards on whom the onus lies and on whom the burden of proof lies.

PUNJAB VAT TRIBUNAL

APPEAL NO. 697 OF 2013

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HIM TECHNOFORGE LTD.
Vs
STATE OF PUNJAB

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

9th January, 2015

HF ▶ Dealer

Penalty cannot be imposed on account of recovery of an invoice in the vehicle which relates to another transaction.

PENALTY – CHECK POST/ ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX -GOODS SOLD FROM H.P. TO PUNJAB VIDE BILL A – GOODS SOLD TO DELHI PARTY VIDE INVOICE NO. B CARRIED THROUGH ANOTHER VEHICLE – INVOICE A SHOWN AT ICC BEFORE ENTERING PUNJAB – INVOICE C OF AN EARLIER DATE RECOVERED ON SEARCH OF VEHICLE – GOODS DETAINED– SUSPICION RAISED REGARDING INVOICE B AS TO HOW GOODS WERE SENT TO TWO DIFFERENT PLACES THROUGH THE SAME INVOICE – NO EXPLANATION TENDERED BY DRIVER -GOODS RELATING TO INVOICE B PRESUMED TO BE UNLOADED SOMEWHERE IN PUNJAB – NO INFORMATION REGARDING INVOICE C FURNISHED AT THE CHECK POST OF HP AND VEHICLE NOT STOPPED AT ICC MULLANPUR – PENALTY IMPOSED FOR ATTEMPT TO EVADE TAX – APPEAL BEFORE TRIBUNAL – ALLEGATION REGARDING SALE OF GOODS IN PUNJAB REJECTED AS GOODS PERTAINING TO INVOICE B HAD NOT ENTERED PUNJAB YET – CLERICAL ERROR ADMITTED TO HAVE BEEN COMMITTED BY ICC BAROTIWALA WHILE TYPING INVOICE NO B INSTEAD OF A- DRIVER NOT RESPONSIBLE FOR CLERICAL ERROR OF ICC STAFF - INVOICE C HAS NOTHING TO DO WITH CURRENT TRANSACTION IN QUESTION – PENALTY IMPOSED ON TOTAL VALUE OF BOTH INVOICES A &C NOT RIGHT AS THERE IS NO DISCREPANCY REGARDING INVOICE A – NO PENALTY IS HELD TO BE PAYABLE AS DRIVER HAD REQUISITE DOCUMENTS COVERING THE GOODS – PENALTY DELETED – APPEAL ACCEPTED – *SEC 51(7) OF THE PVAT ACT*

Facts:

In this case the goods were in transit from Himachal Pradesh to Punjab and were sent vide invoice no. 3541 dated 8.12.09. The goods were also sent to Delhi vide invoice no.3542 dated 8.12.09 from H.P. in a different vehicle by the appellant. The vehicle was stopped at the ICC Mullanpur. The driver produced invoice no.3541 issued by appellant in favour of the buyer in Punjab. On search another invoice no.3485 of an earlier date was recovered from the vehicle. Suspecting the documents to be ingenuine, the goods were detained u/s 51(6) of the Act. The officer questioned regarding invoice no 3542 as to how the goods were sent to two different places against the same invoice. Moreover this invoice was not produced voluntarily by the

driver. It was also suspected that the goods relating to invoice no 3542 were unloaded at Punjab. He further observed that since there was no information furnished regarding invoice 3485 at the check post of HP.,there was an intention to evade tax. Penalty was thus imposed. The first appeal was dismissed. An appeal was filed before Tribunal,

Held:

It is not disputed that the driver was in possession of the bill relating to the goods in transit. If bill 3485 was recovered, it has nothing to do with the present transaction. As far as entry regarding bill no 3542 is concerned, it is admitted by the ICC staff of Barotiwala that it was due to their clerical error that they entered invoice no 3542 instead of 3541.. The allegation regarding sale of goods in Punjab is rejected as the goods in question had not yet entered Punjab after passing through ICC Mullanpur. The penalty has been imposed on total value of goods as mentioned in invoice 3541 and 3485 while there is no dispute regarding invoice no 3541.There is no mensrea as the driver produced the bill concerned with the goods in transit. The appellant cannot be held to be responsible for mistake of ICC staff. The vehicle which had taken goods to Delhi under invoice 3542 must be answerable to the ICC through which it passes. Therefore, the appeal is accepted and penalty is deleted.

Present: Mr. Alok Krishan, Chartered Accountant for the appellant.

Mr. N.D.S. Maan, Additional Advocate General for the State.

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

1. The order dated 14.12.2009 passed by the Excise and Taxation Officer-cum-Designated Officer, Information Collection Centre, Mullanpur and the order dated 6.2.2013 passed by the Deputy Excise and Taxation Commissioner (Appeals)-cum-Joint Director (Investigation), Patiala Division, Patiala are under challenge. The penalty of Rs. 56,782/- was imposed by the Designated Officer which was upheld by the Appellate Authority.

2. The appellant had sold spares to M/s Mahindra ltd. Swaraj Division, Mohali vide its bill Nos. 3485 dated 3.12.2009 and also vide bill Nos. 3541 dated 8.12.2009 amounting to Rs. 42,612/- and bill No. 3542 of the same date for Rs. 62,114/-, the goods alongwith bill No. 3541 were dispatched to Mohali through vehicle No. Ch-01-L-5334 on 8.12.2009. The goods, through bill No. 3542 dated 8.12.2009 were sold by the appellant to M/s Mahavir Motors, 3635 1st Floor, Mori Gate Chowk, Delhi-6. The goods were dispatched to Delhi through vehicle No. HP-12B-8216 on 8.12.2009.

3. When the vehicle No. Ch-01-L-5334 loaded with tractor parts was stopped at the ICC, Mullanpur when it had crossed the ICC, it was apprehended by the police staff.

4. On demand, the driver of the vehicle produced one Invoice No. 3541 for a sum of Rs. 62,114/- issued by M/s Him Technoforge Ltd., Baddi in favour of M/s Mahindra and Mahindra Ltd., Mohali and one VAT Form No. XXVI-A dated 8.12.2009 issued by the check post of H.P.

5. On search of the vehicle one more invoice No. 3485 for Rs. 43038/-was recovered from the vehicle. This invoice was not produced voluntarily even after the truck was brought back. It was not got entered by the driver at the Check Post of H.P.

6. After examining the documents, the Checking Officer detained the goods u/s 51(6)(a) of the PVAT Act, 2005 on the ground that the documents covering the goods were neither proper nor genuine. On issuing the notice to the driver of the vehicle, and for appearance to the owner, none appeared before him. After completion of the report, the Detaining Officer forwarded the proceedings to the Excise and Taxation Commissioner, ICC, Mullanpur.

7. The Excise and Taxation Officer after examining the case observed that the appellant was asked to explain about Invoice No. 3542 and the Form XXVI-A issued by Check Post of H.P. , wherein the entries of two bills i.e. 3542 and 3543 were made. The driver could not give any explanation as to how against the same invoice goods were sent to two different places. Moreover, Invoice No. 3542 was not produced by the driver at this ICC voluntarily. He further observed that all the aforesaid evidence proves that the goods pertaining to Vehicle No. 3542 have been unloaded at some place in Punjab. He further observed that no information pertaining to invoice No. 3485 was furnished at the check post of HP and the vehicle was not stopped in order to give information at this ICC, with the intention to evade the tax. Ultimately, the Excise and Taxation Officer imposed a penalty of Rs. 56,782/- including VAT @ 4% on the value of the goods. On appeal, the Deputy Excise and Taxation Commissioner (Appeals) dismissed the same.

8. I have heard the ld. Counsel for the parties and pursued the record of the case.

9. It is not disputed that the appellant was dealing with the sale of spare parts. He has not disputed that the driver had Bill No. 3485 dated 3.12.2009 but did not produce the same. It is not the case of the state that the driver was not in possession of the bill and invoice pertaining to the goods lying in the Truck No. No. CH-01-L-5334 on 8.12.2009. Rather, the case of the department is that when the truck was stopped the driver presented the bill No. 3541 dated 8.12.2009 to the authorities. If the bill No. 3485 dated 3.12.2009 relating to other goods for which different truck was sent on the earlier date has nothing to do with the present transaction. So far as entry in Form No. XXVI-A of Bill No. 3542 dated 8.12.2009 is concerned, it was not due to the fault on the part of the appellant but due to clerical mistake of the Excise and Taxation Staff on duty at Barotiwala Check Post who wrongly entered the Invoice No. 3542 in place of Invoice No. 3541. The value of the goods relating to invoice No. 3542 were wrongly mentioned as Rs. 62,114/- instead of Rs. 43,038/-. As regards, the value of the goods in the invoice, the person handling the duty repeated the amount of Invoice 3542 and 3543 at Rs 62,114/-. Lateron, the authorities of Barotwala Sales Tax issued a clarification admitting the mistake. The allegations as levelled by the authorities below that the appellant had sold the goods pertaining to Invoice No. 3542 in Punjab does not stand to the reason as the vehicle was coming from Barotiwala Check Post and had not yet entered the Punjab after passing through ICC, Mullanpur. The authorities have raised the penalty and tax amounting to Rs. 56,782/- on the entire amount of both the invoices bearing Serial No. 3541 for Rs. 42,114/- and Invoice No. 3485 for Rs. 43038/- while there is no dispute or inconsistency in Invoice No. 3541 valued at Rs. 62114/-. The alleged inconsistency was only in respect of Invoice No. 3485 valued at Rs. 43038/-. There is no element of mensrea to evade tax in the case because as soon as the driver of the vehicle was brought back to the ICC Mullanur, then he produced the Invoice No. 3541 for Rs. 62114/- which pertained to the goods as contained the truck, if any mistake has been committed in the documents as prepared by the Excise and Taxation Staff at Barotiwala (HP), the appellant cannot be held responsible. When the driver of the vehicle was having proper documents which covered the goods, then no penalty was payable. Both the authorities below have not taken note of all the facts and circumstances of the case and the documents have been mis-interpreted. The Invoice No. 3485 which was of some earlier date and did not relate to the goods lying in the vehicle had nothing to do with the transaction in question. The vehicle which had taken goods to Delhi under the Invoice No. 3542 must be answerable to the ICC through which it would pass. Thus, it is a fit case where the interference of the Tribunal is called for.

10. Resultantly, I accept the appeal and set-aside the impugned order for penalty.

11. Pronounced in the open court.

PUNJAB VAT TRIBUNAL

APPEAL NO. 545 OF 2013

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MALWA INDUSTRIES LTD.
Vs
STATE OF PUNJAB

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

4th May, 2015

HF ▶ Revenue

Rectification order passed under wrongly invoked section is not void.

APPEAL - PREDEPOSIT – ENTERTAINMENT OF – RECTIFICATION - RECTIFICATION ORDER PASSED BY DESIGNATED OFFICER U/S 66 OF THE ACT- DISMISSAL OF FIRST APPEAL FOR NON COMPLIANCE OF SEC 62(5) OF THE ACT - APPEAL BEFORE TRIBUNAL - EXEMPTION CLAIMED FROM CONDITION OF PREDEPOSIT ON THE GROUND THAT THE RECTIFICATION ORDER HAVING BEEN PASSED U/S 66 INSTEAD OF SEC 29(8) IS VOID – SEC 29(8) OF THE ACT CATEGORICALLY VESTS THE DESIGNATED OFFICER WITH THE POWER TO RECTIFY – HELD BY TRIBUNAL THAT POWERS UNDER BOTH SECTIONS ARE SYNONYMOUS -MERE MENTIONING OF WRONG SECTION WOULD NOT NEGATE THE ORDER WHEN PROPER PROCEDURE FOR RECTIFICATION AS PROVIDED UNDER SEC 29(8) IS ADOPTED – LEGALITY OF THE ORDER TO BE SEEN LATER BEING SUBJECT MATTER OF MERIT - APPEAL DISMISSED – APPELLANT TO DEPOSIT THE AMOUNT FOR HEARING OF APPEAL – *SEC 62(5), SEC 66 AND SEC 29(8) OF THE PVAT ACT*

A rectification order was passed u/s 66 of the PVAT Act by the designated officer. An appeal against it was filed without depositing 25% of the additional demand required for entertainment of appeal. The appeal was dismissed for non compliance of sec 62(5) of the Act. On appeal before Tribunal, waiver of condition of predeposit was prayed for on the ground that the rectification order was void being passed u/s 66 instead of sec 29(8) of the Act . The latter categorically vested the officer with the power to rectify. The Tribunal observed that the rectification order was passed with proper procedure as required u/s 29. Mere wrong invoking of the section would not negate the order. The order is held not to be void. The legality of it would be seen later as it was the subject matter of merit. The condition of predeposit was to be complied with at this stage. Therefore, appeal is dismissed.

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. The order dated 19.7.2013 passed by the Deputy Excise and Taxation Commissioner is under challenge. The appeal has been filed by the appellant for claiming exemption from depositing 25% of the additional demand on the ground that order of rectification having been passed under Section 66(1) of the Punjab Value Added Tax Act is void abinitio, therefore, there was no requirement to comply with Section 62(5) of the Punjab Value Added Tax Act.

2. Heard. Though, the Designated Officer has no power to rectify the order u/s 66 of the Punjab VAT Act, 2005, yet, he is vested with such powers under Section 29(8) of the PVAT Act, 2005.

Section 29(8) of the PVAT Act, 2005 reads as under:-

> *29(8) "The designated officer may within a period of one year from the date of the assessment order, rectify any assessment, made under sub-section (2) or sub-section (3), if he discovers that there is mistake apparent from the record.*
>
> *PROVIDED THAT no order for rectifying such assessment shall be made without affording an opportunity of being heard to the effected person."*

3. In this case, original assessment was framed on 21.2.2012, however, while sensing that, while framing the assessment, mistake was committed which was apparent on record. A notice u/s 66(1) of the PVAT Act, 2005 was issued on 2.3.2012 for 19.3.2012 for rectifying the mistake. The order of rectification was also passed on 19.3.2012 itself. Thus, the rectification was made quite within time. Apparently, the assessing authority wrongly invoked the powers under section 66(1) of the PVAT Act, 2005, whereas he should have exercised the powers u/s 29(8) of the Act. The powers U/s 29(8) are the synonymous to the powers u/s 66(1) of the Act, 2005. In both the cases, the rectification could be made after providing opportunity of hearing to the adverse party, however Section 66(1) adds a proviso, according to which the hearing could be provided in cases where the lights of the parties are affected. Since 66(1) of the Act intentionally deprived the designated officer of such powers. Mere mentioning of the wrong section would not negate the order passed by the Assistant Excise and Taxation Commissioner-cum-Designated officer, Ludhiana whereby he exercised the powers of rectification by adopting proper procedure for rectification as prescribed under Section 29(8) of the Act, 2005.

4. It may be noticed that Deputy Excise and Taxation Commissioner has dismissed the appeal solely on the ground of non compliance of Section 62(5) of the Act. The order being not void in any manner, the impugned order does not suffer from any fault. The legality of the order is to be seen later on as the same is a matter of merit, but at this stage, provisions of Section 62(5) of the Act were to be complied with before the appeal of the appellant is entertained.

5. Resultantly, this appeal is dismissed. However, the appellant is granted one month time to comply with Section 62(5) of the Act, 2005. On doing so, the appeal filed by the appellant shall be entertained. Otherwise, the order passed by the Deputy Excise and Taxation Commissioner shall remain intact.

6. Pronounced in the open court.

PUNJAB VAT TRIBUNAL

APPEAL NO. 69 OF 2014

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SABER PAPER BOARD PVT. LTD.
Vs
STATE OF PUNJAB

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

14th July, 2015

HF ▶ Revenue

Uncertified copy of assessment order bearing no signatures and date would not render the original order void as the latter is duly signed and dated.

PREDEPOSIT – APPEAL – ENTERTAINMENT OF – ASSESSMENT ORDER -FIRST APPEAL DISMISSED FOR NON COMPLIANCE OF SEC 62(5) OF THE ACT – WAIVER OF CONDITION OF PREDEPOSIT REQUESTED BEFORE TRIBUNAL CONTENDING THAT COPY OF ASSESSMENT ORDER SUPPLIED BEING UNDATED IS VOID – CONTENTION REJECTED AS ORIGINAL ORDER FOUND SIGNED AND DATED – UNCERTIFIED COPY BEARING NO DATE AND SIGNATURES ATTACHED BY APPELLANT COULD NOT FORM THE BASIS OF ARGUMENT – NO EFFORT ON PART OF APPELLANT TO PROCURE CERTIFIED COPY - MERITS OF THE CASE TO BE SEEN LATER – PREDEPOSIT OF 25% OF ADDITIONAL DEMAND NECESSARY FOR ENTERTAINMENT OF APPEAL – APPEAL REJECTED – *SEC 62(5) OF PVAT ACT*

An assessment order was passed raising an additional demand. The first appeal was dismissed for non compliance of sec 62(5) of the Act. The appellant pleaded before Tribunal that since the copy of order did not bear date, it was nonest in the eyes of law and is liable to set aside. In such circumstances the appellant cannot be compelled to deposit the amount for entertainment of appeal. The tribunal has held that the argument given by appellant is factually incorrect as it the original order in the original file shows date and signature. The uncertified copy attached by the appellant cannot be the basis for criticism. Moreover, the appellant could have applied for the certified copy but he did not. The merits of the case are to be seen during arguments. The assessment order is not void. The appellant has to comply with the condition of predeposit for hearing of appeal. The appeal is dismissed.

Present: Mr. Ajay Chaudhary, Advocate counsel for the appellant.

Mr. N.D.S. Mann, Additional Advocate General for the State

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

1. The Excise and Taxation Officer-cum-Designated Officer framed the assessment for the year 2009-10 by creating an additional demand of Rs. 91,09,354/-. The appeal filed by the appellant against the said order dated 29.8.2013 was dismissed for non compliance of Section 62(5) of the Punjab Value Added Tax Act, 2005, hence this appeal.

2. It is undisputed that the Section 62((5) of the Punjab Value Added Tax Act, 2005 call for entertaining the appeal only on deposit of 25% of the additional demand. Admittedly, the appellant has not complied with Section 62(5) of the Act.

3. His only argument is that since the copy of the order does not bear the date of order therefore, this order being nonest in the eye of law is liable to be set-aside, therefore, the deposit by the appellant cannot be compelled.

4. Arguments heard. Record perused.

5. No doubt in case of void and nonest orders, the compliance of Section 62(5) of the Act cannot be compelled and could be suspended because such orders are likely to be set-aside. But, this argument raised in the present case is unsustainable.

6. The impugned order is neither void nor nonest. The argument that the order is undated is factually incorrect. Normally the TDN and Challan are issued on the day, the order is passed. The order clearly bears the date i.e. 29.08.2013 as the date of issuing the TDN and Challan.

7. Even otherwise on perusal of the original order in the original file, it transpires that it is duly signed and dated. Of course the counsel has attached an undated and uncertified copy of the order but the same can't be the basis of criticism of the department. The appellant never applied or annexed certified copy of the order with the appeal. Therefore, the appeal should have been dismissed on this sole ground. It also can't be said on any basis that the alleged undated and unsigned copy of the order was sent to the appellant. Had he asked for a certified copy, then he must have been supplied the correct copy of the order which bears the date and signatures of the officer passing the order. Consequently, the argument of the counsel that the order attached by him bears no date and signatures of the officer is of no consequence and is turned down.

8. The order at the face of it is neither void nor bad for any reason, if it is not correct or against law, it would be set-aside. The merits of the case would be seen at the time of final arguments. However, at present the Deputy Excise and taxation Commissioner was to examine whether the appeal can be entertained without compliance of Section 62(5) of the Punjab Value Added tax Act, 2005. Having gone through the impugned order, the same is well reasoned and well founded. He was justified in refusing to entertain the appeal.

9. Resultantly, this appeal is dismissed, however, the appellant is provided one month more time from today to deposit 25% of the of the additional demand. In case, he complies with the provisions of Section 62(5) of the Act, the appeal shall be entertained, otherwise, the order passed by the Deputy Excise and Taxation Commissioner shall remain intact.

PUNJAB VAT TRIBUNAL

APPEAL NO. 490 OF 2013

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RELIANCE RETAIL LTD.
Vs
STATE OF PUNJAB

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

6th July, 2015

HF ▶ Revenue

Input Tax Credit not admissible on goods sent for job work but not returned within 90 days or same assessment year.

INPUT TAX CREDIT – DENIAL OF - GOODS PURCHASED SENT FOR JOB WORK – GOODS NOT RETURNED IN THE SAME ASSESSMENT YEAR - ITC DENIED ON PURCHASE OF SUCH GOODS– APPEAL BEFORE TRIBUNAL – HELD GOODS SENT FOR JOB WORK OUGHT TO BE RETURNED WITHIN 90 DAYS AS PER RULE 20 OR IN THE SAME ASSESSMENT YEAR TO CLAIM ITC – NO EXTRAORDINARY CIRCUMSTANCES SEEN AS PER RULE 20 TO CONDONE THE DELAY FOR RETURN OF GOODS IN QUESTION– ITC OUGHT TO BE REVERSED AS RULE 20 IS MANDATORY- RESTORATION OF ITC NOT POSSIBLE U/S 13(3) OF THE ACT AS GOODS ADMITTEDLY RETURNED IN SUBSEQUENT YEARS – MERE COMMUNICATION OF ORDER POST LIMITATION PERIOD DOES NOT RENDER THE ORDER AS TIME BARRED-— *SEC13(3) OF PVAT ACT AND RULE 20 OF PVAT RULES.*

PENALTY - INPUT TAX CREDIT – REJECTION OF CLAIM- GOODS PURCHASED SENT FOR JOB WORK – GOODS NOT RETURNED IN THE SAME ASSESSMENT YEAR - ITC DENIED ON PURCHASE OF SUCH GOODS ALONGWITH LEVY OF PENALTY – APPEAL BEFORE TRIBUNAL — HELD GOODS SENT FOR JOB WORK OUGHT TO BE RETURNED WITHIN 90 DAYS AS PER RULE 20 OR IN THE SAME ASSESSMENT YEAR TO CLAIM ITC - ITC OUGHT TO BE REVERSED ON NON RETURN OF GOODS IN SAME ASSESSMENT YEAR AS PER SECC13(3) -BREACH OF SEC 13(3) OF THE ACT AND RULE 20 OF THE RULES – PROVISION FOR PENALTY SPECIFICALLY PROVIDED- REDUCTION OF ITC CLAIMED FROM THE EXCESS ITC CARRIED FORWARD NOT PERMISSIBLE AS EVERY YEAR IS INDEPENDENT AND IS TO BE ASSESSED SEPARATELY- PENALTY UPHELD- *SEC13(3) AND SEC 56 OF PVAT ACT AND RULE 20 OF PVAT RULES.*

INTEREST – INPUT TAX CREDIT – DENIAL OF - GOODS PURCHASED SENT FOR JOB WORK – GOODS NOT RETURNED IN THE SAME ASSESSMENT YEAR - ITC DENIED ON PURCHASE OF SUCH GOODS ALONGWITH LEVY OF PENALTY AND INTEREST– APPEAL BEFORE TRIBUNAL- ITC OUGHT TO BE REVERSED ON NON RETURN OF GOODS WITHIN STIPULATED PERIOD -LEVY OF INTEREST UPHELD ON ACCOUNT OF WITHHOLDING THE AMOUNT BY APPELLANT FOR HIS OWN BUSINESS – REDUCTION OF ITC CLAIMED FROM THE EXCESS ITC CARRIED FORWARD

NOT PERMISSIBLE AS EVERY YEAR IS INDEPENDENT AND IS TO BE ASSESSED SEPARATELY- *SEC13(3) AND SEC 32 OF PVAT ACT AND RULE 20 OF PVAT RULES.*

Facts:

The appellant was engaged in the manufacturing and sale of jewellery. Some goods purchased worth Rs 24,57,78,897/- from within Punjab were sent for job work out of Punjab out of which goods worth Rs 8,23,326/- were not received back within a period of 90 days as per Rule 20 or in the same assessment year i.e. 2008-09. The appellant claimed ITC for the year 2008-09 on these goods including those that were not returned in the same financial year. The AETC rejected the claim and imposed penalty u/s 56 and interest u/s 32 of the Act. The first Appeal was dismissed. Aggrieved by this an appeal was filed before Tribunal.

Held:

That delay in receiving the goods after job work for a few days, under special extra ordinary circumstances could be condoned as per Rule 20, but in this case they were not received within the stipulated period of 90 days nor in the same financial year. They were admittedly received in subsequent years. Every year has to be assessed independently. Therefore, ITC was bound to be reversed as this rule is considered mandatory and not directory. Also, there is a violation of sec 13(3) which provides for restoration of ITC only on receipt of the goods back during the said period. The restoration of ITC is admissible only on producing of documents evidencing receipt of such goods during the said financial year which were not produced by the appellant. Therefore, the ITC is not available for the goods received back in the subsequent years.

Since the appellant did not receive the goods back within time, he was liable to reverse the ITC. Failure to do so resulted in breach of obligation of sec 13(3) of the Act and Rule 20 of the Rules. Hence, penalty was rightly levied. A specific provision had been enacted under law for imposition of penalty, therefore, on violation of it penalty is rightly imposed. Regarding question of interest, it is held that it is rightly levied as the appellant withheld the amount and used the same for his own business .The argument that there was excess ITC carried forward from which amount claimed could be reduced instead of levying penalty and interest is rejected holding that every assessment year is independent and has to be assessed separately. The amount carried forward must have been dealt within the subsequent year.

Question of limitation is answered against assessee pointing out that the order has been passed within the limitation period. Formal communication of the order after the period of limitation does not affect the framing of assessment. The appeal is dismissed.

Cases referred:

State of Andhra Pradesh vs. Khetmal Parekh reported in (1994) STC 406
Sharif-uD-Din vs. Abdul Gani Lone AIR 1980 SC 303
Dasu Ram Nauta Dass vs. State of Punjab and Another (2009) 19 VST 34
Stelco Strips Ltd. vs State of Punjab (2009) 33 PHT page/31

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

Mr. N.D.S.Mann, Additional Advocate General for the State.

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

1. This is an appeal filed by M/s Reliance Retail Ltd (previously known as M/s Reliance Fresh (herein referred as the appellant against the order dated 14.6.2013 passed by the

Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala 'dismissing the appeal against the order dated.15.11.2012 passed by the Assistant Excise and Taxation Commissioner-cum-Senior Auditor, S.A.S. Nagar, Mohali framing the additional demand of Rs.25,80,541/- under the Punjab Value Added Tax Act, 2005 (herein referred as the Act, 2005)

2. The appellant is a dealer duly registered under the provisions of the Punjab Value Added Tax Act, 2005 as well as under the provisions of the Central Sales Tax Act, 956 at Mohali, having TIN N.03112020357. The appellant has been dealing with manufacturing and sale of jewellery besides the other business.

3. The case relates to the assessment year 2008-09. During the said year, the appellant had claimed Input Tax Credit on the purchase the bullion of the value amounting to Rs. 24,57,78,897/- whereas, after job work by way of processing and reconditioning goods worth Rs.8,23,326.38/- were not received back within the stipulated period of 90 days as provided under Rule 20 of the rules read with sub section (3) of Section 13 of the Punjab Value Added Tax Act, 2005. Though, the goods were not received back by the appellant after job work during the financial year 2008-09, yet he claimed the ITC without reversal of the same on account of not receiving the goods after job work during the said financial year. As such the Assistant Excise and Taxation Commissioner-cum-Senior Auditor, Mohali vide his order dated 15.11.2012 disallowed the ITC to the aforesaid amount and also imposed penalty and interest there over, while holding that the appellant had admitted that the ITC has been claimed for the entire purchase of gold made from within the State of Punjab and adjusted it towards output tax liability and balance amount of excess ITC was carried out to the next year and the assessee had also admitted that the goods worth Rs.8,23,326.38/- sent out of the State of Punjab for job work were not received back during the said financial year whereas the assessee had availed ITC of the aforesaid amount during the year to which he was not entitled, that apart, the Assistant Excise and Taxation Commissioner awarded penalty and interest for the period of 49 months.

4. On appeal, the Deputy Excise and Taxation Commissioner endorsed the view taken by the Assistant Excise and Taxation Commissioner, Mohali.

5. While assailing the aforesaid judgments Mr. K.L. Goyal, Senior Counsel for the appellant has argued that since Section 13 of the Act of 2005 neither provided for construction of such rule fixing the time limit for return of the goods after job work as a condition for claiming the ITC nor any consequential provision for not receiving the goods within the time have been provided in the rule, therefore, the rule 20 of the rules would be deemed directory and not mandatory, in nature. Moreover, even if it is presumed that the appellant was not entitled to the ITC as claimed by it, even then no interest and penalty could be imposed in the case as there is an excess ITC of Rs.15,92,847/- which has been carried forward to the next year which should have been adjusted towards the ITC to be reversed. It is also another contention of the appellants that the order for that assessment year 2008-09 having been passed on 15.11.2012, but conveyed on 22.2.2013 is clearly time barred as it is not the date of the order for framing that assessment which matters. But it is the date of communication of the order by way of supply of the copy thereof which matters for computing the period of limitation as such the assessment is time barred. In this regard, the Counsel has taken support of the judgment passed by the Apex Court in case of State of Andhra Pradesh vs. Khetmal Parekh reported in (1994) STC 406.

6. Though, the Counsel has admitted that the gold sent for job work could not be received back from the job worker, after job work, within the period of 90 days and this quantity of Gold was received in the subsequent years, yet this fact alone does not violate the right of the appellant to claim ITC in the light of judgment delivered in case of Sharif-uD-Din vs. Abdul Gani Lone AIR 1980 SC 303 wherein in their lordship interpreted the difference

between mandatory and directory provisions. That apart, the Counsel has challenged the imposition of penalty. While referring to the judgment delivered in case of Dasu Ram Nauta Dass vs. State of Punjab and Another (2009) 19 VST 34 wherein, it was observed that even without availing the credit of tax, the appellant was not liable to pay any tax, as it cannot be said that by this action, any profit or gain was caused to the appellant or any loss occasioned to the Revenue. On the accounts alone, the appellant was not liable to pay any tax, as the credit in its account was more than the tax payable. The appellant had no mens-rea to evade or avoid tax. It was also urged that -the ld. Assistant Excise and Taxation Commissioner has wrongly imposed penalty U/s 56 without holding mens-rea on the part of appellant. The appellant has not attempted to evade the tax by any means and so the actions of the appellant do not attract penalty as provided U/s 56 of the Act. The appellant is entitled to tax credit on the purchases meant for use in manufacture of goods. The appellant has accordingly, in the returns, claimed such tax credit. It would not be correct to say that the said amount has not been depicted in the returns filed by the appellant. The balance tax credit of Rs.15,92,847/- has been carried forward. Thus, even if the tax credit of Rs.8,23,326.38/- is disallowed by the assessing authority, the amount of carried forward tax credit shall stand reduced to that extent but it would not tantamount short payment of output tax and raise any demand against the appellant. The appellant has declared correct turnover of purchases and sales in the returns and claimed the tax credit admissible to it under the provisions of the Act. The appellant is in possession of all the requisite documents which have been duly produced before the ld. Officer to show the genuine business transactions of the appellant. Further, the ld. Officer has failed to discharge the onus of proving that the appellant had acted in defiance of law deliberately. The appellant does fulfill any of the conditions laid down under the Act for evasion of tax and hence cannot be penalized for the same.

7. The Counsel has also argued that the appellant could not be subjected to interest for delaying the payment of the tax. As in the present case, even without admitting, if the appellant is disallowed the ITC claimed, the same could only be deducted from the excess ITC carried forward to the next year. Even still, the amount will not exceed the carried forwarded ITC and thus, the appellant will not be liable to pay any tax if the appellant was not liable to pay any tax then the question of charging interest does not arise. The Counsel has also urged that provisions of Section 56 of the Act are not attracted to the facts and circumstances of the present case.

8. To the contrary, the State Counsel has supported the judgments passed by the authorities below while submitting that the goods did not return after job work within the stipulated time. Not only this, the case of the appellant itself is that the goods were' received in subsequent years. The appellant has failed to establish by any documentary evidence that the same goods were received back and what was the date when these were received back. He has also argued that irrespective of rule 20 and its applicability, since the goods were not received back after job work within the tax period, then appellant was bound to reverse the ITC claimed by him. As regards question of limitation, he has submitted that the assessment was framed within time in the presence of the appellant. In the circumstances, the formal communication would not effect the framing of the assessment, though, it may be helpful in counting the period of limitation for filing the appeal. As regards the nature of Rule 20 of the rules, it is submitted that the legislature had framed the rules within its competence and the rule would be read in the same context, as it was framed and can it be given different interpretation as such the violation of such rule will follow the consequences.

9. Arguments heard Record perused.

10. From the record produced by the appellants as well as the admissions made by them, it is apparent that the appellant had made the purchases and claimed ITC, on the value of

the bullion and the ornaments amounting to Rs.24,57,78,897/-. It is also a fact that the goods were sent by the appellant for job work in the year 2008-09 outside the State of Punjab. The goods worth Rs.8,23,326.38/- were neither received back within the stipulated period of 90 days, nor the same were received during the tax period i.e. year 2008-09. It is not a case where the goods were received after job work within the margin of few days –as prescribed in Rule 20 of the Rules. Had the bullion as well as the ornaments been received, after job work within the said financial year and not within 90 days the authorities would have considered the case of the appellant for condoning the delay, but in the present case, the appellant has submitted that the goods were received back in subsequent years and it is not definite when these goods were received back. Every year is an independent year and is to be assessed separately. Therefore, the goods which have not been counted for the year 2008-09, certainly, input tax credit was bound to be reversed. Section 13 (3) of the Act reads as under:-

> *"Where a taxable person sends any goods as such or after being Partially processed for further processing on job work basis, he shall debit the" ITC by five percent of the value of such goods. If such goods after processing are received back by such person, the ITC debited at the time of dispatch, shall be restored. Such person shall, however, be required to produce proper evidence in the shape of records, Challans or memos or any other document evidencing receipt of such goods, whenever asked for."*

11. Rule 20 of the said Act has been incorporated by prescribing the time limit for receipt of such goods after job work.

12. Irrespective of the fact and without commenting deep over the matter as to whether Rule 20 is directory or mandatory, it would be suffice to say that the delay in receiving the goods after job work for a few days, under special extra ordinary circumstances could be condoned, but in the present goods were not received during the said financial year. Therefore, the ITC so claimed was bound to be reversed.

13. The Counsel has relied upon the case of S.G.S. International Ludhiana wherein similar question was decided by the Excise and Taxation Commissioner, Punjab. The judgment delivered by the Excise and Taxation Commissioner, Punjab does not support the case of the appellant. The Excise and Taxation Commissioner in his Endings observed as under:-

(1) The amount of input tax credit debited in respect of taxable goods sent for job work and received back after a period of 90 days can be restored if the taxable person is able to prove with the help of documents that the same goods are received back. It can be accepted as a special case. The dealer should be able to prove/ produce sufficient reasons for delay in getting goods back, beyond the prescribed limit of 90 days. The delay should be of only few days under special extra ordinary circumstances.

(2) If the taxable goods after job work are received back after a period of 90 days the provisions of Section 60 of the Punjab Value Added Tax Act are to be invoked.

14. The order passed by the Excise and Taxation Commissioner, Punjab U/s 85 of the Act on 25.10.2010 refers to the following principles:-

(1) If the taxable goods received after job work after a minor delay of few days could be condoned if such delay is duly explained and there are special extra ordinary circumstances to condone such delay and in such situation (in case of few days delay), Section 60 of the Punjab value Added Tax Act could be invoked.

But the present case stands on a different footing. The goods were not received not only within a short period beyond the prescribed limit of 90 days, but also not received within that financial year." Therefore, the appellant could not take support of the said findings returned by the Excise and Taxation Commissioner, Punjab. Similarly, the facts as laid down in Stelco Strips

Ltd. vs State of Punjab (2009) 33 PHT page/31 are quite different and are not applicable to the facts of the present case. As regards the distinction between the directory and mandatory rule, the same is a matter of law and interpretation. But in the present case, there is violation of Section 13(3) which provides that ITC could be restored only on receipt of the goods back during the said period. Section 13 (3) does not refer to the justification of the claim of ITC even if the goods are received in subsequent years. The appellant has not led any cogent evidence in the shape of challan, invoice or any such document evidencing that the same goods have been received back after job work and in which year. Even the restoration of the ITC during the said year was also admissible only in cases where the taxable person produces proper evidence in the shape of record, challans or memos or any other document evidencing receipt of such goods as prescribed U/s 13 (3) of the Act. Therefore, the argument raised by the Counsel for the appellant that ITC is available to the appellant even if goods had not been received back within the same financial year, are without merit and have to be turned down.

15. Now coming to the question of penalty and interest, it may be observed that since the goods worth Rs.8,23,326.38/- had not been received back after job-work within the stipulated time much less within the same financial year and there is no evidence that the same goods had returned and in which year yet the appellant claimed the -ITC for which he was not entitled. Since he had not received the goods back within time then he was liable to reverse the ITC. Since, it is breach of obligation of Section 13 (3) of the Punjab Value Added Tax Act, 2005 and Rule 20 of the Punjab Value Added Tax Rules, 2005, therefore, the penalty provisions as prescribed U/s 56 (e) of the Punjab Value Added tax Act, 2005 are attracted. Section56 (e) reads as under :-

Penalty for evasion of tax

If the Commissioner or the Designated Officer is satisfied that the person, in order to evade or avoid payment of tax-

(a) _____

(b) _____

(c) _____

(d) _____

(e) has availed input tax credit to which he is not entitled to; or

(f) _____

(g) _____

he shall direct that the person shall pay, by way of penalty, in addition to the tax and interest payable by him, a sum equal to twice the amount of tax, assessed on account of the aforesaid reasons:

16. Penalty is imposable for any contravention or failure to comply with any of the provisions of this Act and the Rules framed thereunder. The legislature while framing the rules governing the payment of tax and penalty, has placed an obligation upon the assessee to file the true and correct returns in compliance to the provisions of law and on failure to do so, it has also the power to provide incidental measures including measures for prevention of evasion of tax. The Act though does not provide for institution of any prosecution for violation of the provisions for payment of tax yet it is well within its powers to enact the provisions in nature of imposition of penalty for non compliance of obligations as prescribed under law. The provisions with regard to powers of penalty are constitutional as this power falls within entry 54 of list appended to the VIIth schedule.

17. The argument raised by the counsel is that since he had carried forward excess ITC therefore, the amount claimed by him could be reduced but this contention is without any merit because every assessment year is independent year and is to be assessed separately. As such since a specific clause for imposition of penalty has been provided under the Act, therefore on violation of a specific clause, the Assessing Officer was justified in imposing penalty. The other contention raised by the counsel is that men-rea is missing in the present case. Having gone through the impugned orders, the said issue has been discussed in detail by the Assessing Officer. Rather the Assessing Officer while upholding- the order of penalty has observed the judgment passed by the Hon'ble Gujrat High Court is on different fact situation as the provisions of the Acts of both the States are different. The appellant, in this case has failed to point out as to 'why he did not comply with the Section 13(3) of the Act pay the penalty.

18. Now coming to the claim of interest since the appellant with held the amount and used the same for his own business. Therefore, he is liable to pay interest u/s 32 of the Punjab Value Added Tax Act, 2005. Argument that there was excess ITC which was carried forward to the next year after deducting the amount involved. Therefore, the amount of ITC claim should have been adjusted as such appellant was not entitled to pay any amount, consequently no interest. The arguments cannot be accepted. Every assessment year is an independent year. The amount carried forward must have been dealt with in the subsequent year, therefore, the same cannot be considered. Since the appellant wrongly claimed the ITC, therefore he was entitled to pay penalty as well as interest.

19. As regards the question of limitation; the assessment for the year 2008-09, which is in question, was framed by 15.11.2012. i.e. within limitation in the presence of the parties. The appellant well know about the framing of the assessment, therefore the formal communication of the order after the period of limitation does not effect the date of framing of the assessment though it could matter at the time of counting the period of limitation for filling the appeal. No other argument has been raised.

20. Having gone through the judgments of both the courts below, I am constrained to hold that there is nothing to take a different view then what was taken by the courts below.

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

22. Pronounced in the open court.

PUNJAB VAT TRIBUNAL

APPEAL NO. 546 OF 2014

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SHANTI SALES (INDIA) PVT. LTD.
Vs
STATE OF PUNJAB

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

14th July, 2015

HF ▶ Assessee-appellant

ASSESSMENT – DECLARATION FORMS – SUBMISSION OF – ADDITIONAL DEMAND RAISED UNDER CST ACT ON ACCOUNT OF SHORTAGE OF C FORMS – APPEAL BEFORE TRIBUNAL – C FORMS IN QUESTION PRODUCED BY APPELLANT AS PER REMAND REPORT MADE BY ETO – BOTH PARTIES AGREED BEFORE TRIBUNAL ON THE FACT THAT ADDITIONAL DEMAND WAS ON ACCOUNT OF SHORTAGE OF C FORMS -MATTER REMITTED TO DESIGNATED OFFICER FOR RECONSIDERATION AND REFRAMING OF ASSESSMENT IN THE LIGHT OF THE REPORT – APPEAL ACCEPTED- *SEC 8 OF CST ACT, RULE 12 OF CST (R&T) RULES, 1957*

In this case, an additional demand was raised under the CST Act. On appeal before Tribunal, it was brought to the notice of the court that the report made by the ETO indicated that the C forms had been produced by the assessee and found correct. It was agreed by both the appellant and the respondents before the court that the additional demand was on account of C forms only. Thus the case is remitted back to the designated officer to reconsider and reframe the assessment in the light of the report. The appeal is accepted.

Present: Mr. B.K. Gupta, Advocate counsel for the appellant.

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

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

1. This appeal is directed against the order qua part B/CST part, passed by the ETO Ludhiana-III whereby the demand of Rs. 23,85,078/- was created.

2. The undated report made by the ETO Ludhiana-III indicates that all the 87 forms worth Rs. 8,23,62,171/- were verified and were found to be correct. The report is reproduced as under:-

> *"As per the directions of the Hon'ble Chairman, VAT Tribunal, Punjab in appeal case of M/s Shanti Sales India private Ltd. for the period 2009-10, the appellant has*

submitted 87 (Eighty Seven) 'C' forms worth Rs. 8,23,62,171/- (Eight Crore Twenty three lacs sixty two thousand one hundred and seventy one only.).

The 87 (Eighty Seven) 'C' forms worth Rs. 8,23,62,171/- (Eight Crore Twenty Three lacs sixty two thousand one hundred and seventy one only) submitted by the taxable person have been verified and found correct."

3. The counsel has stated that this order to his knowledge, was passed on 13.7.2015. It is not known as to why the ETO Ludhiana-III passed an undated order. He is directed to explain about the same. Copy of the order is sent to ETC, Punjab for his information. However, both the parties agree that the additional demand of Rs. 23,85,078/- under part B/CST was created for shortage of 'C' Forms worth Rs. 8,23,62,171/-. Therefore, in the light of the said report, it becomes essential to send the case back to the ETO-cum-designated officer Ludhiana-III for reconsideration and for re-framing the assessment.

4. Resultantly, this appeal is accepted, impugned orders are set-aside and the officer is directed to decide the case afresh in light of the undated order passed by the ETO Ludhiana-III and reframe the assessment. The appellant is directed to appear before the Designated Officer on 14.9.2015.

5. Pronounced in the open court.

PUNJAB VAT TRIBUNAL

APPEAL NO. 700 OF 2013

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SHRIRAM TRANSPORT FINANCE CO. LTD.
Vs
STATE OF PUNJAB

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

4th May, 2015

HF ▶ Appellant company

Non Speaking order passed by first appellate authority without recording reasons is liable to be set aside.

APPEAL - NON SPEAKING ORDER – NOTICE – IMPROPER SERVICE OF – LOAN ADVANCED BY FINANCE COMPANY FOR PURCHASE OF VEHICLE BY BORROWER – VEHICLE SURRENDERED FOR FAILURE TO PAY INSTALLMENTS – VEHICLE TAKEN TO LUDHIANA FOR PARKING IN COMPANY YARD – PENALTY IMPOSED WHILE CROSSING ICC CONSIDERING IT AS AUCTION OF VEHICLE WITHOUT BEING REGISTERED – NO PROPER NOTICE SERVED ON APPELLANT BEFORE PENALIZING – FIRST APPEAL DISMISSED WITHOUT CONSIDERING ARGUMENTS RAISED BY APPELLANT COMPANY – CONTENTIONS RAISED NOT DEALT WITH - NON SPEAKING ORDER PASSED – ORDER PASSED BY DETC SET ASIDE BY TRIBUNAL FOR IMPROPER SERVICE OF NOTICE AND NO OPPORTUNITY OF BEING HEARD GIVEN – CASE REMITTED TO DETC FOR PASSING SPEAKING ORDER – APPEAL ACCEPTED- *SEC 51 AND SEC 62 OF PVAT ACT.*

The appellant company being financer had financed the vehicle at Chandigarh as per the loan-cum- hypothecation agreement. Due to default in payments by the borrower/ purchaser, the vehicle was surrendered back to the company. It was then taken to Ludhiana for parking in company yard. When it reached the ICC, the case was forwarded to the AETC and penalty u/s 51 (7) (b) was imposed. The first appeal was dismissed. On appeal before Tribunal, it was accepted by the court that no proper notice was sent to the appellant. It was not served on the financer company from whose custody the vehicle was taken. Also, the DETC has passed a non speaking order. No reasons are mentioned for rejecting the argument of the appellant that it was not required to be registered in Punjab or that it was not doing any sale/ purchase of vehicles. The order does not disclose whether the appellant is heard or not. Therefore, an order passed without proper service and without giving an opportunity of being heard is liable to be set aside. Accepting the appeal, the case is remitted back to the First appellate authority to pass a speaking order.

Present: Mr. Maninder Singh, Advocate 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 9.7.2013 passed by the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala dismissing the appeal of the appellant against the order dated 13.2.2013 passed by the Assistant Excise and Taxation Commissioner, Information Collection Centre, shambu (Import), Mahmadpur.

2. Briefly stated the facts of the case are that the appellant company being financers gave a finance of Rs. 2,30,000/- to Shri Hans Raj S/o Rakha Ram, resident of House No. 1661/2, Burail, Sector 45, Chandigarh as per loan cum hypothecation agreement dated 20.8.2011 for the purchase of vehicle No. HR-37A-0763. Shri Hans Raj, borrower had entered into loan-cum-hypothecation agreement. The entry with regard to which was made in the registration certificate by the Regional Transport office. Mr. Hans Raj committed default in making instalments, therefore he surrendered his vehicle in the terms of agreement before the company at Ambala.

3. On 31.1.2013, the said vehicle i.e. HR-37A-0763 was sent to Ludhiana, where it was to be parked in the company yard. When the vehicle reached ICC, Shambu (Import), it was detained. The Detaining Officer referred the case to the Assistant Excise and Taxation Commissioner who vide order dated 13.2.2013 imposed a penalty to the tune of Rs. 71,980/- under Section 51(7)(b) of the VAT Act.

4. Feeling aggrieved, the appellant preferred an appeal before the Deputy Excise and Taxation Commissioner(A)-cum-Joint Director (Investigation), Patiala Division, Patiala (herein referred as the First Appellate Authority) which was dismissed by him vide order dated 9.7.2013, hence this appeal.

5. The counsel for the appellant has urged that no proper notice was served upon the appellant before issuing the order of penalty. I agree with this contention as the record of the office highlights that the Assistant Excise and Taxation Commissioner had issued notice to the owner of the vehicle without mentioning his name and address. Therefore, it was difficult to say that upon whom this notice was to be served. Notice was not served upon the financer company from whose custody the vehicle was taken.

6. I also agree with the other contention of the counsel for the appellant that the order passed by the Deputy Excise and Taxation Commissioner is non speaking. He did not meet with the arguments raised by the counsel for the appellant. It was also contended that the appellant raised the contention that the company is not doing any business of sale and purchase of the vehicles anywhere in the State of Punjab, but it runs the business of finance. Actually, the vehicles are financed in the name of the owners/borrowers and on failure to return the amount, the borrower surrenders the vehicle. The balance amount outstanding against the borrower is adjusted after further transfer of the vehicle. Thus, in the accounts of the company neither the purchase nor the sale of the vehicle is entered. In other words, the hypothecated asset is neither capitalized nor it is treated as a trade asset. The account of the company reflects loan and advances. No trading is involved which may attract any tax payable under the Punjab VAT Act. The Assistant Excise and Taxation Officer has held that the branch of the company at Ludhiana had no TIN number where the truck was to be auctioned. Thus, he has imposed the penalty upon the appellant company for auctioning the vehicle without being registered person. This Hon'ble Court has in a number of cases held that no penalty could be imposed on the ground that the consignee of Punjab is not registered. It is however stated that in the present case even the company is not required to be registered under Punjab VAT Act, 2005 because the company is doing the business of advancing loans and recovering the same in accordance with the agreement of hypothecation of the vehicle.

7. The Deputy Excise and Taxation Commissioner did not meet with these agreements at the time of passing the order. However, he passed only one line order which is reproduced as under:-

> *"After hearing both the parties and going through the record file it is clear that attempt to evade tax is there and hence appeal is dismissed."*

8. It is surprising to notice that the Deputy Excise and Taxation Commissioner being quasi-judicial authority should have made some observations over the order passed by the Deputy Excise or Taxation Commissioner which is cryptic in nature. He, instead of accepting and rejecting the appeal should have recorded the reasons for doing so. Reason is the life line of the order, it distinguishes expert in law and administration from a common man. Therefore, it could be expected from such persons in authority (judicial or quasi judicial) to clarify as to why the contentions raised by him were accepted or rejected. I have gone through the order passed by the Assistant Excise and Taxation Commissioner and observed that the same suffers from illegalities. The order does not disclose as to whether he had heard the appellant company or not. If he had come to know about the name of the company/appellant then he would have issued notice to the company. He did not issue notice to Shri Kuldip Singh whose name figures as owner of the vehicle in his statement. Thus, any such order passed without notice and without giving an opportunity of being heard to the appellant is bad in the eye of law and is liable to be set-aside.

9. Resultantly, this appeal is accepted and impugned order is set-aside and the case is remitted back to the Deputy Excise and Taxation Commissioner to pass a speaking order after hearing both the parties. The parties are directed to appear before the Assistant Excise and Taxation Commissioner on 24.5.2015.

10. Pronounced in the open court.

SGA
LAW OFFICES

PUNJAB VAT TRIBUNAL

APPEAL NO. 88 OF 2015

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RAIL FAB
Vs
STATE OF PUNJAB

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

16th July, 2015

HF ▶ Dealer

Mere non reporting of goods at ICC cannot be penalized if international transaction proved with help of sufficient documents.

MENS REA – PENALTY – CHECK POST/ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – GOODS IN TRANSIT FROM SAHNEWAL TO KAPURTHALA – DOCUMENTS SCRUTINIZED – GOODS SHOWN TO BE PURCHASED FROM OUTSIDE INDIA - FAILURE TO FURNISH INFORMATION AT ICC RECORDED – NO E-ICC FURNISHED BY APPELLANT – SUSPECTING EVASION OF TAX ASSUMING GOODS TO BE PURCHASED LOCALLY , PENALTY IMPOSED U/S 51(7)(c) OF THE ACT – APPEAL BEFORE TRIBUNAL – RELEVANT CERTIFICATE ISSUED BY CUSTOM AUTHORITIES PRODUCED SHOWING GOODS BEING BROUGHT FROM OUTSIDE INDIA – PAYMENTS MADE THROUGH BANKS – ACCOUNT BOOKS INDICATED NO CONCEALMENT OF TRANSACTION – MERE NON REPORTING AT ICC NOT SUFFICIENT TO ESTABLISH ATTEMPT TO EVADE TAX – FAILURE TO ESTABLISH MENSREA ON PART OF APPELLANT BY AUTHORITIES – APPEAL ACCEPTED AND PENALTY DELETED- *SEC 51 (4),51(7)(c)OF THE PVAT ACT, RULE 64 (B) &(C)OF PVAT RULES*

Facts:

The goods were in transit from GRFL Sahnewal to Kapurthala. The documents bill of Entry, G.R. and GRFL Gate pass were produced by the driver. It was suspected that the information relating to the transaction was not furnished at ICC and that the goods were purchased locally and not from outside India as projected. It was observed by the officer that the appellant had not furnished E-ICC or Vat 12 as required under rule 64(b) &(c) of the Rules. Penalty was imposed u/s 51(7)(c) for attempt to evade tax. Aggrieved by the order of first Appellate authority an appeal was filed before Tribunal.

Held :

Though the information ought to be reported at the ICC but in this case all the relevant documents indicates that the gods were imported from outside India. A certificate by custom authorities showing that the goods were the result of an international transaction make it apparent that the appellant had no intention to conceal the transaction or keep it out of books of accounts. Mere non furnishing of information at ICC will not attract penalty u/s 51(7)(c).

Moreover, validity of bills/invoice was never challenged. Payments have been made through banking channels. The appellant has exposed the goods, their value, place of purchase, destination. Therefore, no mensrea on the part of appellant is proved. The respondents have failed to establish attempt to evade tax on part of appellant. The appeal is accepted and penalty is deleted.

Cases referred:

Mahawar Iron Store Ltd., Mandi Gobindgarh vs. State of Punjab passed in Appeal No. 62 of 2011 decided on 12.3.2012

Sagar Steels, mandi Gobindgarh vs. The State of Punjab (2005) 8 Sales Tax Matters 324

Present: Mr. J.S. Bedi, 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 30.12.2014 passed by the Deputy Excise and Taxation Commissioner (A), Jalandhar Division, Jalandhar dismissing the appeal against the order dated 31.10.2013 passed by the Assistant Excise and Taxation Commissioner, Mobile Wing, Jalandhar imposing penalty of Rs. 18,08,270/- under Section 51(7)(c) of the Punjab Value Added Tax Act, 2005.

2. Briefly stated the facts are that on 12/10/2013, the Excise and Taxation Officer, Mobile Wing, Jalandhar intercepted two vehicles bearing numbers PB05-A-0350, and PB-13-W-9967 near Toll Plaza, Ladowal, Ludhiana, the goods were transported from GRFL Sahnewal to Kapurthala. On demand, the drivers produced the following documents:-

1. GRFL Gate Pass number SNL/I/TI/13-14/2-21209, dated 11.10.2013 and Gate Pass number SN/I/TI/13-14/22292 dated 12.10.2013.
2. G.R.No. 6223 dated 11.10.2013 of M/s The Truck Operator Union, Kohara Road, Sahnewal Ludhiana in favour of M/s Rail Operator Union, Kohara Road, Sahnewal Ludhiana in favour of M/s Rail Fab, Opp. Rail Coach Factory, Kapurthala.
3. Bill of Entry No. 2469933 dated 7.10.2013 in favour of M/s Rail Fab, Opp. Rail Coach Factory, Kapurthala.
4. G.R. No. 6226 dated 11.10.2013 of M/s The Truck Operator Union, Kohara Road, Sahnewal Ludhiana in favour of M/s Rail Feb, Opp. Rai Coach Factory, Kapurthala.

On scrutiny of the documents, it was suspected that the information relating to the transaction was not furnished at any Information Collection Centre as required in Form VAT -12 and in accordance with Rule 64(b) 64(c) read with Section 51(4) of the Act and that the goods might have been purchased locally but projected that the goods had been purchased out of India. It was also doubted that the appellant had no good intention for not generating E-ICC and wanted to evade tax, therefore, the Checking Officer detained the goods and forwarded the case to the Assistant Excise and Taxation Commissioner, Mobile Wing, Jalandhar for further proceedings.

3. Whereupon, the Assistant Excise and Taxation Commissioner, Mobile Wing, Jalandhar issued notice dated 13.10.2013 u/s 51(6)(b) of the Punjab Value Added Tax Act, 2005 to the appellant for verification of the said transaction. In response to the notice, the counsel as well as representative of the firm appeared before him. However on 14.10.2013 Shri J.S. Bedi, Counsel for the appellant appeared before the Detaining Officer and produced the following documents:-

1. Commercial invoice 13XHL-GA-20, dated 31.8.2013, Two photocopies of Kanda Parchi Nos. 427 and 428 of M/s Weight Bridge, Sultanpur RD, Opp. Octroi Post, Kapurthala, one bill of entry showing the value of the goods as Rs. 87,51,844/- and bill of lading.

After examining the entire record the Assistant Excise and Taxation Commissioner observed that the appellant had not furnished E-ICC or Vat-12 as required under Section 64(b) and (c) of the Rules. Therefore, he was convinced that the dealer had ill intention and had made an attempt to evade tax for not filling Form VAT-XXII or VAT-XXXVI to generate the information regarding the transaction. Resultantly he imposed a penalty to the tune of Rs. 18,08,270/- under Section 51(7)(c) of the Act, 2005.

4. Feeling aggrieved, the appellant filed the appeal which was dismissed by the Deputy Excise and Taxation Commissioner by observing that the appellant failed to comply with the provisions of Section 51(2), 51(4) and Rules 64(b) & (c) of the Punjab Value Added Tax Act, 2005, hence this second appeal.

5. The counsel for the appellant, in order to assail the order passed by the authorities below, has urged that the Golden thread running through Section 51(7)(c) is an element of men-sera to evade tax which is missing in the present case. The appellant was in possession of bill of entry, bill of lading furnished before the custom authorities, G.R. and gate pass which he produced. He also urged that the transaction was in continuity of the information given to the custom authorities. Payment was through the banking channels therefore mere non reporting of the goods at the ICC is not sufficient for imposition of penalty. He has also urged that the value of the goods has not been properly assessed for imposing the penalty. To the contrary, the Counsel for the respondent has urged that the Act has provided a specific provision for imposition of penalty in cases where the mandatory provisions of the Act and the rules are violated. He has referred to me. Section 51(2), 51(4) and Rules 64(b) & (c) framed under the Punjab Value Added Tax Act, 2005 and has prayed for dismissal of the appeal.

6. Having heard the rival contentions, there are two classes of cases:

> *Firstly where the goods brought are duly tax paid and no tax is due to be paid within the State and no tax is involved, the information regarding the import of such goods has already been given to the custom authorities. In such cases, mere non reporting of the transaction at ICC of the State is not material and does not entail any penalty particularly when the driver of the vehicle was in possession of all the relevant and requisite documents regarding the transaction and there was no intention to keep the goods out of the books. The second category of cases is that where the tax has not been paid, the intention of the party is to keep the goods out of books and the goods are taxable. The party is not equipped with proper and genuine documents. The goods are taken through escape route;*
>
> *In such cases, non furnishing of information entails penalty and violation of the mandatory provisions of law assumes significance. The requirement of submitting information in electronic mode and generation thereof through a required form regarding taking the goods at the ICC is essential for multiple purposes including keeping the goods in the account books.*

7. Sub Section (4) of Section 51 stipulates that the owner or person incharge of the goods vehicle, shall deliver within 48 hours, the transit slip to the officer incharge of the check post at the ICC at the entry or at the point of its exist from the State failing which he shall be liable to pay penalty at the rate of 50% of the value of the goods. The counsel for the appellant, without disputing the provision regarding furnishing of the information, has argued that he had presented the bills regarding importing of the goods from outside the country. He had also submitted the bill of entry, bill of lading as submitted before the custom authorities alongwith

commercial invoice of the country of purchase, the goods having been imported were not taxable and were to be used in manufacturing the Rail parts, therefore as he had already reported the goods to the custom authorities then mere non reporting of the goods would not entail penalty as the mens-rea part is missing in the case.

8. Having considered the contentions, I agree with the same to some extent. The appellant at the time of stopping the truck presented the following documents:-

(1) Bill of entry
(2) Foreign bills transaction advice issued by the bank
(3) Inward remittance Transaction Advice dated 20.8.2013 issued by Rail Feb.
(4) Ledger account w.e.f. 1.4.2013 to 28.2.2014 which indicates that the goods were purchased by the appellant by Bill No. 13 XHLG-A-20, dated 31.8.2013 (US $ 116637.44). This document correlates to the commercial invoice and the bill of entry submitted before custom authorities to the aforesaid number. The invoice No. 13XHLG-A-20, dated 31.8.2013 finds mentioned in all the documents relating to the transaction.
(5) Another document issued by the custom authorities.
(6) The Commercial Invoice issued by the Shandong Xinghe Import & Export Co., Ltd. in favour of Rail Fab (appellant) with regard to sale of the goods detained.
(7) The Packing List shows the goods as 961 pieces of Aluminium Alloy Hollow Profiles and 59 pieces Polycarbonate Profiles. Total quantity comes 1080 pieces weighing 30722 kgs.
(8) Document showing further details of the aforesaid goods. There is a VAT invoice issued by China Firm in favour of Rail Fab opposite Rail Coach factory, Kapurthala, Punjab containing the declaration of the exporter, Cargo Transportation Insurance Policy, Bill of lading dated 10 September, 2013 for lading of goods.

9. No doubt, the Act has provided the generation of Form XXXVI, or VAT-XII or furnishing of the E-ICC at the office of the Information Collection Centre, at the time of entry of the goods at the relevant place (nearest check post) yet the transactions which is continuity relate to information before the custom authorities and the appellant produces all the documents regarding information in order to prove it as International transaction, then the question that no information was given at the ICC is of no consequence as the main intention of the Act was to keep the goods in the accounts books and the transaction should not be concealed by the assessee.

10. In this case, it is apparent from the bill of entry and bill of lading as well as certificate issued by the custom authorities that the goods were the result of an international transaction and nothing was concealed by the appellant. The account books indicate that the appellant never intended to keep the goods out of the books. In such situation mere non furnishing of the information at the ICC does not attract penalty u/s 51(7)(c) of the Act. Similar observations were made in case of M/s Mahawar Iron Store Ltd., Mandi Gobindgarh vs. State of Punjab passed in Appeal No. 62 of 2011 decided on 12.3.2012 wherein, it was observed as under:-

> *"The case of the appellant is that in fact the driver-cum-incharge of the vehicle had misplaced the old documents including goods receipt and it is because of this reason that he was occasioned to procure the new goods receipt. There being no disparity in weight, value and description of the goods in both these goods receipts, mere non cancellation of the goods receipt does not spell out a case of an attempt to evade tax. It*

was for the transporter to record a note with regards to the cancellation of the earlier goods receipt on the new one. For the lapse, on his part, no malafide can be attributed to the driver-cum-incharge of the vehicle of the appellant. It is the case of the department that the goods were in the vehicle of the appellant. It is the case of the department that the goods were not reported initially at the ICC Railway Station, Amritsar and it was non reporting to the ICC subsequently that Form VAT-XXXVI was got issued. Be that as it may, but the fact remains that if the intention of the appellant had been malafide or there had been variance or defect in the documents, the driver-cum-incharge of the goods vehicle had hardly a courage to report the goods later on at the ICC Railway Station, Amritsar. May be that the driver-cum-incharge of the vehicle was non-cognizant the goods at the ICC, railway Station, Amritsar. Had there been any discrepancy in the documents covering the transaction, the same, in all probabilities, would have come to the notice of the authorities of ICC, Railway Station, Amritsar and they would have detained the goods. An other set of documents was given to the driver-cum-incharge of the vehicle by the custom clearing agent. It is apt to be borne in mind that this transaction is in continuity of international contract for which the custom had been duly paid. The Photostat copies of commercial invoice from Pakistan, bill of entry (custom), international sales, VAT-XXXVI generated by ICC, Railway Station, Amritsar, challans of custom clearing agent, goods receipt of transport, Excise Register showing the particular entry, Bill showing sales of the disputed transaction, Sale account in the books of the appellant, bank document regarding payment of disputed import transaction alongwith bank statement, VAT-15 showing import transaction, VAT-20 showing import duly accounted for have been shown. The authenticity of these documents has not been challenged. These documents go a long way in proving that this is an international transaction, which rules out the possibility of making an attempt to evade tax. In Sagar Steels, mandi Gobindgarh vs. The State of Punjab (2005) 8 Sales Tax Matters 324, it has been observed by the Sales Tax Tribunal-II, Punjab that no penalty can be levied under Section 14-B(7) of the Punjab General Sales Tax Act, 1948 solely for non reporting at the ICC. The invoice, copy of Foreign Contract and bill of entry in both the sets of the documents were the same. The particulars in old custom cargo receipt and the new one are the same. The payments were made through banking channels. Therefore, the transactions in no manner could be kept out of account books. The goods had merely moved through Amritsar."

11. In the present case also the validity of the bills/invoice has not been challenged. The bill of entry and bill of lading relate of the transaction in question. The payments were made through banking channels. There is no discrepancy in the documents covering the transaction. Sale account in the books of appellant, bank documents regarding payment have been annexed by the appellant in the appeal. The authenticity of the documents has not been challenged. As such, it is amply established that this is an international transaction which rules out the possibility of making an attempt to evade tax. The main idea behind furnishing of the information of such transaction is that the appellant may not evade tax. But in the present case since the appellant had already exposed the goods, the value; the place of purchase; place of destination and the payment made through the documents, therefore no mensrea on the part of the appellant is proved.

12. As a result of the aforesaid discussion, it is observed that the respondents had failed to establish if there is an attempt to evade tax.

13. Resultantly, this appeal is accepted, orders passed by the authorities below are set-aside and penalty imposed is quashed. However, it is made clear that the order shall not debar the Assessing Authority of the appellant from taking cognizance of this transaction while framing the assessment.

PUNJAB VAT TRIBUNAL

APPEAL NO. 258 OF 2011

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KAARTIKE GOLD ENTERPRISES
Vs
STATE OF PUNJAB

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

18th May, 2015

HF ▶ Revenue

Penalty u/s 51(7) is imposable where jewellery has been intercepted by the police authorities and no proper bills have been issued in respect of the goods.

PENALTY – CHECK POST/ ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – GOODS VEHICLE- GOODS(GOLD BARS) CARRIED IN PUBLIC BUS BY TWO PERSONS – SEARCH BY POLICE – PERSONS HANDED OVER TO EXCISE AND TAXATION OFFICER FOR VERIFICATION – NO DOCUMENTS PRODUCED IN RESPECT OF GOODS ALLEGED TO BE SOLD BY DELHI TRADER TO BATALA – PENALTY IMPOSED U/S 51(7)(c) OF THE ACT - APPEAL BEFORE TRIBUNAL – PROCEEDINGS NOT VOID MERELY ON BASIS OF CHECKING BY POLICE AS PERSONS WERE HANDED OVER TO THE CONCERNED OFFICER – INVOICE PRODUCED LATER BORE NO REGISTRATION NUMBER AND WAS ISSUED BY SOME THIRD PARTY – DOCUMENT FOUND MANIPULATED FOR NOT BEING IN CONSONANCE WITH SEC 50 OF DELHI VAT ACT – MERE NON DETENTION OF VEHICLE NOT TO EXONERATE LIABILITY FROM PAYMENT OF TAX AND PENALTY – PERSONS CARRYING GOODS THEMSELVES INCLUDED TO BE CARRIERS OF GOODS AS PER SEC 2(e) OF THE ACT - NON DISCLOSURE AT ICC DUE TO LIFE THREAT ON ACCOUNT OF EXPENSIVE GOODS BEING CARRIED HELD NOT CONVINCING AS DOCUMENTS WERE TO BE ACCOMPANIED ALONGWITH INVARIABLY- PENALTY UPHELD ON BASIS OF ATTEMPT TO EVADE TAX AND MANIPULATED INVOICE – *SEC 51(2), (7)*(c),*OF PVAT ACT; SEC 50 (2) OF DELHI VAT ACT*

Facts:

Five gold bars were being carried by two persons travelling in a bus from Delhi to Batala. At the Octroi post Rajpura, the bus was checked by the police squad. It was disclosed that the goods were being brought from Delhi businessman named M/s Deepak Jewellers/ Traders. Both the persons were handed over to the Detaining officer by the police. No documents were in their possession. Doubting it to be a case of tax evasion, penalty was imposed u/s 51(7)(c) of the Act. An appeal is filed before Tribunal.

Held:

The contention raised by the appellant that the police had no jurisdiction to search the carriers regarding matters related to tax is rejected on the ground that the police was only checking for crimes on highway and on coming across the carriers it handed over the persons to the detaining officer. Therefore, the proceedings are not void.

The invoice was categorically stated to be not in their possession when asked to produce. Even later on it was not produced on the pretext that the appellants were busy appearing before income tax authorities. Not even a copy of it was produced. The invoice shown later is suspected to be issued by some other dealer. The invoice is held to be ingenuine as it does not bear the registration number and is not in consonance with sec 50(2) of Delhi VAT Act. No bill book or account books have been produced to authenticate the sale. Therefore, the invoice purportedly prepared to save themselves cannot be used as a document to save from tax liability.

It was alleged by the appellant that the goods were to be detained alongwith the vehicle for a legal detention. This argument is rejected holding that this power is given u/s 51(2)&(4) of the Act. But this can be exercised only in appropriate cases and not all. Sec 51(2) refers to the detaining of the person in charge of goods or a goods vehicle. A person carrying goods himself is included as a carrier as per section 2(e) of the Act, to be detained in case he is carrying the goods. Non detaining of the vehicle will not exonerate the appellant from tax liability in absence of requisite documents.

The plea that since goods were valuable and hence were not disclosed at ICC as it might lead to life threat is rejected as the goods ought to have been atleast been carried with the documents.

The goods were in shape of bars and not ornaments. Thus it cannot be aid they were carried for self consumption. The goods are held to be transported by carriers of appellant without documents for evading tax. The manipulated invoice was produced to save the tax liability. Therefore, the penalty is upheld and appeal is dismissed.

Case referred:

State of Punjab and Another Vs. Kabir Diamonds Pvt. Ltd. (2011) 43 VST 117

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 judgment dated 2.8.2011 passed by the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala dismissing the appeal of the appellant against the order dated 31.3.2010 imposing a penalty of Rs. 41,33,250/-.

2. This is a second round of litigation through which the case is passing.

3. The facts of the case are that on 16.3.2010 two persons namely Shri Karan S/o Sunder Lal and Sh. Kewal S/o Manga Masih were travelling alongwith live gold bars from Delhi to Batala meant for their buyers M/s Kaartike Gold Enterprises, Sarafa Bazar, Batala. They were hiding the said gold bars while hiding the same under the used clothes in inner part of the bag and were traveling by bus which was coming from Delhi and going to Batala. The bus when reached octroi post Rajpura, it was checked by the Police squad under the supervision of Sh. Binder Singh, Incharge Police Station, Focal Point, Rajpura. During

checking of aforesaid" two persons sitting in the bus, five gold bars were recovered from them. On enquiry, they disclosed that they had brought the gold bars from Delhi based businessman named M/s Deepak Jewellers/Traders. The Checking Officers while suspecting the transaction to be in genuine reported the matter to their seniors. They in turn contacted the senior authorities of the Excise and Taxation Department as the case was suspected to be that of tax evasion under Punjab Value Added Tax Act, 2005 (herein referred as the Act, 2005). After recording the statement of Shri Karan S/o Sunder Lal and Sh. Kewal S/o Manga Masih, Shri Binder Singh, Incharge of the Police Station, Focal Point, Rajpura recorded D.D.R. No.12, dated 16.3.2010 at 11.00 A.M. vide which he handed over both the persons to the Detaining Officer who also recorded the statements of both the persons wherein they had deposed that they had bought the gold bars from Delhi and started their journey at 10.30 P.M. Since then they were continuously in contact with the owners of the goods. They were not in possession of documents relating to the goods. Even on demand of the documents relating to the transaction by the Detaining Officer, they could not produce the same. Both the persons produced visiting card of the appellant firm on 17th March, 2010. While doubting the case to be that of tax evasion, the Detaining Officer served notice U/s 51 (6) (b) upon them. The goods were also got weighed and evaluated from M/s Jagdish Jewellers a Patiala based registered evaluator (approved by Government of India) who issued a certificate authenticating that the gold bars were of 5 kg weight and were of the value of Rs.82,66,500/-.

4. The Detaining Officer was not satisfied by the explanation made by the carriers therefore, he forwarded the case to the Designated Officer who conducted the enquiry and vide order dated 31.3.2010 imposed a the tune of Rs.41,33,250/- U/s 51 (7) (c) of the Act.

5. The appeal filed against the said order was dismissed by the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala on 31.3.2010.

6. Still dis-satisfied the appellant preferred the appeal before the VAT Tribunal, Punjab. Whereupon, the Hon'ble Tribunal vide its judgment dated 25.4.2011 observed that the order passed by the Deputy Excise and Taxation Commissioner lacked reasons, therefore, they accepted the appeal, set-aside the order dated 31.3.2010 and remitted the matter back to the Deputy Excise and Taxation Commissioner for passing a speaking and reasoned order.

7. Thereupon, the Deputy Excise and Taxation Commissioner vide his order dated 2.8.2011, again dismissed the appeal and upheld the order of penalty. As such the present appeal is before me.

8. Arguments heard. Record perused.

9. Prime argument raised by Mr. Goyal, Senior Advocate before me is that the police authorities had no jurisdiction to search the carriers regarding the matters relating to the tax in this regard, he has taken me through the provisions of Section 51 (2) (3) (4) & (6) of the Punjab Value Added Tax Act, 2005. Thus, he has raised strenuously contended that detention order being void, all the consequential proceedings are liable to be quashed. Having considered the contentions raised by both the parties, I do not find any material substance in the same. This argument was not raised by the appellant before the Detaining Officer, Designated Officer or the Deputy Excise and Taxation Commissioner. In any case, the police was holding routine picket in order to check the crime on the highway when they came across the carriers, they found the two persons carrying five gold bars without any required documents therefore, they suspecting it to be a case of tax evasion, handed it over to the Detaining Officer who issued notice U/s 51 (6) (b) for 17.3.2010. None appeared to answer the notice. The case was adjourned to 18.3.2010. On 18.3.2010 Mr. Sumit Kumar one of the partners who appeared alongwith Mr. K.L. Goyal, Senior Advocate admitted that the goods were being transported from Delhi without informing the concerned ICC. No account books, no bill, GR and Form XXXVI were produced in respect of the transaction. Ultimately, the case was forwarded to the

Excise and Taxation Officer/Assistant Excise and Taxation Commissioner who issued a notice to the appellant for 29.3.2010 The documents placed on the record speak for themselves that the police had not interfered much in the case and referred the matter to the Assistant Excise and Taxation Officer who were only competent to check the evasion of tax. As such the question of police custody of these two persons does not arise. In any case the police did nothing further except that as soon as they came to know that the case was relating to tax evasion, they referred the matter to appropriate authority.

10. As regards the power of the police to check the vehicle in discharge of their duties to detect the crime, it was observed by the VAT Tribunal, Punjab in case of M/s Dwarka Gems Ltd., Jaipur (Rajasthan) Versus The State of Punjab decided on 3.2.2012 as under :-

> *"Mr. Goyal admits that the ETO can take assistance of the police to discharge his duties. The law authorizes the police to check the vehicles. On detection of any crime concerning the Excise and Taxation Department, the police can call the concerned officer of this Department. There is nothing to suggest that any prejudice has been occasioned to Shri Ajit Singh due to calling of the ETO by the Police of0cials. The non mention of the bus number or name of the company of the bus in the detention notice or the impugned orders or absence of bus ticket with Shri Ajit Singh pales into in significance in the light of "goods carriers" definition as given in Section 2 (e) of the Act, 2005. There is no legal bar that the police officials cannot inform and call the authorities of Excise and Taxation department, when an offence being committed under the provisions of the Punjab Value Added Tax Act, 2005 comes to their notice. To give such a call by the police officials to the officers of the said department would rather advance the cause of justice. In M/s Unique Chains, Mumbai State of Punjab, Appeal (VAT) No. 73 of 2008-09 decided on 20.2.2009 also Ankit Mehra alongwith one other person carrying the gold ornaments was intercepted by G.R.P. at Beas Railway Station and then ETO (MW) was called and action under Section 51 of the Act was taken. The appeal of M/s Unique Chains, Mumbai was dismissed by this Tribunal. To throw out the case of the department for mere interception of Sh. Ajit Singh at the initial stage by the police, would tantamount to sacrificing the justice at the altar of technicalities or the un-codified or un-laid law."*

11. The counsel for the appellant has urged that these two persons were carrying documents i.e. copy of invoice of purchase from M/s Raja and Co., Delhi showing the value of goods as Rs.80,94,053/-, but the said invoice was neither taken into consideration by the Assistant Excise and Taxation Commissioner, Mobile Wing, Patiala nor by Detaining Officer. Having heard the contention, I do not find myself in agreement to the same. Invoice appears to have been manipulated at later stage. Though, at the cost of repetition, it may be observed that the documents were not produced till 25.3.2010. The carriers of goods made categorical statement on 16.3.2010 that they are not in possession of any documents supporting the transaction and had stated that they had purchased the goods from M/s Deepak Jewellers. Even on the next date i.e. 17.3.2010, none appeared before the Detaining Officer to produce the copy of the invoice. Ultimately on 28.3.2010, they projected defence that they were busy to appear before the Income Tax Authorities to explain regarding the said transaction of the Gold Bars, therefore, they could not produce the same. Had they been in possession of the invoice purported to have been issued by their sellers, then they would have produced atleast a copy of it before the Detaining Officer or Assistant Excise and Taxation Commissioner, but it was not 'so done. The two carriers had made a statement that they had brought the goods from M/s Deepak Jewellers but alleged invoice appears to have been issued by M/s Raja and Company, Delhi. It would also be pertinent to mention here that the contention, that they could not produce the invoice as they had to appear before the Income Tax Commissioner in connection with the same case, is nothing but camouflage for making a ground to cover the delay. During the period, they must have procured the invoice. The story as set up by the appellant to cover the delay is also bogus. The case was at a rudimentary stage. There was no occasion for the

Income Tax Authorities to go into the issue and probe about the transaction. Even otherwise, when the matter was already subjudice before the police as well as the Excise and Taxation Department, there was no occasion for the Income Tax Authorities to come in action without any search or seizure, without having any reference from any department, complaint or survey on account of evasion of Income Tax on this account.

12. While examining the genuineness of the invoice, it is observed that the invoice allegedly issued by M/s Raja & Co. There are two types of invoices i.e. (l) VAT invoice (i) Retail Invoice. This case is relating to VAT invoice. As per Rule 54, the VAT invoice shall be issued. Rule 54 reads as under:-

RULE 54. (3) The words 'VAT Invoice" shall be prominently printed on the invoice.

(4) A VAT invoice shall contain, the following details:-

(a) a consecutive serial number printed by a mechanical or electronic process. In case of a computer generated invoice, the serial number may be generated and printed by computer, only if, the software automatically generates the number and the same number cannot be generated more than once;

(b) the date of issue;

(c) the name, address and registration number of the selling person;

(d) the name, address and registration number of the purchaser

(e) full description of the goods;

(f) the quantity of the goods;

(g) the value of the goods per unit;

(h) the rate and amount of tax charged in respect of taxable goods;

(i) the total value;

(j) If the goods are being sold, transferred or consigned to a place outside the Union Territory, Chandigarh, serial number of Form VAT-36 (from the date of its introduction by the Chandigarh Administration)

(k) Mode of transportation of goods and details thereof; and

(l) Signature of the proprietor of partner or director his authorized agent.

13. Thus, it is not in consonance with Section 54 of the Punjab Value Added Tax Act. Since the goods were being imported from Delhi, therefore the goods should have been on the invoice as per Section 50 of the Delhi VAT Act. As per Section 50 of Delhi VAT Act, the invoice should contain the following particulars:-

50(2) The tax invoice issued under sub-section (1) of this section shall contain the following particulars on the original as well as copies thereof:-

(a) The words 'tax invoice' in a prominent place;
(b) The name, address and registration number of the selling registered dealer;
(c) The name and address of the purchaser and his registration number, where the purchaser is a registered dealer;
(d) An individual pre printed serialized number and the date on which the VAT invoice is issued;

14. In the present case, the contents in "Tax invoice" as issued by M/s Raja & Co. are not in consonance with Section 50 (2) of Delhi VAT Act. The words Tax invoice are missing from the alleged invoice. The dealers have admitted that the goods were meant for trade but the invoice does not indicate if it was retail invoice or was meant for whole sale. The invoice does not indicate the registration number of the appellants though they are registered dealers. Though the carriers stated that they had bought the gold bars from M/s Deepak Jewellers yet invoice is in the name of M/s Raja and Co., Phase IV, Ashoka Vihar, Delhi.

15. No bill book or account book has been produced period w.e.f. 16.3.2010 to 22.3.2010 in order to authenticate the sale. Thus this invoice purportedly prepared in order to save their skin cannot be used as a document in their favour in order to escape the tax liability. Such books appeared to have been prepared later on only to plug the holes. The counsel for the appellant has next contended that the case is not covered by Section 51(6)(b) of the Act. According to the said Section, if the person incharge of the goods has not submitted the documents at the ICC on his entry into the State, such goods would be detained alongwith the vehicle. It means that the tax authorities were vested with the powers to detain the goods alongwith the vehicle, but in the present case, the officer while checking the bus detained the goods and not the goods vehicle alongwith the goods. Therefore, the detention of the goods was illegal. The arguments can be condemned as untenable for the reason that the power to detain the person incharge of goods alongwith goods vehicle has been given by Section 51(2) and (4) of the act of 2005. But this power can be exercised only in fit and appropriate cases and not in all cases. The detention of the person incharge of the goods where he is not traveling in a goods vehicle is equally valid in the light of the said Section. In the present case, the persons were traveling in the bus alongwith other passengers with the gold bars without generating VAT 36 at the I.C.C. when after crossing the Delhi border the bus reached near Rajpura, both were apprehended alongwith gold bars without the covering documents, therefore, considering the case to be that of tax evasion, the police referred the matter to the Excise and Taxation Department.

16. Section 51 (2) refers to the detaining of the person incharge of the goods or a goods vehicle. A person himself carrying goods has been included as a carrier to be detained in case he is carrying the goods. Carrier of the goods has been declined in Section 2 (e) of the Act of 2005 which reads as under :-

> *2(e) "carrier of goods" includes a person or a transport company or a booking agency, who transports, receives or delivers goods;*

In such a situation when the carrier of the goods is traveling in a public railway, ship or airways then the carrier of the goods is to be detained. It was not the bus or the other vehicle to be taxed but the goods were to be taxed. So it is not in each and every case, where the vehicle is to be detained alongwith the person incharge of the goods. Non detaining of the vehicle also does not exonerate the appellant from making payment of tax and penalty when the goods are not covered by necessary documents as required U/s 51 (2) & (4) of the Act. The appellants did not produce any document and Form XII-A, Form-XXXVI as required by Rules 30 (1), 63(1) & 64 (b), therefore certainly he was amenable to the penalty proceedings. The provision with regard to detaining of the vehicle alongwith the goods appears to have been introduced in the Act in order to facilitate the authorities to move the goods and keep them in custody till the tax is paid.

17. As regards, the plea taken by the appellant that the matter was not reported to the I.C.C. as the goods were valuable and its disclosure could lead to the life threat, it may be observed that since the goods were not covered by any documents, therefore the excuse can't be approved. The appellant could have argued this point if the goods were accompanying the documents. It was not possible for the persons who are carrying the goods without documents

to declare about the transaction at the I.C.C. All this shows that the non reporting of the transaction at the ICC was willful with a view to keep the transaction out of the books of account to evade or avoid the payment of tax in the State of Punjab. Declaration of any transaction of goods by way Form XXXVI was mandatory, to be generated at the ICC established by the Government of Punjab. As regards the other contention that information was not necessarily required to be furnished at the Information Collection Centre in light of the judgment State of Punjab and Another Vs. Kabir Diamonds Pvt. Ltd. (2011) 43 VST 117 (Pau), it may be observed that the same is not applicable to the facts of the present case because in case of Kabir Diamonds Pvt. Ltd., the goods were being carried as samples for approval and not for sale. Further, those samples were covered by proper and genuine documents.

18. The other argument raised by Mr. Goyal, Sr. Advocate is section (2) of Section 51 is not applicable to the facts of the present case. Kewal and Karan were only carriers of goods but not carrying the goods in the goods vehicle 51 (2) refers to the carrying the goods in the goods vehicle. To buttress this contention, he has taken support of the judgment delivered in case of International Switch Gears 109 STC 75 (P&H) wherein, it was observed as under:-

> *"sub-section (2) of section 14-B of the Punjab General Sales Tax Act, 1948 (as applicable to the Union Territory of Chandigarh) enjoins upon the owner or the person in-charge of a goods vehicle or vessel to carry certain documents while transporting the goods. In sub-section (3) also, reference has been made to the goods vehicle or the vessel while empowering an officer incharge of a check-post or barrier to examine the contents of the vehicle or the vessel. Since "goods vehicle" has been defined to be a motor vehicle in clause (8) read with clause (18) of section 2 of the Motor Vehicles Act, 1939, that cannot give rise to a presumption that the power to inspect the goods in transit extended to the carriers other than a motor vehicle Sub-section (6) does not indeed specifically refer to a good s vehicle or vessel but the entire scheme of section 14-B of the Act relates to the transportation of goods in a goods vehicle or a vessel. Sub-section (6) of section 14-B would not be attracted in the animal driven cart carrying the goods."*

Having considered the contention, the same does not find favour with me. The judgment delivered in case of International Switch Gears (supra) involved the interpretation if Section 14-B of the Punjab General Sales Tax Act. Section 51(2) is not akin to Section of 14-B of the Punjab General Sales Tax Act in so far as the interpretation of the person carrying the goods i.e. carrier of the goods. A sea change has been brought in Section 51 of the Act so as- to add a person incharge of the goods as carrier of the goods. First proviso to Section 51 (2) is reproduced as under:-

> *51(2) The owner or person Incharge of the goods or a goods vehicle shall carry with him a goods vehicle record, goods receipt, a trip sheet or a log-book, as the case may be, and a sale invoice or bill or cash memo, or delivery challan containing such particulars, as may be prescribed, in respect of such goods meant for the purpose of business, as are being carried in the goods vehicle or by any other means and produce a copy each of the aforesaid documents to an officer incharge of a check post or information collection centre, or any other officer not below the rank of an Excise and Taxation Officer checking the vehicle at any place.*
>
> *Provided that a person selling goods from within or outside the State in the course if intrastate or inter-State trade or commerce, shall also furnish or cause to be furnished a declaration with such particulars, as may be prescribed:*
>
> *Provided further that a taxable person, who sells or dispatches any goods from within the State to a place outside the State or imports or brings any goods or*

otherwise receives goods from outside the State, shall furnish particulars of the goods in a specified form obtained from the designated officer, duly and signed.

19. As per Section 51 (2) of the Act, a person in incharge who is carrying the goods without documents could be detained though he is not carrying the goods in a goods vehicle. In the present case the employees of the appellant firm were found carrying the 5 Kg of gold bars without any documents, therefore they having contravened the basic requirements of law were detained.

20. Mr. Goyal, Sr. Advocate has further submitted that the two persons being the employees of the owners appellant were in possession of the invoice in Form VAT 49 which is meant for all export out side the State of Delhi. The goods were to be delivered at Batala and it is not clear from any document that the goods were meant for sale.

21. Having heard the contentions. The goods were meant for sale, it is admitted by the appellant by the reply dated 31.3.2010 before the Designated Officer as under:-

1. Information could not be provided at the ICC because the long route buses do not stop at the ICC.
2. Both the consigner and consignees are existing dealers in the trade doing regular business and they are registered under the taxation laws and filling returns and playing tax.

22. It would further be relevant to mention that the goods were in the shape of gold bars and not ornaments therefore it can't be said that those goods were for self consumption or for design approval. The goods were being carried in a concealed manner obviously to save tax to the tune of eighty lacs odd.

23. All this goes to show that the appellant was transporting the gold bars through his carriers from Delhi and they were taking it for sale to Batala by concealing them in the bags without documents with an intention to evade tax and the appellant manipulated the documents and fabricated the invoice in order to save himself from penalty. Having examined the judgments passed by the courts below, the same are found to be well reasoned and do not smack of any defect illegally or impropriety so as to interfere with the same.

24. Resultantly, Findings no merits in the appeal, the same is dismissed.

25. Pronounced in the open court.

NOTIFICATION (U.T. Chandigarh)

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AMENDMENT REGARDING SCHEDULE E

CHANDIGARH ADMINISTRATION
EXCISE & TAXATION DEPARTMENT

Notification

14th August, 2015

No. E&T-ETO(Ref.)-2015/2289 With reference to the Chandigarh Administration, Excise & Taxation Department's Notification bearing No. E&T/ETO(Ref.)-2015/99 dated 17 April, 2015 and in exercise of the powers conferred by sub-section (3) of the Section 8 of the Punjab Value Added Tax Act, 2005 (Punjab Act No. 8 of 2005) as extended to the Union Territory Chandigarh and all other powers enabling him to this behalf, the Administrator, Union Territory, Chandigarh, hereby makes the following amendments in Schedule E' appended to the said Act w.e.f. 15.8.2015, namely.

AMENDMENT

1. In the said Schedule 'E', at Serial Nos, 9 & 10 and the entries relating thereto, the following items shall be substituted, namely.

"9.	All kind of Batteries except Cell Phone Battery, Torch Battery, Watch Battery and other Toys related batteries	14.30%
"10	Mobile Phones/Cell phones including all its parts and accessories such as Head Phones, Data Cable, Mobile Charger, Memory Card, Ear Phone, Audio Device, Mobile Cover, Mobile Battery, Bluetooth and Mobile Holder	9.35%

Sd/-
Sarvjit Singh, IAS
Secretary Excise & Taxation
Chandigarh Administration

SGA
LAW OFFICES

NOTIFICATION (Haryana)

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AMENDMENT IN SECTIONS 2, 8, 15A, 16, 17, 34, 60

HARYANA GOVT. GAZ. (EXTRA.) AUT. 3, 2015 (SRVN. 12, 1937 SAKA)

PART II
HARYANA GOVERNMENT
LEGISLATIVE DEPARTMENT

Notification

The 3rd August, 2015

No. Leg. 9/2015. - The following Ordinance of the Governor of Haryana promulgated under clause (1) of article 213 of the Constitution of India, on the 31st July, 2015 and is hereby published for general information:-

HARYANA ORDINANCE NO. 3 OF 2015

THE HARYANA VALUE ADDED TAX
(SECOND AMENDMENT)
ORDINANCE, 2015
AN
ORDINANCE
Further to amend the Haryana Value Added Tax Act, 2003

Promulgated by the Governor of Haryana in the Sixty-sixth Year of the Republic of India.

Whereas the Legislature of the State of Haryana is not in session and the Governor is satisfied that the circumstances exist which render it necessary for him to take immediate action;

Now, therefore, in exercise of the powers conferred by clause (1) of article 213 of the Constitution of India, the Governor of Haryana hereby promulgates the following Ordinance:-

1. This Ordinance may be called the Haryana Value Added Tax (Second Amendment) Ordinance, 2015.

2. In sub-section (1) of section 2 of the Haryana Value Added Tax Act, 2003 (hereinafter called the principle Act),-

I. After clause (o), the following clause shall be inserted, namely:-
'(oo) "electronic governance" means the use of electronic medium for,-

(i) Filing of any form, return, annexure, application, declaration, certificate, memorandum of appeal, communication, intimation or any other document;
(ii) Creation, retention or preservation of records;
(iii) Issue or grant of any form including statutory declaration form, order, notice, communication, intimation or certificate; and
(iv) Receipt of tax, interest, penalty or any other payment or refund of the same through Government treasury or banks authorized by the Government treasury;';

II. For clause (w), the following clause shall be substituted, namely:-

'(w) "input tax" means the amount of tax actually paid to the State in respect of goods sold to a VAT dealer, which such dealer is allowed to take credit of as actual payment of tax by him, calculated in accordance with the provisions of section 8;'.

3. For section 8 of the principal Act, the following section shall be substituted, namely:-

"8. Determination of input tax.- (1) Input tax in respect of any goods purchased by a VAT dealer shall be the amount of tax actually paid to the State on the sale of such goods to him and shall, in case of a dealer who is liable to pay tax under sub-section (1) of section 3 or, as the case may be, makes an application for registration in time under sub-section (2) of section 11, include the tax paid under this Act and the Act of 1973 in respect of goods (except capital goods) held in stock by him on the day he becomes liable to pay tax but shall not include tax actually paid in respect of goods specified in Schedule E used or disposed of in the circumstances mentioned against such goods:

Provided that where the goods purchased in the State are used or disposed of partly in the circumstances mentioned in Schedule E and partly otherwise, the input tax in respect of such goods shall be computed pro rata:

Provided further that if input tax in respect of any goods purchased in the State has been availed of but such goods are subsequently used or disposed of in the circumstances mentioned in Schedule E, the input tax in respect of such goods shall be reversed.

(2) A tax invoice issued to a Vat dealer showing the tax charged to him on the sale of invoiced goods shall, subject to the provisions of sub-section (3), be a proof of the tax paid on such goods for the purpose of sub-section (1).

(3) Where any claim of input tax in respect of any goods sold to a dealer is called into question in any proceeding under this Act, the authority conducting such proceeding may require such dealer to produce before it in addition to the tax invoice issued to him by the selling dealer in respect of the sale of the goods, a certificate furnished to him in the prescribed form and manner by the selling dealer and such authority shall allow the claim only if it is satisfied after making such inquiry, as it may deem necessary that the particulars contained in the certificate produced before it are true and correct and in no case the amount of input tax on purchase of any goods in the State shall exceed the amount of tax in respect of the same goods, actually paid under this Act into the Government treasury.

(4) The State Government may, from time to time, frame rules consistent with the provisions of this Act for computation of input tax and when such rules

are framed, no input tax shall be computed except in accordance with such rules."

4. For section 15A of the principal Act, the following section shall be substituted, namely:-

"15A. Provisional assessment.- If an assessing authority has reason to believe on the basis of documentary evidence available with him that a dealer has evaded or avoided payment of tax under this Act, he may after giving the dealer a reasonable opportunity of being heard, determine for any period of the current financial year and any time within a period of six months from the date of detection, the taxable turnover of such a dealer on provisional basis to the best of his judgment and assess him to tax accordingly. The amount of tax so assessed shall be payable by the dealer in accordance with the provisions of section 22. Every deposit of tax under this section shall be adjustable against the liability of the dealer in assessment made under section 15.".

5. In section 16 of the principal Act,-

(i) for the words "three years", the words "six years" shall be substituted; and
(ii) in the explanation, for the word "is", the words "has been" shall be substituted.

6. for section 17 of the principal Act, the following section shall be substituted, namely:-

"17. If in consequence of definite information which has come into its possession, the assessing authority discovers that the turnover of the business of a dealer has been under assessed or has escaped assessment or input tax or refund has been allowed in excess in any years, it may, at any time before the expiry of eight years following the close of that year or within three years from the date of final assessment order, whichever is later, after giving the dealer a reasonable opportunity, in the prescribed manner, of being heard, reassess the tax liability of the dealer for the year for which the reassessment is proposed to be made and for the purpose of reassessment, the assessing authority shall, in case the dealer fails to comply with the terms of the notice issued to him for the purpose of reassessment, have power to reassess to the best of its judgment.".

7. In the second proviso to sub-section (1) of section 34 of the principal Act, for the words "three years", the words "six years" shall be substituted.

8. After Chapter X of the principal Act, the following Chapter shall be inserted, namely:-

"Chapter-XA

Electronic governance

"54A. Implementation of electronic governance.- (1) Notwithstanding anything contained in this Act or the rules framed thereunder, the Commissioner may, by an order, with the approval of State Government, implement electronic governance for carrying out the various provisions of this Act and the rules framed thereunder.

(2) Where an order has been passed under sub-section (1), the Commissioner may, by notification in the Official Gazette, amend or introduce forms for returns, applications, declarations, annexures, memorandum of appeal, report of audit or any other document which is required to be submitted electronically.

54B. Automation.-(1) The provisions contained in the Information Technology Act, 2000 (21 of 2000) and the rules framed and directions given thereunder, including the provisions relating to digital signatures, electronic governance, attribution, acknowledgement and dispatch of electronic records, secure electronic records and secure digital signatures and digital signature certificates, shall apply to the procedures under this Act and rules framed thereunder for electronic governance.

(2) Where any return, annexure, report of audit, document, application, form including statutory declaration form, certificate, communication or intimation is submitted by a dealer or his authorized signatory electronically through the official website, such return, annexure, report of audit, document, application, form including statutory declaration form, certificate, communication or intimation shall be deemed to have been submitted by him, if the dealer or his authorized signatory has given consent to use the official website:

Provided that the dealer or his authorized signatory who has consented to use the official website shall not retract from or repudiate such documents submitted by him through the official website.

(3) Where a certificate of registration, order, form including statutory declaration, certificate, notice or communication is prepared on any automated data processing system and is sent to any dealer, then the said certificate of registration, order, form including statutory declaration, certificate, notice or communication shall not be required to be personally signed by the Commissioner or any other officer subordinate to him and the certificate of registration, order, form including statutory declaration, certificate, notice or communication shall not be deemed to be invalid only on the ground that it has not been personally signed by the Commissioner or any other officer subordinate to him.

Explanation.- For the purposes of this section, "authorized signatory" means a person authorized by the dealer for electronic governance.".

9. In section 60 of the principal Act, for the words and signs "website www. haryanatax.com", the words "official website" shall be substituted.

Chandigarh:
The 31st July, 2015-08-13

PROF. KAPTAN SINGH SOLANKI,
GOVERNOR OF HARYANA

KULDIP JAIN
Secretary to Government Haryana
Legislative Department

NOTICE (Haryana)

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PUBLIC NOTICE REGARDING FURNISHING OF PAN

EXCISE & TAXATION DEPARTMENT,

HARYANA

It is brought to the notice of all the Dealers registered under the Haryana Value Added Tax Act, 2003 (HVAT, 2003) that Goods and Services Tax (GST) is likely to be implemented from 1st April 2016. For migration from VAT to GST, Goods and Services Tax Identification Number (GSTIN) will be allotted to all the existing Dealers in the State which will be a PAN based number.

While validating the PAN details of the existing dealers with the Income Tax Department database, it was observed that certain dealers have not furnished their PAN details so far to the Department. Beside these, the PAN details of certain dealers are invalid as per the Income Tax Department database.

The list of such dealers is made available on the official website of the Department i.e. www.haryanatax.gov.in. These dealers are hereby requested to update their correct PAN details online through their login on the official website of the Department or through email at haryanataxpan@gmail.com or through SMS at 09501022222 by 18th August, 2015 positively, failing which the Department will initiate the cancellation proceedings against those dealers as per the HVAT Act, 2003.

Excise & Taxation Commissioner,

Haryana, Panchkula

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

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APRIL-JULY INDIRECT TAX COLLECTION UP 37.6%

Service tax was hiked to 14 per cent from 12.36 per cent effective June this year while the excise duty was increased marginally to 12.5 per cent from 12.36 per cent in the Budget.

The Centre's revenue from excise, customs duty and service tax grew an impressive 37.6 per cent in April-July this year to Rs 2.1 lakh crore, reflecting an uptick in consumption in certain sectors besides the increase in collection from hikes in tax rates, and withdrawal of a stimulus to consumer goods and automobiles.

Service tax was hiked to 14 per cent from 12.36 per cent effective June this year while the excise duty was increased marginally to 12.5 per cent from 12.36 per cent in the Budget.

These and the withdrawal of stimulus (concessional tax rates) to automobiles and consumer goods contributed to the surge in indirect tax collections. In the case of service tax, for instance, the growth in collections in April-July would have been nearly half the actual growth reported of 20.1 per cent if the rate hike hadn't occurred, analysts said. Indirect tax receipts growth of 39.1 per cent seen in July is better than the 33.3 per cent recorded in June, but below the 46.2 per cent recorded in April. According to experts, consumption in sectors like automobiles — car sales recorded a 17.47 per cent growth in July — is expected to sustain the trend in tax revenue, although the low fuel prices would have a negative impact on collections. The government has set a target of collecting Rs 6.46 lakh crore from excise, customs and service tax this year, an 18.8 per cent growth from last year's receipts.

Courtesy: The Indian Express

12th August, 2015

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CONG HOLDS UP GST BILL AGAIN, GETS OPPN BACKING

A determined Congress stalled the government's attempt to initiate discussion on the Goods and Services Tax (GST) Bill in the Rajya Sabha on a day Opposition leaders took on the BJP-led NDA for "using" industrialists and corporate heads to attack them for Parliament disruptions.

Deputy Chairman PJ Kurien's reminder that the Constitution Amendment Bill for GST was Congress' "baby" and that the protests were "undemocratic" failed to make headway. As Finance Minister Arun Jaitley moved the GST Bill for discussion, a vociferous Congress ensured the adjournment of the Rajya Sabha which, due to paucity of the BJP-led NDA's numbers, has borne the brunt of the agitations against "Lalitgate" and Vyapam scam this monsoon session that ends tomorrow.

The BJP's attempts to corner the Congress by holding it responsible for stalling the GST Bill and harming the country's economy has failed to affect prevailing sentiments in the lead Opposition party. In fact, Leader of Opposition Ghulam Nabi Azad, Janata Dal-United leader Sharad Yadav and CPM's Sitaram Yechury have accused the government of "using" media and business leaders to attack the Opposition for the disruptions in Parliament.

Yadav strongly objected to India Inc asking all political parties to end the logjam, saying that after 68 years of Independence, "capitalists" were telling leaders to let Parliament function. "They must know that 125 crore Indians have chosen Parliament and they want to run it," he said.

Azad supported him saying: "We discuss the comments being made about MPs every day. Now, industrialists are saying that the House should function. The government is using media against the Opposition".

Jaitley responded by questioning whether the common man wanted Parliament not to function. In what is being called the first-of-its-kind initiative, over 15,000 people, including India's top industrialists, have launched a signature campaign, urging MPs to allow Parliament function, debate and legislate. Soon after the House met in the afternoon session, Jaitley moved the GST Bill for discussion. While Congress members stormed the Well shouting "No", some Opposition members could be heard asking the government to begin a debate followed by voting over the contentious issues.

Courtesy: The Tribune
12 August, 2015

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DIST TAXATION BAR ASSN MEMBERS PROTEST OUTSIDE AETC OFFICE

The District Taxation Bar Association and Punjab Tax Bar Association members today staged a protest outside the office of Assistant Excise and Taxation Commissioner-District I against the non-issuance of Value Added Tax (VAT) refunds.

Initially, Assistant Excise and Taxation Commissioner Tejbir Singh Sidhu was heading Ludhiana district-I and now, he had been transferred to district-III and Rajpal Singh has taken over the charge of district-I.

While protesting, Arun Kanwal, president, District Taxation Bar Association, alleged that the new AETC was harassing them and not issuing refunds.

"Some files have been cleared by the previous AETC and vouchers have been issued but the new AETC is asking for some more documents before issuing refunds," Kanwal said.

Mohit Aggarwal, press secretary, DTBA said refunds amounting to Rs 5 to 7 crore were pending but were not being issued by the AETC concerned.

When contacted, AETC, Rajpal Singh said he joined the office on July 23 and had already approved more than 200 files.

"There were some documents missing from some files and I have asked the official concerned to submit the same. The processing of the files has been started again by me today. It is just that I had a very less time due to which the problem is occurring. But I am doing my best and have already cleared 200 files. Association members are over reacting and there is nothing to panic and refunds will be issued to everybody in the coming days," the AETC said.

Courtesy: The Tribune
5th August, 2015

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GST BILL AHEAD, TEST FOR CONGRESS IN RAJYA SABHA

The government on Friday set the stage for another push to the long-awaited Goods and Services Tax (GST) bill as finance minister Arun Jaitley moved a formal notice to the Rajya Sabha secretariat to table the legislation next week.

Unsure of support from the Congress, the Centre is banking on regional parties like the Trinamool, JD (U), Samajwadi Party, DMK, and BJD to get the bill through the Rajya Sabha test. A section of the government also thinks the bill may test the Congress' stand as the legislation was originally planned during the UPA era.

Leaving no stones unturned, hectic parleys were already on between the government and the Opposition. Jaitley is believed to have held long meetings with NCP chief Sharad Pawar and Rajya Sabha chairman Hamid Ansari, while parliamentary affairs minister Venkaiah Naidu met Congress leaders Mallikarjun Kharge and Ghulam Nabi Azad.

Even as the Congress remains adamant on washing out the entire session and the Upper House remains paralysed due to protests, the government plans to place the bill on Monday as the session is scheduled to end on August 13. The urgency to pass the bill is palpable — observers feel the GST roll-out could be delayed by a year if the parliament fails to pass the 122nd constitution amendment bill for GST during this session.

The Lok Sabha had cleared the GST bill in the last budget session but the government preferred to refer it to a Select Committee in an attempt to try to get the Congress on board.

But the latter has found faults with the current draft of the bill.

Top Congress sources told HT that if a debate finally takes place in the Rajya Sabha on the bill, the party will have decide on a final stand—to support, abstain from voting, or vote against the bill.

Meanwhile, Tamil Nadu chief minister J Jayalalithaa asked PM Narendra Modi to arrive at a broad consensus on various issues before taking up the GST bill as states are concerned about the impact it will have on their fiscal autonomy.

Courtesy: Hindustan Times
8th August, 2015

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PUNJAB GOVERNMENT'S ENTRY TAX ON SUGAR HITS LEGAL HURDLES

A key ordinance promulgated by the Punjab government in May to charge 11% entry tax o sugar has turned out to be legally not sustainable.

Even as the ordinance was signed by governor Kaptan Singh Solanki, this new law was not notified under the governor's signatures and seal. Instead, the notification was issued wrongly in the name of the principal secretary for industries and commerce. The embarrassing error occurred in spite of the industries department's following the due procedure of routing the file through office of legal remembrancer HPS Mahal for vetting before publishing the notice, say sources in the government.

It is unclear at what level this goof-up took place, but indirect blame is being passed on to the LR's office. The government's argument is that the buck stops with the office that vets the file.

The LR was unavailable for comments, as he refused to meet the HT reporter on Thursday, directing him through his staff officer to first seek formal appointment. When contacted over his office telephone again, his staff said the LR had gone to the high court.

In a one-page note to the government on August 12 (HT has a copy), the LR wrote that the ordinance in question "is required to be repealed". In the note, he refuses to accept the government's proposition of issuing a corrigendum to rectify the mistake, whether printing or clerical.

Another legal lacuna in this ordinance, source say, is that even as the governor had signed it, no schedule was appended to it. On this issue, the LR has told the government: "A perusal of the file reveals that the intention of the AD (administrative department) is to get signed schedule from the governor retrospectively or issue a corrigendum to achieve the purpose." In this regard, he pointed out that though a corrigendum can be issued to rectify "printing or clerical mistake" even retrospectively, "this department (of legal and legislative affairs) is of the view that (in the present case) this was neither a clerical error nor a printing mistake".

In a clear indication of a full blown inter-departmental cold war brewing, the LR reiterated referring to an earlier communication that a "new ordinance" was needed to be promulgated to achieve the purpose by repealing the existing ordinance.

The LR pointed out that this ordinance had also been challenged in the Punjab and Haryana high court on the grounds that the schedule was notified by the principal secretary on May 29. "However, if need be, fresh ordinance can be promulgated to achieve the purpose as advised earlier," the LR has stated in the communication.

HC orders against coercive recovery

Meanwhile, the high court division bench led by acting chief justice SJ Vazifdar has directed the state government to take no coercive action till further orders for the recovery of tax under this ordinance. The petition will come up for resumed hearing on September 8.

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Courtesy: Hindustan Times
13th August, 2015

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PUNJAB WINS VAT BATTLE IN HIGH COURT

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The Punjab and Haryana high court on Friday dismissed the petitions of more than 150 firms operating in Punjab which had challenged amendment in the VAT (value-added tax) Act, 2005 by the state government in 2013.

As per rough estimates and arguments of the state in the high court, there will be a revenue benefit of more than Rs 100 crore with this order.

The petitioners had challenged the amendment in the VAT Act carried out in November 2013.

As per the amended provisions, the limitation period for 2006-07 returns of these firms had been made seven years from three years and for 2007-08 and subsequent years, it was made six years. Earlier provisions of the Act had provision of three years for the assessment of returns of these firms. The period had already expired on the date of amendment in 2013. The amendment was necessitated by the fact that the government found that there was evasion by some firms in the state, but the limitation period had expired. The government could not have assessed the returns as per the old Act. So, it was necessary to make the period longer than the original assessment period, the government counsel, Jagmohan Bansal, told Hindustan Times. The state, while defending its move, had argued that it had the powers to amend sections of the VAT Act and it included the power to amend it retrospectively.

Though the detailed order is awaited, the high court bench of justice SJ Vazifdar and justice GS Sandhawalia dismissed the petitions of private firms on Friday.

Courtesy: Hindustan Times
7th August, 2015

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TAX REFORMS IN LIMBO AS GST BILL HITS POLITICAL LOGJAM

A uniform nationwide goods and services tax (GST), India's most ambitious reform initiative that aims to stitch together a common market by dismantling fiscal barriers between states, is staring at fresh hurdles with no signs of an early end to the logjam in Parliament.

The government had targeted to rollout the new tax structure from April 1, 2016, an unlikely possibility given the current impasse in Parliament.

The system can be rolled out only when Parliament passes the Constitution Amendment Bill, which can be passed only if at least two-thirds of the members vote in its favour. In addition, at least half of the state Assemblies will also have to pass the Bill.

The delay in the passage of the Constitution Amendment Bill implies that India's indirect tax system will continue to remain mired in multi-layered taxes levied by the Centre and state governments at different stages of the supply chain such as excise duty, octroi, central sales tax (CST), value-added tax (VAT) and octroi tax, among others.

Under GST, the Centre and states will tax goods and services at identical rates. For instance, if 20% is the agreed rate on a certain good, the Centre and states will collect 10% each, called the CGST and SGST rates.

The delay will likely cause other consequences as well, since states would not be able to decide on the tax rates until the Bill is passed.

The government has commissioned Delhi-based think-tank National Institute of Public Finance and Policy to work out the GST rates that will not bring down either the states' or Centre's existing revenue levels.

Separately, a panel headed by the chief economic adviser Arvind Subramanian is also looking into what could be the possible revenue neutral rates.

Revenue-neutral rates, as these are called in technical parlance, have been a bone of contention between states and the Centre, with the state governments pressing for higher rates as a hedge against lower tax earnings after migrating to GST.

The Bill has not specified the rate, which will be decided by a GST Council headed by the central finance minister with state finance minister as members. Pending the passage of the Bill, the Council cannot be formed and rates cannot be decided.

In addition, it is also imperative to have a robust country-wide information technology (IT) network and infrastructure to make the implementation seamless across state boundaries.

The IT network is still work in progress, which was to be tested in the run-up to April 1, 2016, before its final roll out. This exercise cannot take place and glitches ironed ahead of implementation unless the Bill is passed and GST rates on specific goods and services are decided.

Courtesy: Hindustan Time
13th August, 2013

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GST BILL TO BE TABLED IN RS TODAY AS CONG STEPS UP PRESSURE

The government has listed the Goods and Services Tax bill, that seeks to replace all indirect taxes with a uniform levy, for consideration and passing in Tuesday's business in Rajya Sabha even as doubts persists if the main Opposition Congress will allow its passage.

The Revised List of Business of Rajya Sabha said finance minister Arun Jaitley will move the Constitution (One Hundred and Twenty-second Amendment) Bill, 2014, incorporating recommendations made by a House Select Committee.

The GST bill has already been approved by Lok Sabha and was referred to a Rajya Sabha Select Committee in the last session. The panel has given its report endorsing majority of the provisions, while suggesting changes to compensate the states fully for five years for any revenue loss for the GST rollout and definition of supply for the purpose of states levying additional 1% tax.

Indirect tax reform GST proposes to create a uniform tax rate across the country by subsuming excise, service tax and other local levies. If implemented GST bill can boost India's GDP by 1-2%.

Read No-win situation: Between govt and GST, a Congress wall

It is now awaiting a nod of Rajya Sabha, where the ruling NDA does not have a majority, and as a constitutional amendment bill, GST needs the support of two-thirds of the House. With the Congress repeatedly disrupting proceedings in Parliament and only three days before the monsoon session ends, the government is desperate to see it pass muster.

The Bharatiya Janata Party (BJP) has also issued a whip to all its Rajya Sabha members to be present in the House on Tuesday.

While some regional parties in the opposition - the Trinamool Congress, the Samajwadi Party, Janata Dal(United) and the Biju Janata Dal - are in favour of the bill, the Congress, the Left and the AIADMK had submitted dissent notes on the report of the committee which was tabled in Parliament last month.

Prime Minister Narendra Modi recently met Tamil Nadu chief minister J Jayalalithaa and sought her support assuring her that there will be amendments to make the bill acceptable to her party, which has at least 10 lawmakers in the Upper House.

But on Monday, the government saw a light in the tunnel with Samajwadi Party chief Mulayam Singh Yadav telling the Congress, whose protests in the past two weeks have led to a near washout of the session, in Lok Sabha that his party wants the House to function and will not back it if it continues to be adamant.

At a meeting convened by Lok Sabha Speaker Sumitra Mahajan, Yadav told Congress leaders to spell out their demand and end the matter through debate.

The ruling BJP accused the Congress of adopting a "hit and run policy" by not allowing the government to speak on the allegations it was raising in the House, while finance minister Jaitley blamed the opposition party's top two leaders for the impasse.

"The government observes that on the pretext of Sushma Swaraj, the real motive of the Congress is that they don't want the GST Bill to be passed. They want India's growth to suffer," he told reporters outside Parliament. "Except the Congress, all the opposition parties want that the House should function. Even most of the Congress leaders are against disruption in Parliament but their two top leaders want to stall the House."

The Congress has been demanding the resignations of foreign minister Sushma Swaraj and Rajasthan chief minister Vasundhara Raje for allegedly aiding controversial former IPL chief Lalit Modi, and Madhya Pradesh chief minister Shivraj Singh Chouhan over the Vyapam admission and recruitment scam.

Courtesy: Hindustan Times
11 August, 2015

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LATE TAX PAYMENT FRIES KFC

CHANDIGARH: The excise and taxation department of the UT administration has slapped a penalty against the outlets of multinational KFC for late payment of tax amounting to Rs 1.5 crore.

Excise officials said the outlets, run by AN Traders Private Limited, have not been depositing tax with the department since December 2014. "These outlets collect VAT 12.5% from customers but have not been depositing the amount with the department in violation of rules," said a senior official of the excise department.

Officials said, "Some outlets are being run by the same person by floating another firm in the name of M/s Silver Leaf Hospitalities Private Limited, Chandigarh, which too has not been depositing the tax."

Excise department officials refused to disclose the penalty amount but said the outlets were told to deposit the amount by August 12. Four outlets of KFC abound in Chandigarh.

Though a statement of the UT administration called it a case of tax evasion, the excise officials, when contacted, denied it. "No, it's not a case of tax evasion, but of late payment of tax. We are in touch with KFC officials. They will have to deposit the penalty as well as the interest," said assistant excise taxation commissioner Ravinder Kaushik.

KFC finance department head (regional) Rakesh Aggarwal conceded there was a delay in tax payment. "Calling it a case of tax evasion is misleading. We have filed our returns and everything is online. I admit that there has been a delay in depositing the tax due to some reasons. But we have already started paying the due amount," said Aggarwal. He also said the tax amount was less than Rs 1 crore and not Rs 1.5 crore, as claimed by the excise department.

It was not the first time that KFC has landed itself in a tax row. In 2013, the excise department had raided the four KFC outlets in Chandigarh for alleged evasion of tax. In January, the Panchkula excise department had also raided a KFC outlet in Sector 9 for delay in payment of tax.

Courtesy: The Tribune
1st August, 2015