SGA
LAW OFFICES

Issue 24
December 2015

"You don't pay taxes--they take taxes."

---- Chris Rock

NOMINAL INDEX

NOTIFICATIONS

CHANDIGARH

PUNJAB

NEWS OF YOUR INTEREST

Edited by

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News From Court Rooms

- **Supreme Court issued notice on a petition filed by State of Punjab against the High Court decision in the case of "The Jalandhar Iron & Steel Merchants Association vs. State of Punjab"** ***[****For reference of the order passed by High Court, see the judgment on our website "****COMPOSITE JOURNAL(7-12) page no. 232"].***

Petition(s) for Special Leave to Appeal (C) CC **No(s). 21360/2015**

STATE OF PUNJAB AND ORS. Petitioner(s)

VERSUS

TRISHALA ALLOYS PVT. LTD. Respondent(s)

Date: 11/12/2015 These petitions were called on for hearing today.

CORAM: HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE PRAFULLA C. PANT

Present: For Petitioner(s) Mr. Nikhil Nayyar, AAG
Ms. Kiran Bhardwaj, AOR

UPON hearing the counsel the Court made the following

O R D E R

Delay condoned.

Issue notice.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master

- **Supreme Court issued notice in the matters pertaining to levy of tax on composite contracts in Hospitals. High Court had allowed the petition filed by Hospitals holding that no tax is leviable on such contracts.**

Petition(s) for Special Leave to Appeal (C).....CC **No(s). 21133-21134/2015**

STATE OF HARYANA & ANOTHER ETC. **Petitioner(s)**

VERSUS

M/S ESCORTS HOSPITAL & RESEARCH CENTRE LTD. ETC. **Respondent(s)**

Date: 04/12/2015 These petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MR. JUSTICE S.A. BOBDE

Present: For Petitioner(s): Mr. Mukul Rohtagi, AG
Mr. Alok Sangwan, AAG

For Respondent(s): Dr. Monika Gusain,Adv.

UPON hearing the counsel the Court made the following

O R D E R

Delay condoned.
Issue notice returnable in four weeks.
Dasti, in addition, is permitted.

(**Meenakshi Kohli)**
Court Master

(Jaswinder Kaur)
Court Master

ENTRIES IN SCHEDULE – KRUPA HAIR TONIC

MVAT - Bombay High Court has held that "Krupa Hair Tonic" is a medicinal product covered by Schedule Entry C-II-37 BST.

High Court has observed that merely because a product is sold without prescription, such a fact does not take away it's medicinal character. The court observed that the product is not a hair oil as understood in common parlance but a product which is in the nature of a hair tonic and covered by the class of drug/medicine.

[The Commissioner of Sales Tax v. M/s. Krupa Aushadhalaya

(Judgment of the High Court of Bombay dated 1st December, 2015 in Sales Tax Application No. 21 of 2015)]

SALE OF SMART CARDS

Karnataka HC : Contract for supply of smart cards with requisite information embedded to the Department by the assessee is only rendering of service and not sale. (Zylog Systems P Ltd. – September 18, 2015).

INTER STATE SALE

Madras HC : Sale of goods to another State is an inter-state sale even if goods are supplied to common godown of buyer and seller.

Central Sales Tax : Where assessee carrying on business in Tamil Nadu placed an order with a dealer situated in Maharashtra for supply of specific number of goods and thereupon the dealer moved the goods from Maharashtra to a godown in Tamil Nadu, which was in joint custody of assessee and the dealer. Thereafter delivered goods to assessee after receipt of payment. Sale of goods in question was an inter-State sale. Revenue appeal dismissed. South India Viscose Ltd. judgment followed. (Annamalaiar Mills Ltd – June 3,2015).

NO SERVICE TAX

CESTAT, Mumbai: No ST on activity of boiling, cleaning and freezing of vegetables and fruits.

Service Tax: Sorting, cleaning, boiling and freezing of vegetables/fruits and subsequently packing them in unit packing to be sold by their customers under brand name, amounts to 'processing in relation to agriculture' and is exempt from service tax. (Tasty Bite Eatables Ltd. – September 30, 2015)

SERVICE TAX

CESTAT, Bangalore : Cutting of trees and converting 'cutwood' into 'billets' for use in 'pulp plant' amounts to 'processing of goods' and if said activity does not amount to manufacture under Central Excise Act, 1944, it would be liable to service tax under Business Auxiliary Services. Matter remanded to decide the issue of 'Manufacute'. (Lakshmappa – July 30,2015)

TRADE DISCOUNT

Karnataka HC : Trade discount is deductible to calculate VAT even if it is given via credit note subsequent to issue of tax invoice.

Karnataka VAT : Where assessee claimed deduction in respect of discount given to purchasing dealer in form of credit note subsequent to issuance of tax invoice and Assessing Authority disallowed claim of deduction, assessee was entitled to give further discount even after sale had been completed, provided it was trade discount or pursuant to any contract. (S.B. Audio and Video – November 2, 2015).

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SUBJECT INDEX

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SUPREME COURT OF INDIA

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CIVIL APPEAL NO. 4385-4386 OF 2015

SODEXO SVC INDIA PRIVATE LIMITED
Vs
STATE OF MAHARASHTRA & ORS.

A.K. SIKRI AND ROHINTON FALI NARIMAN, JJ.

9th December, 2015

HF ▶ Assessee

Pre printed payment vouchers issued to customers under the authorization of RBI are not goods but a service rendered by the appellant and not liable to Octroi or LBT.

SODEXO VOUCHERS - GOODS/ SERVICES -PAYMENT SYSTEMS- PREPRINTED VOUCHERS – OCTROI TAX- WHETHER TERMED AS 'GOODS' OR 'SERVICE'-PRE PRINTED VOUCHERS ISSUED BY APPELLANT COMPANY TO CUSTOMER COMPANIES FOR FURTHER ISSUANCE TO THEIR EMPLOYEES FOR THEM TO PROCURE FOOD ETC FROM AFFILIATE SHOPS,STORES AS PER AGREEMENT – VOUCHERS PRESENTED BACK TO APPELLANT BY AFFILIATES FOR REIMBURSEMENT OF CASH AFTER GETTING SERVICE CHARGE DEDUCTED FROM IT – SERVICE TAX PAID BY APPELLANT FOR SERVICES RENDERED TO CUSTOMER AND AFFILIATES THEREBY –QUESTION ARISEN WHETHER SUCH VOUCHERS ARE 'GOODS' OR SERVICES FOR PURPOSE OF OCTROI /LOCAL BODY TAX – HIGH COURT HELD IT TO BE 'GOODS' AS THEY ARE CAPABLE OF BEING SOLD AFTER ENTERING LIMITS OF THE CITY– ORDER REVERSED BY SUPREME COURT HOLDING THE SAID TRANSACTION AS SERVICES ON BASIS OF THREE FUNDAMENTAL REASONS – GOODS IN THE TRANSACTION ARE SOLD BY AFFILIATES AND NOT APPELLANT AS LATTER IS ONLY A FACILITATOR BETWEEN CUSTOMER AND AFFILIATES – SAID VOUCHERS ARE NON TRANSFERRABLE AND PRINTED FOR SPECIFIC CUSTOMERS – SAID VOUCHERS CANNOT BE TRADED SEPARATELY LIKE GOODS – POLICY GUIDELINES OF RBI SHOW THAT SAID TRANSACTION IS IN NATURE OF SERVICE- PERQUISITE GIVEN BY THE CUSTOMER TO ITS EMPLOYEES BY ADOPTING METHODOLOGY OF VOUCHERS FOR WHICH SERVICES OF THE APPELLANT ARE UTILIZED- APPEAL ACCEPTED - *SECTION 2(25), S. 127, S. 152P OF MAHARASHTRA MUNICIPAL CORPORATION ACT [ACT NO. LIX OF 1949]*

Facts

The appellant company is conducting business of providing pre-printed meal vouchers. The appellant enters into contract with its ***customers*** *(companies/establishments) for issuing the same which in turn provide them to their* ***employees*** *for procuring meals/food and other items. The appellant has made arrangements with some restaurants, shops, stores etc. called* ***affiliates*** *from whom the employees procure food etc on presentation of the said vouchers. The affiliates present the same to the appellant for reimbursement of the face value of vouchers and the appellant deducts the service charge payable by the affiliates as per their agreement. Likewise,*

the appellant takes service charge from its customers (companies) and pays service tax on such service charge. The question that arose was whether such vouchers are 'Goods' for the purpose of levy of Octroi or LBT or a 'Service'. The High court has held that these are ***goods*** *as they are capable of being sold by the appellant and are capable of being possessed, delivered stored. An appeal is thus filed before the Supreme Court.*

Held

There are three fundamental reasons for arriving at a conclusion that these vouchers are not 'goods'.

1) ***Nature of Meal Vouchers****: The High court has mistakenly held that these vouchers after being printed are sold by the appellant whereas its only a service charge of a small amount taken from its customers in proportion to the face value of the vouchers. The goods are provided by the affiliates whereas the appellant is only a facilitator between customers and affiliates. The intrinsic character of the entire transaction is to provide services by appellant through these vouchers. It is the affiliates who get money for the goods sold and not the appellant who only gets a service charge for the services rendered to both customers and affiliates. Also, these vouchers are printed for a particular customer and are not transferrable.*

*2)****Transaction Regulated by RBI Guidelines****: The policy guidelines issued by the RBI show that the real nature of the transaction is to provide service and these vouchers cannot be termed as 'goods'. Para 8 of the guidelines provides for deployment of money collected. As per this, amount so collected has to be kept in the escrow account and the persons, like the appellant, are obliged to use it only for making payments to the participating merchant establishments and other permitted payments. The test of 'whether these vouchers can be traded separately' is in the negative. Hence, these are not 'goods'.*

*3)****Real character is the facility by the customer to its employees****: Rule 3 of Income Tax Rules prescribes method of 'valuation of perquisites'. It is this perquisite given by the customer to its employees by adopting methodology of vouchers and for its proper implementation, services of the appellant are utilized.*

Thus, appeals are accepted and judgment passed by High court is set aside. 'Sodexo Meal Vouchers' are not 'goods' within the meaning of S. 2(25) of the Act and not liable for either Octroi or LBT.

Case referred:

- *Tata Consultancy Services v. State of Andhra Pradesh, (2005)1 SCC 308*

Case applied:

- *Bharat Sanchar Nigam Ltd. & Anr. v. Union of India & Ors., (2006)3 SCC 1*
- *Idea Mobile Communication Limited. v. Commissioner of Central Excise and Customs, Cochin, (2011) 12 SCC 608*
- *Sunrise Associates v. Govt. of NCT of Delhi & Ors., (2006) 5 SCC 603*
- *H. Anraj v. Government of Tamil Nadu, (1986) 1 SCC 414*
- *Yasha Overseas v. Commissioner of Sales Tax & Ors., (2008) 8 SCC 681*

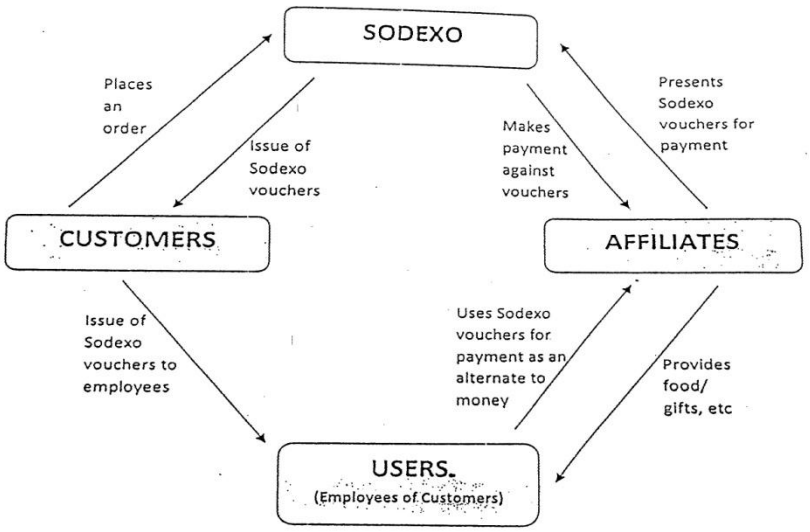
Present: For Appellant(s): Mr. Jay Savla, Advocate
Ms. Renuka Sahu, Advocate
Mr. Prabhat K.C., Advocate

For Respondent(s): Mrs. Jayashree Wad, Advocate
Mr. Ashish Wad, Advocate
Mrs. Kanika Baweja, Advocate
Ms. Paromita Majumdar, Advocate
M/s. J. S. Wad & Co., Advocate

******

A.K. SIKRI, J.

1. The appellant company is conducting the business of providing pre-printed meal vouchers which are given the nomenclature of 'Sodexo Meal Vouchers'. As per the appellant, it enters into contracts with its customers for issuing the said vouchers. These customers are establishments/companies having number of employees on their rolls. They provide food/ meals and other items to their employees up to a certain amount. It is for this purpose that the agreement is entered into by such establishments/companies with the appellant for issuing the said vouchers. After receiving these vouchers for a particular denomination, some are distributed by the companies to its employees. For utilisation of these vouchers by such employees, the appellant has made arrangements with various restaurants, departmental stores, shops, etc. (hereinafter referred to as 'affiliates'). From these affiliates, the employees who are issued the vouchers can procure the food and other items on presentation of the said vouchers. The affiliates, after receiving the said vouchers, present the same to the appellant and get reimbursement of the face value of those vouchers after deduction of service charge payable by the affiliates to the appellant as per their mutual arrangement. In this manner, the appellant, by issuing these vouchers to its customers, gets its service charge from the said companies. Likewise, the appellant also takes specified service charges from its affiliates. A diagramatic representation of the business model of the appellant is as under:



2. On the basis of the aforesaid arrangement made by the appellant with its customers as well as its affiliates, the question that has arisen for consideration is as to whether these vouchers can be treated as 'goods' for the purpose of levy of Octroi or Local Body Tax (LBT) or the aforesaid activity only amounts to rendering service by the appellant. The issue has to be examined as per the relevant provisions of the Maharashtra Municipal Corporation Act [Act No. LIX of 1949] under which the Municipal Corporation is entitled to levy and collect Octroi or LBT.

3. Before we advert to the relevant provisions of the Act, it would be worthwhile to mention that in order to carry on the aforesaid business, the appellant is compulsorily required to obtain necessary approval/ authorisation from the Reserve Bank of India (RBI), which requirement is spelt out from Section 7 of the Payment and Settlement

Systems Act, 2007. The appellant has been granted a Certificate of Authorisation by the RBI to operate a payment system for the issuance of Sodexo Meal Vouchers in the form of 'Paper Based Vouchers' under the aforesaid provision.

4. The Payment and Settlement Systems Act, 2007 provides for the regulation and supervision of payment systems in India and designates RBI as the authority for that purpose and all related matters. Under Section 2(1)(i) of the Payment and Settlement Systems Act, 2007, a 'payment system' is defined as a system that enables payment to be effected between a payer and a beneficiary, involving clearing, payment or settlement service or all of them but does not include a stock exchange. The appellant is also required to adhere to the Pre-paid Issuance and Operation of the Payments Instruments in India (Reserve Bank) Directions, 2009 issued under the Payment and Settlement Systems Act, 2007 and Revised Consolidated Guidelines, 2014. Thereunder, 'pre-paid payment instruments' are defined as payment instruments that facilitate purchase of goods and services against the value stored on such instalments. The value stored on such instruments represents the value paid for by the holders by ash, by debit to a bank account, or by credit card. The amount so paid by the customers is always kept in escrow account and is used strictly only for settlement of vouchers and never accounted for or used as income in the hands of the appellant. Accordingly, the Certificate issued to the appellant contains the following terms and conditions:

> *"The Payment System Provider shall adhere to the provisions of the Payment and Settlement Systems Act, 2007, regulations issued thereunder and the directions/guidelines issued by the Reserve Bank of India.*
>
> *The authorization is only for issue of meal vouchers and gift vouchers in the form of 'Paper based vouchers' and 'Smartcard' or 'Smart Meal Card' and subject to adherence of the 'Policy Guidelines for issuance and operation of Pre-paid Payment Instruments in India' (unless specific relaxation has been permitted by the RBI)*
>
> *Sodexo shall adhere to the provisions of the prevention of Money Laundering Act and ruled framed thereunder. Further, the guidelines on Know Your Customer/Anti-Money Laundering/ Combating Financing of Terrorism issued by the RBI to Banks, from time to time shall apply mutatis mutandis to the entity."*

5. Thus, as per the aforesaid authorisation by the RBI, the business operation that is carried out by the appellant, has the following essential features:

(i) *the payment system operated by the appellant involves issuance of vouchers having a face value (meal and gift vouchers) to the customers;*

(ii) *customers grant said vouchers to their employees (beneficiaries);*

(iii) *the employees use the vouchers to obtain/pay for food, meal or goods; (iv) vouchers can only be used in an affiliated network of restaurants and shops (affiliates/redeemers);*

(v) *the affiliated restaurant/shop having delivered the food/meal/ good, receives the voucher and turns it to the appellant who issued it for reimbursement of the face value (redemption); and*

(vi) when the vouchers are redeemed, the appellant reimburses to the affiliate/redeemer the face value of the voucher and retains a service fee in order to compensate for the attractiveness of the system which has benefited to the affiliate's business. The appellant pays service tax on such service fee charged.

6. Having taken note of the nature of business operation of the appellant herein and the manner the same is statutorily regulated by the Payments and Settlement Systems Act, 2007 and the Rules framed thereunder, we revert to the issue that has to be answered in the present case, namely, whether these Sodexo Meal Vouchers are goods within the meaning of Section 2(25) of the Act. For this purpose, it would be imperative to take note of the definition of goods appearing in the aforesaid provision as well as some other relevant provisions of this Act.

7. Section 2(25) of the Act provides the definition of 'goods', Section 2(31A) defines 'Local Body Tax' (LBT), and Section 2(42) contains the definition of 'Octroi'. These two provisions read as under:

*"**2. Definitions**.*

In this Act, unless there be something repugnant in the subject or context,–

xx xx xx

(25) "goods" includes animals;

xx xx xx

(31A) "Local Body Tax" means a tax on the entry of goods into the limits of the City, for consumption, use or sale therein, levied in accordance with the provisions of Chapter XIB, but does not include cess as defined in clause (6A) and octroi as defined in clause (42);

xx xx xx

(42) "octroi" means a cess on the entry of goods into the limits of a city for consumption, use or sale therein; but does not include a cess as defined in clause 6A or Local Body Tax, as defined in clause (31A)."

8. As is clear from the reading of Section 2(31A), LBT is the tax on the entry of goods into the limits of the city, when these goods are for consumption, use or sale. The tax is to be levied in accordance with the provisions of Chapter XIB. It, however, specifically excludes Octroi, as defined in Section 2(42. It also becomes clear that Octroi is a cess on the entry of goods into the limits of a city for consumption, use or sale therein, but it does not include a cess as defined in clause (6A) or LBT. Both these levies are on the goods that enter into the limits of a city for consumption, use or sale therein.

9. The charging section, for imposition of tax under the Act, is Section 127. This provision enumerates various types of taxes. Sub-section (1) thereof empowers the Corporation to impose two kinds of taxes, namely, property tax and a tax on vehicles, boats and animals. Sub-section (2) also authorises the Corporation to impose certain other kinds of taxes which, inter alia, include Octroi and a cess on entry of goods in lieu of Octroi. Clause (aaa) was inserted in sub-section (2) by way of amendment carried out

vide Mah.27 of 2009, with effect from August 31, 2009, whereby LBT was also included as another form of tax which could be levied and this clause reads as under:

> *"(aaa) Local Body Tax on the entry of the goods into the limits of the City for consumption, use or sale therein, in lieu of octroi or cess, if so directed by the State Government by Notification in the Official Gazette;"*

10. Procedure for levying such a tax is contained in Section 149 and we would like to reproduce sub-section (1) thereof, which is as under:

> *"**149. Procedure to be followed in levying other taxes**.*
>
> *(1) In the event of the Corporation deciding to levy any of the taxes specified in sub-section (2) of section 127, it shall make detailed provision in so far as such provision is not made by this Act, in the form of rules, modifying, amplifying or adding to the rules at the time in force for the following matters, namely:*
>
> *(a) the nature of the tax, the rates thereof, the class of classes of persons, articles or properties liable thereto and the exemptions therefrom, if any, to be granted;*
>
> *(b) the system of assessment and method of recovery and the powers exercisable by the Commissioner or other officers in the collection of the tax;*
>
> *(c) the information required to be given of liability to the tax;*
>
> *(d) the penalties to which persons evading liability or furnishing incorrect or misleading information or failing to furnish information may be subjected;*
>
> *(e) such other matters, not inconsistent with the provisions of this Act, as may be deemed expedient by the Corporation:*
>
> *Provided that no rules shall be made by the Corporation in respect of any tax coming under clause (f) of sub-section (2) of section 127 unless the State Government shall have first given provisional approval to the selection of the tax by the Corporation."*

11. In order to have the stock of all the relevant provisions of this Act, another provision which needs to be noticed is Section 152P, which relates to the provisions relating to LBT. It is to the following effect:

> ***"152P. Levy of Local Body Tax.***
>
> *Subject to the provisions of this Chapter and the rules, the Corporation, to which the provisions of clause (aaa) of sub-section (2) of section 127 apply, may, for the purposes of this Act, levy and collect Local Body Tax on the entry of goods specified by the State Government by notification in the Official Gazette, into the limits of the City, for consumption, use or sale therein, at the rates specified in such notification."*

12. What follows from the conjoint reading of the aforesaid provisions is that LBT or Octroi is a tax 'on the entry of goods into the limits of the city', which goods are

meant for 'consumption, use or sale therein'. In this backdrop, we have to find out the true nature of the Sodexo Meal Vouchers and to ascertain whether they are 'goods'.

13. The appellant had resisted the imposition of LBT primarily on the ground that it was providing services to the establishments with whom it had entered into contracts and, therefore, such agreements were for service and not for sale of any goods. The High Court has negated the contention primarily on the ground, which, in fact, is the sole ground, that the scheme postulates printing of the paper vouchers by the appellant which are sold to its customers. The said customers, in turn, provide the vouchers to their employees who use these vouchers in the restaurants or different places or outlets to get ready-to-eat items and beverages of the face value printed on the said vouchers. Therefore, the vouchers are used to pay the price for food items and beverages distributed to users. The High Court, in the passing, has also remarked that these vouchers are capable of being sold by the appellant after they are brought into the limits of the city. Therefore, the said vouchers have its utility and the same are capable of being paid or sold and same are capable of being delivered, stored and possessed. Thus, according to the High Court, the test laid down by this Court in ***Tata Consultancy Services v. State of Andhra Pradesh***, *(2005)1 SCC 308* has been satisfied.

14. We may mention at this stage itself that the learned counsel for the respondent hammered the aforesaid reasons given by the High Court by adopting these reasons as his arguments. Learned counsel for the appellant, on the other hand, referred to the intrinsic nature of the transaction with the aid of RBI Policy on the subject and certain judgments of this Court, on the basis of which he was vociferous in his submission that in reality it was only a service which was provided by the appellant with no element of 'goods' involved in the transaction.

15. We have already taken note of the nature of the transaction. After going through the relevant provisions and the principle laid down in various judgments explaining the features of 'services' and 'goods', we are of the opinion that the Sodexo Meal Vouchers cannot be treated as 'goods' for the purpose of levy of Octroi or LBT. There are at least three fundamental and principal reasons for coming to this conclusion, which we would like to discuss in detail hereinafter.

(I) Exact Nature of Meal Vouchers:

16. The basic mistake which has been committed by the High Court is to proceed on the basis that after printing of the paper vouchers, these are sold by the appellant to its customers. A diagramatic representation of the business model of the appellant, already depicted above, would make it manifest that the vouchers are not the commodity which are sold. If the face value of the said vouchers is rps Rs.50, by giving these vouchers to its customers, the appellant only takes specified service charges from its customers, which is normally Rs.2 for Rs.50 voucher. Likewise, when these vouchers are given by the customers to its employees and the employees present the same to various affiliates with whom the appellant had made the arrangements and those affiliates supply the goods against those vouchers, while reimbursing the cost of these vouchers to the said affiliates, the appellant again takes service charges from these affiliates, which is again a sum of Rs.2. Thus, insofar as the appellant is concerned, it has made the arrangements with the affiliates for supply of goods against those vouchers. This arrangement is made to help the customers by simply facilitating the

provision for making available food items, etc. of a particular amount, represented by vouchers, to the employees of these customers. No doubt, vouchers bear a particular value and for such value, goods are provided to the employees. However, these goods are not provided by the appellant, but by the affiliates. The appellant is only a facilitator and a medium between the affiliates and customers and is providing these services. The intrinsic and essential character of the entire transaction is to provide services by the appellant and this is achieved through the means of said vouchers. Goods belong to the affiliates which are sold by them to the customers' employees on the basis of vouchers given by the customers to its employees. It is these affiliates who are getting the money for those goods and not the appellant, who only gets service charges for the services rendered, both to the customers as well as the affiliates.

17. It is to be borne in mind that the vouchers are not 'sold' by the appellant to its customers, as wrongly perceived by the High Court, and this fundamental mistake in understanding the whole scheme of arrangement has led to wrong conclusion by the High Court. The High Court has also wrongly observed that vouchers are capable of being sold by the appellant after they are brought into the limits of the city. These vouchers are printed for a particular customer, which are used by the said customer for distribution to its employees and these vouchers are not transferrable at all.

(II) <u>Transaction Regulated By RBI Guidelines:</u>

18. As already pointed out above, without the sanction/ authorisation of the RBI to operate such a payment system under the Payment and Settlement Systems Act, 2007, nobody can operate such a system, as the purpose of the said Act is to regulate the payment and settlement thereof by means of *'Paper Based Vouchers'*. An insight into the Policy Guidelines dated March 28, 2014 issued by the RBI to regulate such transactions would also clinchingly bears out that the real nature of the transaction is to provide service and by no stretch of imagination these vouchers can be termed as 'goods'. The very first para, viz. Para A, stipulates the purpose of these Guidelines and Rules as follows:

> *"A. Purpose*
>
> *To provide a framework for the regulation and supervision of persons operating payment systems involved in the issuance of Pre-paid Payment Instruments (PPIs) in the country and to ensure development of this segment of the payment and settlement systems in a prudent and customer friendly manner. For the purpose of these guidelines, the term 'persons' refers to 'entities' authorized to issue prepaid payment instruments and 'entities' proposing to issue pre-paid payment instruments."*

19. Introduction to these Guidelines mentions that the same are passed after a comprehensive review of the extant Guidelines and Instructions for the purpose of laying down the basic eligibility criteria and the conditions for operations of such payment systems in the country. Some of the definitions given in para 2 are reproduced below for better understanding of the system:

> *"**2. Definitions***
>
> *2.1 **Issuer**: Persons operating the payment systems issuing pre-paid payment instruments to individuals/organizations. The money so collected*

is used by these persons to make payment to the merchants who are part of the acceptance arrangement directly, or through a settlement arrangement.

2.2 ***Holder*** *: Individuals/Organizations who acquire pre-paid payment instruments for purchase of goods and services, including financial services.*

2.3 ***Pre-paid Payment Instruments****: Pre-paid payment instruments are payment instruments that facilitate purchase of goods and services, including funds transfer, against the value stored on such instruments. The value stored on such instruments represents the value paid for by the holders by cash, by debit to a bank account, or by credit card. The pre-paid instruments can be issued as smart cards, magnetic stripe cards, internet accounts, internet wallets, mobile accounts, mobile wallets, paper vouchers and any such instrument which can be used to access the pre-paid amount (collectively called Prepaid Payment Instruments hereafter). The pre-paid payment instruments that can be issued in the country are classified under three categories viz. (i) Closed system payment instruments (ii) Semi-closed system payment instruments and (iii) Open system payment instruments.*

2.4 ***Closed System Payment Instruments****: These are payment instruments issued by a person for facilitating the purchase of goods and services from him/it. These instruments do not permit cash withdrawal or redemption. As these instruments do not facilitate payments and settlement for third party services, issue and operation of such instruments are not classified as payment systems.*

2.5 ***Semi-Closed System Payment Instruments****: These are payment instruments which can be used for purchase of goods and services, including financial services at a group of clearly identified merchant locations/establishments which have a specific contract with the issuer to accept the payment instruments. These instruments do not permit cash withdrawal or redemption by the holder.*

2.6 ***Open System Payment Instruments****: These are payment instruments which can be used for purchase of goods and services, including financial services like funds transfer at any card accepting merchant locations (point of sale terminals) and also permit cash withdrawal at ATMs/Bcs.*

xx xx xx

2.8 ***Merchants****: The establishments who accept the PPIs issued by PPI issuer against the sale of goods and services."*

20. In order to ensure that payment received from the customer is paid to the affiliates against those vouchers, Para 8 provides for the deployment of money collected. As per this, the amount thus collected has to be kept in the escrow account and the persons, like the appellant herein, are under obligation to use this amount only for making payments to the participating merchant establishments and other permitted payments.

21. Read in the aforesaid context, insofar as the appellant is concerned, it is only a service provider on the touchstone of the test laid down in ***Bharat Sanchar Nigam Ltd. & Anr. v. Union of India & Ors., (2006)3 SCC 1*** Paragraph 87 of this judgment, enumerating this test, is reproduced below:

> *"87. It is not possible for this Court to opine finally on the issue. What a SIM card represents is ultimately a question of fact, as has been correctly submitted by the States. In determining the issue, however the assessing authorities will have to keep in mind the following principles: if the SIM card is not sold by the assessee to the subscribers but is merely part of the services rendered by the service providers, then a SIM card cannot be charged separately to sales tax. It would depend ultimately upon the intention of the parties. If the parties intended that the SIM card would be a separate object of sale, it would be open to the Sales Tax Authorities to levy sales tax thereon. There is insufficient material on the basis of which we can reach a decision. However we emphasise that if the sale of a SIM card is merely incidental to the service being provided and only facilitates the identification of the subscribers, their credit and other details, it would not be assessable to sales tax. In our opinion the High Court ought not to have finally determined the issue. In any event, the High Court erred in including the cost of the service in the value of the SIM card by relying on the "aspects" doctrine. That doctrine merely deals with legislative competence. As has been succinctly stated in Federation of Hotel & Restaurant Assn. Of India v. Union of India, (2005) 4 SCC 214: (SCC pp.652-53, paras 30-31*
>
> *"'...subjects which in one aspect and for one purpose fall within the power of a particular legislature may in another aspect and for another purpose fall within another legislative power'.*
>
> *xx xx xx*
>
> *There might be overlapping; but the overlapping must be in law. The same transaction may involve two or more taxable events in its different aspects. But the fact that there is overlapping does not detract from the distinctiveness of the aspects."*

22. Further, para 20 of the judgment of this Court in ***Idea Mobile Communication Limited. v. Commissioner of Central Excise and Customs, Cochin, (2011) 12 SCC 608*** shall be applicable here as well making it a case of service and not sale of goods. This para is as under:

> *"20. The charges paid by the subscribers for procuring a SIM card are generally processing charges for activating the cellular phone and consequently the same would necessarily be included in the value of the SIM card. There cannot be any dispute to the aforesaid position as the appellant itself subsequently has been paying service tax for the entire collection as processing charges for activating cellular phones and paying the service tax on the activation. The appellant also accepts the position that activation is a taxable service. The position in law is therefore clear that the amount received by the cellular telephone company from its*

subscribers towards the SIM cards will form part of the taxable value for levy of service tax, for the SIM cards are never sold as goods independent from services provided. They are considered part and parcel of the services provided and the dominant position of the transaction is to provide services and not to sell the material i.e. SIM card which on its own but without the service would hardly have any value at all."

23. We may also take note of the judgment of this Court in ***Sunrise Associates v. Govt. of NCT of Delhi & Ors., (2006) 5 SCC 603,*** where this Court considered as to whether lottery tickets can be treated as goods and after discussing the earlier judgment in ***H. Anraj v. Government of Tamil Nadu, (1986) 1 SCC 414,*** pointed out that the primary test would be as to whether such lottery tickets would constitute a stock in trade of every dealer and, therefore, is a merchandise which can be bought and sold in the market. This was followed in another judgment in ***Yasha Overseas v. Commissioner of Sales Tax & Ors., (2008) 8 SCC 681,*** wherein again the test of 'flexibility in its utilisation and its transferability were discussed and applied in the context of REP licences' to determine whether such licences were goods or not.

24. We may mention here that the appropriate test would be as to whether such vouchers can be traded and sold separately. The answer is in the negative. Therefore, this test of ascertaining the same to be 'goods' is not satisfied.

(III) Real Character Of The Transaction Is The Facility By The Customers As Employers To Their Employees:

25. Section 17 of the Income Tax Act, 1961, defines 'salary' in the hands of the employees which becomes taxable under the Income Tax Act. Various components of salary are enumerated therein. Clause (viii) of sub-section (1) of Section 17 includes 'the value of any other fringe benefit or amenity as may be prescribed' as part of salary. Rule 3 of the Income Tax Rules prescribes the method of 'valuation of perquisites'. We are concerned with Rule 3(7)(iii), which deals with the value of free food, etc. and reads as under:

"(iii) The value of free food and non-alcoholic beverages provided by the employer to an employee shall be the amount of expenditure incurred by such employer. The amount so determined shall be reduced by the amount, if any, paid or recovered from the employee for such benefit or amenity:

Provided *that nothing contained in this clause shall apply to free food and non-alcoholic beverages provided by such employer during working hours at office or business premises or through paid vouchers which are not transferable and usable only at eating joints, to the extent the value thereof in either case does not exceed fifty rupees per meal or to tea or snacks provided during working hours or to free food and non-alcoholic beverages during working hours provided in a remote area or an off-shore installation."*

26. Thus, the value of such free food and non-alcoholic beverage provided by an employer to an employee is treated as expenditure incurred by the employer and amenity in the hands of the employee. It is this perquisite given by the customer to its

employees by adopting the methodology of vouchers and for its proper implementation, services of the appellant are utilised.

27. For all the aforesaid reasons, we are of the opinion that the judgment of the High Court has not discussed and decided the issue correctly and warrants interference. We, thus, allow these appeals and set aside the judgment of the High Court by holding that Sodexo Meal Vouchers are not 'goods' within the meaning of Section 2(25) of the Act and, therefore, not liable for either Octroi or LBT. There shall, however, be no order as to costs.

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SUPREME COURT OF INDIA

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CIVIL APPEAL NO. 5784-5788 OF 2007

GUJARAT INDUSTRIES & ORS.
Vs
COMMISSIONER OF CENTRAL EXCISE-I

A.K. SIKRI AND ROHINTON FALI NARIMAN, JJ.

14th December, 2015

HF ▶ Revenue

The process of cold -rolling of hot-rolled stainless pattis amounts to 'manufacture'.

COLD ROLLING – PROCESS OF – MANUFACTURE - EXCISE DUTY- COLD -ROLLING OF HOT-ROLLED STAINLESS STEEL PATTIS TAKEN UP ON JOB WORK – EXCISE DUTY NOT PAID-DEMAND RAISED CONSIDERING IT AS 'MANUFACTURING' PROCESS'- ORDER UPHELD BY COMMISSIONER REFERRING TO HSN EXPLANATORY NOTES CONTENDING THAT SUCH PROCESS BRINGS ABOUT DISTINCT CHARACTERISTICS, USE, IDENTITY AND NAME THEREBY RENDERING IT AS A NEW COMMODITY AND CAPABLE OF BEING MARKETED– ORDER CONFIRMED BY TRIBUNAL AS THE PROCESS HARDENS THE PRODUCT ENTAILING IT NEW CHARACTERISTICS – APPEAL BEFORE SUPREME COURT – BASED ON THE VIEW GIVEN BY TRIBUNAL, PROCESS IN QUESTION HELD TO BE A MANUFACTURING PROCESS U/S 2(F) OF THE ACT – APPEAL DISMISSED - *S.2(f)(i) OF THE CENTRAL EXCISE ACT, 1944*

LIMITATION – NOTICE- EXCISE DUTY- PROCESSING ACTIVITY UNDERTAKEN FOR PERIOD 1995-97 – EXCISE DUTY NOT PAID – NOTICE SERVED DATED 15 MAY, 2000 – CONTENTION RAISED THAT ASSESSEE UNDER BONAFIDE BELIEF THAT THE ACTIVITY UNDERTAKEN DID NOT AMOUNT TO MANUFACTURE AND THAT EXCISE DUTY WAS NOT LEVIABLE – INVOKING OF S.11 A THEREBY EXTENDING PERIOD OF LIMITATION APPEALED AGAINST – ORDER OF COMMISSIONER REFLECTED DUE KNOWLEDGE ON PART OF APPELLANT REGARDING THE SAID ACTIVITY BEING DUTIABLE THEREBY OBSERVING CONNIVANCE ON PART OF APPELLANT - APPEAL DISMISSED BY APEX COURT IN VIEW OF OBSERVATION OF AUTHORITIES BELOW THEREBY VALIDATING THE SERVICE OF IMPUGNED NOTICE AFTER EXPIRY OF LIMITATION PERIOD – *S.11A OF CENTRAL EXCISE ACT,1994*

Facts

The appellant is involved in a job work of processing of cold rolling of the hot- rolled stainless patta/pattis received from other manufacturers. This is done to reduce the gauge of the pattis. No excise duty was being paid by appellant viewing that this process did not amount to manufacture as no new commodity commercially identifiable comes into existence. A demand was raised on account of this process holding it as a manufacturing process. The order was upheld by the Commissioner and the Tribunal. An appeal is thus filed before the Apex court against the levy of excise duty and against the notice being served beyond limitation period.

Held

That the adjudicating authority had referred to HSN explanatory notes and reached a conclusion that the said commodity was distinct from hot rolled products having its own identity, name, character and use which was enough to hold that a new commodity came in to existence. Thus the two products have different physical properties and are in general use from those of their hot rolled counterparts. The item becomes usable for automobile bodies and producing angles, shapes. They become easy to varnish, electroplate etc. due to smooth surface.

The Tribunal upheld the order by majority holding that the process of cold rolling imparts hardening to the product and entails changes in its characteristics. The Apex court concurs with the reasons given by the technical member of Tribunal referring to HSN explanatory notes.

Regarding the period of limitation being expired, it is held contended by the assessee that it was under a bonafide belief that no excise duty was payable and thus the department could not avail the larger period of limitation by invoking to S.11 A of the Act. As observed, this plea is rejected by the authorities below as the assessee was fully aware that other similar manufacturing units were paying duty on such processes . Also, the partner of assessee was fully aware that such activity was dutiable. Therefore, it is difficult to accept that the assesee was under bonafide belief that excise duty was payable on its processing. The plea of notice being time barred is also rejected.The appeal is dismissed.

Present: For Appellant(s) Mr. V. Lakshmi Kumaran, Advocate
Ms. L. Chamaya, Advocate
Mr. Heman Bajaj, Advocate
Mr. Anandh K., Advocate
Mr. M. P. Devanath, Advocate
Mr. S. Vasudevan, Advocate

For Respondent(s): Mr. B. Krishna Prasad, Advocate

******

A.K. SIKRI, J.

1. The assessee/manufacturer in the instant appeals, has commended this Court to decide the following questions of law which arise for consideration in these appeals:

(a) Whether the process of cold-rolling undertaken by the assessee on the hot-rolled stainless steel patta/pattis amount to 'manufacture' within the meaning of Section 2(f)(i) of the Central Excise Act, 1944?

(b) Whether the Custom Excise & Service Tax Appellate Tribunal (CESTAT) was correct in holding that the process of cold-rolling of stainless steel patta/pattis amounts to manufacture in view of Chapter No.4 of Chapter No.72 of the Central Excise Tariff Act, 1985, when the said Chapter Note was not even referred to or relied upon in the show cause notice?

(c) Whether in the facts and circumstances of the case, extended period of limitation under proviso to Section 11A of the Act was invokable for demanding duty from the assessee and for imposing penalty on the assessee?

2.The factual background under which the appeals have been preferred by the appellants can be captured by taking note of the following salient features:

The assessee is engaged in the process of cold-rolling of hot-rolled stainless steel patta/patti on job work basis. As per the assessee, for this purpose, it receives hot-rolled SS patta/patti from other manufacturers and thereafter undertakes the process of cold-rolling in the cold-rolling mill. The purpose of cold-rolling is only to reduce the gauge of the SS patta/patti. After so reducing the gauge by the process of cold- rolling, the SS patta/patti are sent back to the suppliers. For this purpose, the assessee receives job charges from the suppliers of the materials. The assessee claims that apart from cold-rolling, no other process was undertaken by the assessee on the SS patta/patti. The assessee had undertaken this activity during the period between November 1995 and March 1997. It is also the case of the assessee that by the process of cold-rolling, only the gauge of the SS patta/patti gets reduced and no new commercially identifiable commodity comes into existence, and the appellants were under the bona fide belief that the process of cold-rolling does not amount to manufacture under the Central Excise Act and accordingly did not take out central excise registration and did not discharge any central excise duty liability.

3. After conducting some investigation, Commissioner of Central Excise, Ahmedabad issued a show cause notice dated 15.05.2000 to the assessee contending that the process of cold-rolling undertaken by the assessee amounts to manufacture within the meaning of Section 2(f) of the Act and accordingly, the show cause notice sought to demand duty of Rs.24,06,310/- from the assessee for the period from 1995-96 to 1996-97 by invoking the extended period of limitation under proviso to Section 11A of the Act.

4. After considering the reply of the assessee, the Commissioner of Central Excise, Ahmedabad passed Order-in-Original confirming the duty demand of Rs.12,20,563/- after extending the benefit of small scale exemption and imposing penalty of Rs.12,32,563/- on the assessee. The Commissioner held the process of cold-rolling to be amounting to manufacture, in terms of Chapter Note 4 to Chapter 72. The Commissioner also imposed penalties on the suppliers of the materials.

On the appeals filed by the assessee and the suppliers of the cold rolled SS patta/patti, the Tribunal by a 2-1 majority held that the process of cold-rolling amounts to manufacture in view of Chapter Note 4 to Chapter 72. The majority of the Tribunal further held that the extended period of limitation under proviso to Section 11A of the Act is invokable and accordingly confirmed the duty demands and the penalties imposed by the Commissioner.

5. It is in the aforesaid backdrop the questions of law formulated/raised by the appellants need to be decided.

6. We first advert to the central and crucial issue, namely, whether the gauge reduction of the hot rolled SS patta/pattis by cold-rolling process will amount to manufacture of a new product attracting further central excise duty. As we have already pointed out above, the Department seeks to include the said item of the assessee under Chapter Heading 7220.20. Chapter 72.20 including the entry in which Department claims the product falls, is as under:

72.20			**Flat-rolled products of stainless steel, of a width of less than 60mm**	
	7220.10	-	Not further worked than hot-rolled, whether or not in coils	15%
	7220.20	-	Not further worked than cold-rolled (cold-reduced)	15%
	7220.90	-	Other	15%

7. We find that in the Order-in-Original passed by the Adjudicating Authority on the question as to whether cold-rolled pattas are distinct marketable commodities, he relied upon the Harmonised Commodity Description and Coding System (HSN) published by World Custom Organisation to facilitate uniform classification of goods traded in the world classifies cold rolled strips and the hot rolled strips under two separate headings. As per him, this itself

shows that all over the world these products are considered as separate identifiable products. As per general explanatory notes given in part (IV)(B) to Chapter 72 of HSN on which Central Excise Tariff Act, 1985 is based, cold rolled products can be distinguished from hot rolled products by the following criteria:-

(a) *The surface of cold rolled products has a better appearance than of products of hot rolled and never has a layer of scale.*

(b) *The dimensional tolerances are smaller for cold rolled products.*

(c) *Thin-Flat products are usually produced by cooled rolling.*

(d) *Microscopic examination of cold-worked products reveals a marked deformation of the grains and grain orientation parallel to the direction of working. By contrast, products obtained by hot process show almost regular grains owing to recrystallisation; (e) He also opined that cold rolling in the true sense, changes the crystalline structure of the work piece by considerably reducing its cross section.*

Thus what emerges after cold rolling of hot rolled strips is altogether a different product which has different physical properties. And, in the explanatory Note to Chapter Heading 72.09 of HSN, it is further elaborated that because of their special properties (better surface finished, better aptitude to cold – forming, stricter tolerances, generally reduced thickness, higher mechanical strength, etc.), the products of this heading are in general use for purposes different from those of their hot rolled counterparts, which they increasingly tend to replace. They are used, in particular, in the manufacture of automobile bodies, metal furniture, domestic appliance, and central heating radiators and for producing angles, shapes and sections by cold process (either forming or profiling). They are easy to coat (by tinplating, electroplating, varnishing, enamelling, lacquering, painting, coating with plastics, etc.). They are often delivered after annealing, normalizing or other heat treatment.

8. From the above, he concluded that the explanatory notes to HSN also lends support to the fact that hot rolled products and cold-rolled products are two distinct products having their own identity, name, character and use. Cold-rolled strips are used for making cycle/auto-parts etc., whereas hot rolled strips cannot be used for this purpose. The order, thus, proceeded to hold that cold-rolled strips are entirely different than hot-rolled strips which forms the principle raw material for the manufacture of CR strips. A categorical finding was given by the Adjudicating Authority that goods are of different use and have a distinct identity of their own in the market which was sufficient to hold that the new commodity has come into existence as for a product to be marketable it is not necessary that the products should be actually marketed but they should be capable of marketing since cold reducing is being independently by multiple number of units either on job work basis or for use in their other factories it is certainly capable of being marketed.

9. When the matter was taken in appeal before the Tribunal by the assessee, Judicial Member took the view favourable to the assessee whereas Technical Member affirmed the view of the Commissioner. The Technical Member in his brief order pointed out that the Commissioner had given detailed findings that the process of cold-rolling imparts quality of hardening to the products in question and this process entails changes in the characteristics. The Judicial Member also passed a brief order holding that the case was covered by the judgment of this Court in ***Steel Strips Ltd.*** wherein it was held that cold-rolling of steel strips reduced out of the duty paid hot-rolled steel strips do not undergo a process of manufacture. The Judicial Member also observed that there was nothing on record to show that the mere passing of hot-rolled SS patta/pattis between the two rollers, so as to reduce the thickness of the same, amounts to process of hardening or tempering being undertaken.

10. With this difference of opinion, when the matter came up before the Third Member, he undertook a very detailed discussion and ultimately concurred with the opinion of the Technical Member. Not only he relied upon the HSN explanatory notes which corresponds to the Chapter sub-heading of the Schedule to the Tariff Act but also took note of the entire process and discuss the same with reference to the technical literature.

11. After going through the said order, we are inclined to concur with the reasons and rationale given by the Third Member holding the entire process to be 'manufacture' within the meaning of Section 2(f) of the Act. Since, we are agreeing with the said reasoning, it would be apt to reproduce the relevant portion thereof:

> *"5. In this context, the Harmonized System of Nomenclature known as HSN Explanatory Notes was referred to by both the sides. These notes correspond to the Chapter sub-headings of the Schedule to the Tariff Act. The HSN throw considerable light on the process of production in iron and steel industries. To begin with, in the present context, semi-finished products and in certain cases ingots are converted into finished products which are generally sub-divided into flat products ("wide flats" including universal plates, wide coil, sheets, plates and strip) and long products (bars and rods, hot-rolled, in irregularly would coils, other bars and rods, angles, shapes, sections and wire). These products are obtained by plastic deformation, either hot, directly from ingots or semi-finished products (by hot-rolling, forging or hot-drawing); or cold, indirectly from hot finished products (by cold rolling, extrusion, wire, drawing, bright-drawing), followed in some cases by finishing operations (e.g., cold- finished bars obtained by centreless grinding or by precision turning). In the category of hot plastic deformation, "hot- rolling" means rolling at a temperature between the point of rapid recrystallization and that of the beginning of fusion. The temperature range depends on various factors such as the composition of the steel. As a rule, the final temperature of the work-piece in hot-rolling is about 900ºC. In the category of cold plastic deformation, "cold-rolling" is carried out at ambient temperature, i.e., below the recrystallization temperature. Thus, the most significant operational distinction between the hot-rolling and cold-rolling is that, hot-rolling is a rolling done at a temperature between the point of rapid recrystallization and that of the beginning of fusion, while cold rolling is carried out at ambient or room temperatures which is below the recrystallization temperature.*
>
> *5.1 The cold-rolled strips have the following properties which may be shared by certain hot-rolled products:-*
>
> *(a) because of the strain or work hardening they have undergone, cold- worked products are very hard and possess great tensile strength, though these properties may diminish appreciably with heat treatment;*
>
> *(b) elongation of fracture is very low in cold worked products; it is higher in products that have undergone suitable heat treatment.*
>
> *Cold-rolling in the true sense also includes cold reduction changing the crystalline structure of the work-piece by considerably reducing its cross- section. The HSN Notes, therefore, clearly indicate that in the cold- rolling processes because of the strain or work hardening, the cold-worked product becomes very hard. Therefore, when hot-rolled strips, which are flat-rolled products, are subjected to cold rolling, such cold-worked product would be very hard and would possess great tensile*

strength. The process of cold-rolling on such flat products would harden them and, therefore, it is a process of hardening. The fact that hardening can be achieved by heat treatment of steel cannot lead to a conclusion that no hardening can take place by cold-rolling. Hardening or tempering of a matter by heat treatment does not negate the existence of process of hardening or tempering by cold-rolling. The reference to the literature on hardening or tempering from a 'Dictionary of Metal Heat Treatment', 'Hand book of Heat Treatment Steels', 'Heat Treatment Principles and Techniques', would give a lop sided picture of the concept of hardening or tempering. If by heat treatment hardening or tempering of metal can be achieved, equally so by a cold-reducing or cold-rolling or cold-working, hardening of the flat rolled product/strips can be achieved. Heat treatment for hardening or tempering may be suited for particular products while cold- rolling or cold-working may be suited for hardening or tempering other kinds of products. Therefore, by merely referring to hardening or tempering by process of heat treatment, one cannot shut out the entire cold- rolling or cold-working processes which bring about hardening or tempering. In the midst of technical literature produced on behalf of the appellant, there are certain excerpts from 'Material Science and Metallurgy', Chapter 57 of which deals with mechanical working processes. Mechanical working of metals may either by (i) Hot working, or (ii) Cold working. Plastic deformation of a metal above the recrystallization temperature, but below the melting or burning point is called hot working whereas plastic deformation of a metal below its recrystallization temperature is known as cold working. In that chapter, there is an analysis done on principles of hot and cold working of metals and their effects on mechanical properties. The purposes of hot working and its advantages as well as purposes and advantages of cold working are narrated. While stating the principles of hot and cold working, the very first distinction drawn is that in hot working, metal working is performed on a metal held at such a temperature that the metal does not work-harden, while in cold working it is stated that it is a plastic deformation of a metal which results in strain hardening. It usually involves working at ordinary (room) temperature, but for high melting point metals cold-working may be carried out at a red heat. Hot working processes are: forging, rolling, pipe welding, extrusion, spinning and hot piercing and rolling (tubes) etc., while cold rolling processes commonly employed are : rolling, extrusion, pressing and deep drawing, stamping, squeezing, bending, shearing etc.

5.2 Cold rolling is a process by which the sheet metal or strip is introduced between rollers and then compressed and squeezed. The amount of strain introduced determines the hardness and other material properties of the finished product. Cold rolled sheet can be produced in various conditions such as skin-rolled, quarter hard, full hard depending on how much cold work has been performed. This cold working (hardness) is often called temper, although this has nothing to do with heat treatment temper. Cold- rolled metal is given a "temper" rating based on the degree it was compressed. Temper is the state or a condition of a metal as to its hardness or toughness produced by either thermal treatment or heat treatment and quench or cold working or a

combination of same in order to bring the metal to its specified consistency. As per Steel dictionary, cold rolling means rolling metal at a temperature below the softening point of the metal to create strain hardening (work-hardening). It is the same as cold reduction, except that the working method is limited to rolling. Cold rolling changes the mechanical properties of strip and produces certain useful combinations of hardness, strength, stiffness, ductility and other characteristics known as tempers.

5.3 It is not disputed that cold-rolled sheet products are used in a wide variety of end applications such as appliances-refrigerators, washers, dryers, and other small appliances, automobiles-exposed as well as unexposed parts, electric motors, and bathtubs. Cold-rolled sheet products are used in these and many other areas of manufacturing. To meet the various end use requirements, cold-rolled sheet products are metallurgically designed to provide specific attributes such as high formability, deep drawabiliity, high strength, high dent resistance, good magnetic properties, enamelability and paintability. The primary feature of cold reduction is to reduce the thickness of hot-rolled coils into thinner thicknesses that are not generally attainable in the hot rolled state. Cold reduction operation induces very high strains (work hardening) into the sheet. Thus, the sheet not only becomes thinner, but also becomes much harder, less ductile, and very difficult to form. However, after the cold-reduced product is annealed (heated to high temperature), it becomes very soft and formable. Tempering is a form of cold rolling that gives the steel a precise amount of hardness on the outer surface of the steel. Cold rolling is undertaken to reduce the thickness, improve the surface finish, improve the thickness tolerances, to offer a range of tempers and as a preparation for surface coating. Thus, cold-rolling process is also a process of hardening or tempering which is applied to flat rolled products, namely hot rolled strips so as to attract Chapter Note 4 of Chapter 72 of the Schedule to the Tariff Act. In the present case, there is no dispute over the fact that the appellant-assessee was undertaking cold-rolling process on its cold-rolling mills on the hot-rolled strips which were sent to it for the job work of reducing the gauge. The process of reducing the gauge by cold-rolling was also a process of hardening or tempering because cold-rolled products become hard and possess a very high tensile strength by the process of cold-rolling. The fact that a degree of hardness can be achieved will not dilute the applicability of the Chapter Note 4 because every degree of hardening or type of tempering resulting from cold-rolling of flat-rolled products would amount to manufacturing within the meaning of Chapter Note 4 of Chapter 72. The fact that annealing and pickling was done earlier by the party sending the goods for job work, will not make any difference because hardening or tempering of such flat-rolled products comes about only after cold-rolling. Having regard to the variety of flat- rolled products, which are cold-rolled, it cannot be said that the goods are not marketable. Admittedly, none of the parties sending the goods for job work to the appellant-assessee adopted the procedure of sending the goods for job work, as contemplated by Rule 57F of the Central Excise Rules, 1944 and, therefore, there can arise no question of the goods having been sent for job work under Rule 57F. It was not the case of any

of these appellants that the goods were sent in accordance with the provisions of Rule 57F of the said Rules.

12. The other question raised in the appeals pertains to the extended period of limitation. The case set up by the assessee is that, in any case, there was no willful mis-declaration, mis-statement or suppression on the part of the assessee and, on the other hand, the facts gave rise to a bona fide belief that the process did not amount to manufacture and, therefore, show case notice dated 15.05.2000 was beyond the normal period of limitation and, thus, time barred. As pointed out above, the assessee had not been paying any excise duty on the aforesaid process as according to it, this process did not amount to manufacture and no excise duty was paid. It is only on the basis of intelligence report that assessee was evading central excise duty that the matter came to the notice of the Revenue which led to the exercise of issuing of notice. It so happened that on the basis of intelligence, the Officers of Central Excise Department visited and searched the said factory premises on 25.03.1999 in the presence of two independent panchas and Shri Rajnibhai Veljibhai Katharia, partner of assessee and seized certain records for which panchnama dated 25.03.1999 was prepared. Officers in the panchnama observed that the two housing of cold-rolling mills fitted with debapti and gearbox were found installed and other parts were not found in the said rolling mills. During the course of panchnama itself, it was stated by Shri Rajnibhai in presence of panchas:

(a) That the said factory was engaged in the reduction of gauge (15 gauge to 20 gauge) of hot-rolled SS patta, received from various parties on two cold-rolling installed in the factory from November, 1995 to March, 1997;

(b) That hot-rolled SS pattas after annealing and picking process were received from various units in his factory and after reducing the gauge from (15 to 20 gauge) in his factory, the same was sent back to senders on job charges of Rs.1.50 per KG for the said process;

(c) That they closed the said two rolling mills in April, 1977 and sold out the parts other than housing, debapti and gearbox.

Statements of the responsible persons for the said unit were recorded and after conducting some investigation, the Commissioner of Central Excise, issued the show cause notice dated 15.05.2000 to the assessee contending that the process of cold-rolling undertaken by the assessee amounts to the manufacture within the meaning of Section 2(f) of the Act.

13. Once, we keep the aforesaid facts in mind, it is difficult to accept that the assessee was under bona fide belief that excise duty was not payable and that it was not permissible for the Department to avail the larger period of limitation by invoking proviso to Section 11A of the Act. All the Authorities below have rejected this argument of the assessee. The Tribunal while upholding the view of the Commissioner agreed with the reasons given by the Commissioner in the following manner:

"The Commissioner has also for valid reasons held that the extended period of limitation was applicable and that the Department's record did not show the receipt of any letter allegedly written on 28.09.1996. The assessee, dealing with several similar manufacturing units who paid excise duty on identical processes, and doing job work on their behalf would have obviously known that excise registration was required for the cold rolling mills in its factory for the purpose of manufacturing cold-rolled pattas/pattis. The partner of the assessee was fully aware that such activity was dutiable, in view of the fact that four out of six units from which the goods were received by M/s. Gujarat Industries were paying duty on similar manufacturing activity. Thus, the Commissioner is right in

issuing the show cause notice by invoking the extended period of limitation and also holding that the assessee had connived and deliberately acted in a manner to defraud the Revenue. The Division Bench of this Tribunal in ***Indian Strips v. CCE, Ahmedabad 2004 (173) ELT 265*** *took note of the Chapter Note 4 of Chapter 72 for holding that cold rolling process on flat rolled product would amount to manufacture. This decision was rendered after considering the decision of Hon. Supreme Court in* ***Steel Strips Ltd. 1995 (77) ELT 248 (SC)****, which was rendered prior to the enactment of the said Chapter Note 4 which had the effect of including the process of hardening or tempering in relation to flat-rolled products in the definition of 'manufacture'. The subsequent decision in* ***Lalit Engineering Works v. CCE, Ahmedabad*** *could not have taken a view contrary to the earlier binding decision in* ***Indian Strips v. CCE, Aurangabad (supra)*** *is required to be followed in a subsequent decision of the Division Bench. The assessee M/s. Gujarat Industries removed the goods without any cover of excise invoices and the other assessees received the cold-worked goods without cover of such excise invoices."*

14. We, thus, reject the plea of the assessee that the impugned notice was time barred.

15. We do not find any merit in these appeals, which are accordingly dismissed.

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PUNJAB & HARYANA HIGH COURT

CWP No. 21008 of 2015

Go to Index Page

VARSHA CONSTRUCTION COMPANY
Vs
STATE OF PUNJAB AND OTHERS

A.K. MITTAL AND RAMENDRA JAIN, JJ.

1st October, 2015

HF ▶ None (Direction Given)

Respondent has been directed to take a decision on the demand for refund made by the petitioner within the time specified.

REFUND- LACK OF ACTION ON PART OF DEPARTMENT – CONSTRUCTION WORK UNDERTAKEN BY PETITIONER-SALES TAX DEDUCTED U/S 10-C AND DEPOSITED WITH DEPARTMENT – SUBSEQUENTLY, S. 10-C STRUCK DOWN AS UNCONSTITUTIONAL BY HIGH COURT- DEMAND NOTICE FOR REFUND OF AMOUNT DEPOSITED UNDER SAID SECTION SENT FOLLOWED BY REMINDER – INACTION ON PART OF DEPARTMENT – WRIT FILED – RESPONDENT DIRECTED TO DECIDE ON THE DEMAND NOTICE WITHIN A PERIOD OF TWO MONTHS AND RELEASE THE AMOUNT IF PETITIONER FOUND ENTITLED THERETO- *S.10-C OF PGST ACT,1948*

Facts

The petitioner had undertaken construction work at few places for certain offices. While making payments, the said offices had deducted sales tax under S. 10-C of the Act and deposited with the respondents. Subsequently S.10-C was declared as unconstitutional by the High court and interest was allowed on the amount to be refunded in this regard. The petitioner, in pursuance to the order so passed striking down the S. 10-C,moved a demand notice for refund followed by a reminder. No response was received. Thus, a writ is filed.

Held

The respondent is directed to take a decision regarding the demand notice followed by a reminder as per law within a period of two months from the date of receipt of order. If the petitioner is found entitled to refund, the same be released within next one month.

Present: Mr. Munish Bansal, Advocate for the petitioner(s).

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AJAY KUMAR MITTAL, J.

1. This order shall dispose of two petitions bearing CWP Nos. 21008 and 21018 of 2015 as according to learned counsel for the petitioners, the issues involved herein are identical. For brevity, the facts are being extracted from CWP No. 21008 of 2015.

2. In this petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of mandamus directing the respondents to refund the amount deducted as sales tax under Section 10-C of the Punjab General Sales Tax Act, 1948 (in short "the Act") along with interest @ 1.5% per month.

3. The petitioner is a contractor and had undertaken certain construction work/works contract at the instance of offices of the Abohar Canal Division, Abohar during the periods from 2001-02 to 2004-05, Irrigation Project Sub Division No.2, Drainage, Malout from 2001-02 to 2002-03, Irrigation Project Sub Division No.2 Drainage, Gidderbaha for 2000-01, Sirhind Feeder Sub Division, Gidderbaha from 2001-02, Mech Drainage Construction Division, Ferozepur for 2003-04, Rajasthan Feeder Division, Ferozepur from 2000-01 to 2001-02, Eastern Canal Division, Ferozepur for 2003-04 and Drainage Construction Division, Faridkot at Gidderbaha during the period 2001-02. The said offices while making payments to the petitioner(s) had deducted sales tax under Section 10-C of the Act @2% amounting to Rs. 2,27,677/- vide certificates (Annexure P-1 Colly) and deposited the same with respondent No.3. The vires of Section 10-C of the Act were challenged by various writ petitions and this Court vide order dated 13.8.2008 passed in CWP No. 19579 of 2002 declared Section 10-C of the Act as ultra vires and had struck it down as to be unconstitutional. While allowing the said writ petition, this Court had not granted any interest on the amount of tax deducted against which one of the writ petitioners filed LPA No.740 of 2009 which was allowed by this Court vide order dated 26.8.2009 and interest @1.5% per month till the date of payment was granted. In a similar case, this Court vide order dated 25.9.2013 passed in CWP No. 9912 of 1998 granted liberty to the petitioner therein to approach the respondents for the refund of sales tax deducted under Section 10-C of the Act. The petitioner(s) moved a demand notice dated 1.3.2015 (Annexure P-2) before respondent No.3 for the refund. Since no response was received, the petitioner(s) sent a reminder dated 3.6.2015 (Annexure P-3) for refund of the sales tax so deducted, but no response has been received till date. Hence, the present writ petition.

4. Learned counsel for the petitioners submitted that for the relief claimed in the writ petition, the petitioner(s) has sent a demand notice dated 1.3.2015 (Annexure P-2) followed by a reminder dated 3.6.2015 (Annexure P-3) to respondent No.3, but no action has so far been taken thereon.

5. After hearing learned counsel for the petitioners, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petitions by directing respondent No.3 to take a decision on the demand notice dated 1.3.2015 (Annexure P-2) followed by a reminder dated 3.6.2015 (Annexure P-3), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner(s) within a period of two months from the date of receipt of certified copy of the order. It is further directed that in case the petitioner(s) is found entitled to the amount, the same shall be released to the petitioner(s) in accordance with law within next one month.

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PUNJAB & HARYANA HIGH COURT

CWP No. 21257 OF 2015

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J.S.R. RELATORS PVT. LTD.
Vs
THE ASSISTANT COMMISSIONER

A.K. MITTAL AND RAMENDRA JAIN, JJ.

5th October, 2015

HF ▶ None

Petitioner directed to file appeal against the order passed under VCES scheme by the designated officer instead of invoking writ jurisdiction.

WRIT/ALTERNATIVE REMEDY –SERVICE TAX – VOLUNTARY COMPLIANCE ENCOURAGEMENT SCHEME – APPLICATION FILED FOR DECLARING SERVICE TAX UNDER VCES SCHEME – APPLICATION REJECTED – WRIT FILED – DISMISSAL ON ACCOUNT OF IMPUGNED ORDER BEING APPEALABLE – PETITIONER ALLOWED TO TAKE RECOURSE TO REMEDIES AVAILABLE UNDER LAW - *VOLUNTARY COMPLIANCE ENCOURAGEMENT SCHEME, 2013*

Facts

The petitioner could not pay service tax for the period 1/4/2008 to 31/3/2012. As per the scheme under VCES, an option was given to the petitioner to voluntarily declare their service tax amount and pay it by a due date. The petitioner applied for it. Vide letter dated 29.12014 it was conveyed to the petitioner that it was not eligible to declare under the scheme on account of pending audit against it and an investigation had already been initiated. The respondent rejected the application vide order dated 11.3.2015 for the period 2007-08 to 2011-12 but partially accepted it for the period April 2012 to December 2012. Hence a writ is filed.

Held

That the impugned order of the respondent rejecting the application is appealable order as held in the case of Barnala Builders& Property Consultants whereby it is held that the order passed under VCES by the designated authority is appealable u/s 86 of Finance Act, 1994. Therefore, writ petition is dismissed. The petitioner is at liberty to take recourse to the remedies available to it in accordance with law.

Case Followed:

- *Barnala Builders & Property Consultants Vs Dy. CCE&ST, Dera Bassi. 2014(35) STR 65(P&H)*

Present: Mr. Vikrant Kackria, Advocate and
Mr. Ankit Parti, Advocate for the petitioner.

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AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the order dated 11.3.2015 (Annexure P-7) passed by respondent No.1 and in the alternative to direct respondent No.1 to pass a speaking appealable order and reconsider the VCES application dated 30.12.2013 (Annexure P-2).

2. The petitioner is having Service Tax Registration No. AABCJ5246MST001 and was providing the service under the category of construction service. Inadvertently, the petitioner could not pay certain service tax for the period 1.4.2008 to 31.3.2012. The Government vide notification dated 13.5.2013 framed Voluntary Compliance Encouragement Scheme, 2013 (in short "VCES") (Annexure P-1) providing an option to the assessee to voluntarily declare their service tax amount and pay the same by a due date and apply to the designated authority. In pursuance thereto, the petitioner filed declaration dated 30.12.2013 (Annexure P-2) before respondent No.1. Thereafter, the petitioner received a letter dated 29.1.2014 (Annexure P3) that it was not eligible to file the declaration under 'VCES' as investigation, enquiry or audit was pending against it as on 1.3.2013. It was mentioned in the said letter that the investigation had been initiated by Anti Evasion Branch of the Commissionerate on 31.11.2012 and the said investigation was pending as per the summons dated 14.3.2013 and 6.6.2013 (Annexure P-4). A show cause notice dated 23.10.2013 (Annexure P-5) was issued to the petitioner for the payment of service tax of Rs.25,23,351/- for the period from 2008-09 to 2011-12. The petitioner filed reply dated 6.3.2014 (Annexure P-6) to the letter dated (Annexure P-3). Respondent No.1 vide order dated (Annexure P-7) rejected the application of the petitioner for the period from 2007-08 to 2011-12 but partially accepted the same for the period April, 2012 to December, 2012. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that respondent No.1 had erred in rejecting the VCES application filed by the petitioner inspite of the fact that it had fulfilled all the conditions as laid down in the Scheme. However, it was not disputed that the order, Annexure P-7, passed by respondent No.1 is appealable in view of the judgment of this Court in ***Barnala Builders & Property Consultants v. Dy. CCE & ST, Dera Bassi, 2014(35) STR 65 (P&H).***

4. We have heard learned counsel for the petitioner.

5. The petitioner has impugned order dated 11.3.2015 (Annexure P-7) passed by respondent No.1 in this writ petition which is an appealable order as held by this Court in ***Barnala Builders & Property Consultants' case (supra).*** It has been held that the order passed by the designated authority under VCES is an appealable order under Section 86 of the Finance Act, 1994.

6. In view of the above, the present writ petition is dismissed. It shall, however, be open to the petitioner to take recourse to the remedies as may be available to it in accordance with law.

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PUNJAB & HARYANA HIGH COURT

CEA NO. 39 OF 2015

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COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX
Vs
ANAND FOUNDERS & ENGINEERS

A.K. MITTAL AND RAMENDRA JAIN, JJ.

5th October, 2015

HF ▶ Assessee

Mere shortage of stock does not confirm clandestine removal of goods in the absence of any evidence.

CLANDESTINE REMOVAL- EXCISE DUTY- SEARCH AT FACTORY PREMISES – SHORTAGE OF STOCK ADMITTED BY APPELLANT -CLANDESTINE REMOVAL OF GOODS CONCLUDED AND DEMAND RAISED – ORDER OF ADJUDICATING AUTHORITY SET ASIDE BY COMMISSIONER AS NO EVIDENCE FOUND CONCLUDING CLANDESTINE REMOVAL – LACK OF ENQUIRY IN THIS REGARD – RECORD OF ASSESEE NOT SCRUTINIZED – METHOD OF STOCK POSITION VERIFICATION DOUBTED – BENEFIT OF DOUBT EXTENDED BY COMMISSIONER TO ASSESSEE – ORDER UPHELD BY TRIBUNAL ON THE GROUND THAT NO INVESTIGATION CONDUCTED TO ESTABLISH IDENTITY OF BUYERS OR SUPPLIERS OF RAW MATERIAL TO PROVE THE ALLEGATION – NO PERVERSITY FOUND IN THE IMPUGNED ORDER BY HIGH COURT – APPEAL DISMISSED – *S. 11A AND 11AC OF THE CENTRAL EXCISE ACT; RULE 25 OF CENTRAL EXCISE RULES, 2002; RULE 15 OF CENVAT CREDIT RULES, 2004*

Facts

A search was conducted at the premises of the factory of the respondent suspecting clandestine removal of excisable goods and a demand was raised pursuant thereto. However, the commissioner set aside the order on the ground that the assessee's records which were admittedly lying in the other factory were not scrutinized. No investigation was conducted for establishing clandestine removal. Mere admission of stock shortage by the appellant does not confirm clandestine removal. Nothing has been mentioned as to how stock position was verified by the department. Extending benefit of doubt, the order of the assessing authority was set aside. On appeal before Tribunal, it was held that no investigation was conducted by the department to establish the identity of the buyers or the suppliers of the raw materials or the transporters to prove clandestine removal and mere shortages do not lead to finding of clandestine removal. An appeal is filed before High court.

Held

No illegality is found in the order of the Commissioner or the Tribunal. Thus, appeal is dismissed.

Present: Ms. Ranjana Shahi, Advocate for the appellant.

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AJAY KUMAR MITTAL, J.

1. Delay of 239 days in refiling the appeal is condoned.

2. This appeal has been preferred by the revenue under Section 35G of the Central Excise Act, 1944 (in short "the Act") against the order dated 7.2.2014 (Annexure A-1) passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as "the Tribunal") claiming the following substantial question of law:-

> *Whether the Hon'ble Tribunal is justified in rejecting the appeal of the department without discussing the arguments put forth and the relevant provisions of law regarding maintenance of records?*

3. A few facts relevant for disposal of the instant appeal as narrated therein may be noticed. The assessee is engaged in the business of manufacture of CI Pipes and fittings. On 16.7.2008, the preventive staff of Commissionerate conducted search of the factory premises of the respondent on receipt of a specific information that the assessee is involved in the clandestine removal of excisable goods. At the time of search, Shri Kamal Kant, Proprietor of the respondent was present in the factory. No record was found in the said premises and on enquiry from Shri Kamal Kant, it was stated that the records have been temporarily shifted to the office of their adjoining family concern M/s Adhunik Industrial Corporation, Batala due to repair work. Thereafter, the physical verification of the stock of raw material and finished goods of the assessee was conducted. As a result thereof, 239.945 MT of inputs, i.e., pig iron and 133 MT of the finished products involving central excise duty of Rs.16,00,306/- was found short. Accordingly, the stock verification report was prepared on the spot which was signed by the Panches and Shri Kamal Kant. As per the revenue, Shri Kamal Kant in his statement dated 16.7.2008 stated that they were engaged in the manufacture of goods under the brand name Anand only which was unregistered brand name and prior to 2007-08, they were also engaged in the trading of pig iron and pipes which had since been stopped last year. They were engaged in the manufacture of CI Castings, pipes and fittings, manhole covers etc. and sell the same to the contractors, builders and their family units, namely, M/s Adhunik Enterprises, Chandigarh, M/s Madan Steels, Batala and M/s Narindra Enterprises, Batala. They had not maintained any stock register of finished goods and the production was recorded in the raw material register which was also not entered from 4.6.2008 to till the date of search. The production was recorded by weight whereas in the sale invoices, the goods were sold by numbers without indicating the weight of the finished goods. Shri Kamal Kant accepted the quantum of shortage and its value and debited an amount of Rs.16,00,306/- voluntarily vide RG 23A Part-II entry dated 16.7.2008. Accordingly, a show cause notice dated 6.7.2009 was issued to the assessee. The adjudicating authority vide order dated 13.8.2010 confirmed the demand of Rs. 16,00,306/- under Section 11A of the Act and also imposed penalty of equal amount under Section 11AC of the Act read with Rule 25 of the Central Excise Rules, 2002 and Rule 15 of the CENVAT Credit Rules, 2004. Feeling aggrieved, the assessee filed an appeal before the Commissioner (Appeals) who vide order dated 26.12.2012 allowed the appeal and set aside the order of the adjudicating authority. Being dissatisfied, the department filed an appeal before the Tribunal. The Tribunal vide order dated 7.2.2014 (Annexure A-1) affirmed the order of the Commissioner (Appeals) and rejected the appeal. Hence, the present appeal.

4. Learned counsel for the appellant submitted that the Tribunal has dismissed the appeal of the department without discussing the arguments raised by the department and the provisions of law regarding maintenance of records.

5. After hearing learned counsel for the appellant, we do not find any merit in the

appeal.

6. The Commissioner (Appeals) set aside the findings of the clandestine removal of the goods recorded by the adjudicating authority by holding that the assessee's record which were admittedly lying in the adjoining sister concern M/s Adhunik Industrial Corporation were not scrutinized. Further, it was held that the assessee had clarified the stock position vide letter dated 9.8.2008 which was rejected summarily as an after-thought without making the verifications. Shri Kamal Kant in his statement has admitted only shortages and not the fact of clandestine removal and there was no evidence to show the clandestine activities as no further investigation was conducted to establish the identity of the buyers or the suppliers of the raw-materials. The adjudicating authority had mentioned that the production was recorded by weight but in the sale invoices, the goods were sold by numbers without indicating the weight of the finished goods but nothing was proved that how the stock position was verified regarding sale invoices which only showed numbers without giving their weight. Accordingly, the Commissioner (Appeals) extending the benefit of doubt to the assessee had set aside the order passed by the adjudicating authority. The aforesaid findings of the Commissioner (Appeals) were affirmed by the Tribunal by observing that there was no other evidence on record to prove the clandestine activities of the assessee as the revenue has not conducted further investigations to establish the identity of the buyers or the suppliers of the raw-materials or the transporters. Further, it was held by the Tribunal that mere shortages detected at the time of visit of the officers cannot *ipso facto* lead to the allegations and findings of clandestine removal. The relevant findings recorded by the Tribunal read thus:-

> *"7. The Revenue has again reiterated the same stand that as shortages detected at the time of visit of the officers, which has to be held that the respondents had cleared their final product in a clandestine manner. Admittedly, there is no other evidence on record so as to relate to the clandestine activities of the assessee. The Commissioner (Appeals) has rightly relied upon the various decisions of the Tribunal including the decision in the case of Jai Timber Company Vs. CCE&C, Bhopal [2009 (234) ELT 457 (Tib.-All)] and has rightly concluded that mere shortages detected at the time of visit of the officers cannot ipso facto lead to the allegations and findings of clandestine removal."*

7. No illegality or perversity could be pointed out in the aforesaid findings of fact recorded by the Commissioner (Appeals) as well as the Tribunal which may warrant interference by this Court.

8. Accordingly, no substantial question of law arises in this appeal.

9. In view of the above, there is no merit in the instant appeal and the same is hereby dismissed.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 20104 OF 2015

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GILAN INTEL CABLES LIMITED
Vs
CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL AND ANOTHER

A.K. MITTAL AND RAMENDRA JAIN, JJ.

16th November, 2015

HF ▶ Revenue

Concealment of dismissal of writ petition prior to filing of present writ petition seeking same relief as sought earlier disentitles the petitioner from any discretionary relief .

WRIT - DELAY AND LACHES – CONCEALMENT OF FACTS – DISMISSAL OF APPEAL BY TRIBUNAL GRANTING EIGHT WEEKS TIME FOR PREDEPOSIT – WRIT FILED AGAINST THE ORDER – WRIT DISMISSED GRANTING A PERIOD OF ONE MONTH TO MAKE PREDEPOSIT- FAILURE TO COMPLY WITH THE DIRECTION RESULTING IN DISMISSAL OF APPEAL BEFORE TRIBUNAL – FOUR YEARS SUBSEQUENT TO DISMISSAL , WRIT FILED AGAIN SEEKING SAME RELIEF CONCEALING THE FACTUM OF PREVIOUS WRIT FILED ON SAME GROUNDS – PRESENT WRIT PETITION DISMISSED FOR CONCEALMENT OF FACTUM OF FILING OF WRIT PREVIOUSLY - PETITIONER DENIED ANY RELIEF UNDER THE EXTRAORDINARY JURISDICTION THEREBY – *ARTICLE 226/227 OF INDIAN CONSTITUTION*

Facts

The petitioner was running a manufacturing unit. Due to stoppage of its activities, the petitioner sold off the machinery on which CENVAT credit was availed without payment of any excise duty on it. The department demanded the duty which was refused by the petitioner on the ground that there was no such provision in the Rules regarding payment of excise duty on sale of capital goods rendered as scrap. The Tribunal directed the assessee to make predeposit for hearing of appeal. Against this order a writ was filed (No. 16103 of 2011) which was dismissed vide order dated 30.8.2011 directing the petitioner to deposit the amount extending the period by one month. However, the petitioner did not comply with the order of the high court and the appeal was dismissed by Tribunal on 30.9.2011. After lapse of four years, the petitioner has filed the present writ petition seeking the same relief concealing the fact of filing of earlier writ petition.

Held

Following the judgment of V. Chandrasekaran V/s The Administrative Officer and others, it is held that due to concealment of factum of filing of CWP 16103 of 2011 the petitioner is disentitled to any discretionary relief under A- 226/227 and the writ is also dismissed as it suffers from laches and delays. The writ petition is dismissed.

Case applied:

- *V. Chandrasekaran* vs. *the Administrative Officer and others, (2012) 12 SCC 133*

Present: Mr. Manoj Kumar, Advocate for the petitioner.
Mr. Kamal Sehgal, Advocate with
Mr. Rajesh Hooda, Advocate for the respondent.

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AJAY KUMAR MITTAL, J.

1. Short reply by way of affidavit of Commissioner of Central Excise and Service Tax, Faridabad I, New CGO Complex, NH IV, Faridabad on behalf of the respondents dated 13.11.2015 filed today in court is taken on record.

2. The petitioner prays for a direction to the Tribunal to hear the appeal filed by it as it has complied with the condition of pre-deposit of Rs.8 lacs.

3. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner is holding Central Excise Registration No.AABCS8756RXM001 for the manufacture of wire and cables falling under Chapter Heading 8544 of the Schedule to the Central Excise Tariff Act, 1985. On scrutiny of the monthly ER 1 returns, it was noticed that it had stopped manufacturing activities from the month of July 2004. The Range Superintendent asked the petitioner to submit information before shifting of the plant and machinery as it had availed Cenvat Credit amounting to Rs.13,00,604/- on the capital goods installed in its premises. Vide letter dated 7.7.2005, the petitioner informed that no capital goods from its factory to Ponta Sahib had been transferred but undertook to submit the details of disposal. Vide letter dated 8.7.2005, the petitioner intimated that the machines on which Cenvat credit was availed had rusted and ceased to function and as such it had sold the same scrap for a value of Rs.5 lacs. Vide letters dated 18.7.2005 and 28.7.2005, the Range Officer demanded copies of the invoices alongwith duty paying documents with regard to disposal of the said machinery. Vide letter dated 3.8.2005, the petitioner submitted a copy of Store Challan No.51 dated 11.4.2005 showing sale of machinery scrap valued at Rs. 5 lacs without charging any central excise duty from the buyer. The petitioner further clarified that no Central Excise duty was paid on such scrap. On perusal of the said challan, it was found that the buyer's name and address of the goods was not mentioned on it. The goods were sold against cash payments of Rs. 5 lacs. During further enquiries, Shri Narender Singh owner of the truck denied transport of the goods of the petitioner on 1.4.2005 by his truck. The department issued show cause notice dated 5.6.2008, Annexure P-1 to the petitioner proposing recovery of an amount of Rs.13,00,604/-. The petitioner filed its reply dated 3.2.2009, Annexure P-2 denying the allegations. The adjudicating authority did not accept the submissions made by the petitioner and passed the order dated 19.8.2009, Annexure P-3 confirming the demand of duty of Rs.13,00,604/- alongwith interest and penalty from the petitioner. Aggrieved by the order, the petitioner filed appeal before the Commissioner (Appeals). Vide order dated 13.9.2010, Annexure P-4, the appeal was dismissed. Still not satisfied, the petitioner filed appeal as well as stay application before the Tribunal contending that when there was no provision under the Central Excise Rules for payment of duty on capital goods rendered as scrap during the relevant period, then neither any duty could be demanded nor any penalty could be imposed. Vide order dated 13.5.2011, Annexure P-5, the Tribunal directed the petitioner to make pre-deposit of Rs.8 lacs to hear the appeal. The petitioner filed appeal before this court. This court did not interfere with the order on merits but extended the period by one month for pre-deposit of amount of Rs.8 lacs to hear the appeal. However, the petitioner could not deposit the pre deposit amount

of Rs.8 lacs within the time allowed by this court due to financial hardship. The Tribunal dismissed the appeal of the petitioner vide order dated 30.9.2011, Annexure P-6 for non compliance of the order dated 13.5.2011 passed by it. Now the petitioner has deposited the amount of Rs.8 lacs vide challan dated 19.2.2015 and intimated the same to the Assistant Commissioner and prays for hearing the appeal by the Tribunal. Hence the instant petition by the petitioner.

4. In the written statement filed on behalf of the respondents, it has been stated that the petitioner had filed an appeal before the Tribunal against the order dated 13.9.2010 passed by the Commissioner (Appeals). The Tribunal vide order dated 13.5.2011 passed a conditional stay order and directed the appellant to deposit Rs.8 lacs within eight weeks. The petitioner instead of complying with the said order filed CWP No.16013 of 2011 in this court which was dismissed vide order dated 30.8.2011. However, this court extended the time by one month for depositing the amount. The petitioner even did not deposit the amount within the said period. Therefore, the Tribunal dismissed the appeal vide order dated 30.9.2011. After the lapse of four years, the petitioner has filed the present writ petition seeking the same relief. The petitioner has thus concealed the fact of filing of earlier petition in this Court. Consequently, on this short ground alone, prayer for dismissal of the petition has been made.

5. We have heard learned counsel for the parties.

6. After hearing learned counsel for the parties and perusal of record, we find that CWP No.16013 of 2011 had been earlier filed by the petitioner seeking similar relief. The said writ petition was dismissed by this Court vide order dated 30.8.2011. The petitioner has concealed this fact while filing the present writ petition. In para 20 of the writ petition, the petitioner has stated that no such similar Civil Writ Petition has previously been filed by it before this court or the Supreme Court of India. On this short ground alone, the petition is liable to be dismissed. Hon'ble the Apex Court delving into the issue of concealment of facts in ***V. Chandrasekaran*** **vs.** ***the Administrative Officer and others***, (2012) 12 SCC 133, observed as under:-

> *"34. The appellants have not approached the court with clean hands, and are therefore, not entitled for any relief. Whenever a person approaches a Court of Equity, in the exercise of its extraordinary jurisdiction, it is expected that he will approach the said court not only with clean hands but also with a clean mind, a clean heart and clean objectives. Thus, he who seeks equity must do equity. The legal maxim "Jure Naturae Aequum Est Neminem cum Alterius Detrimento Et Injuria Fieri Locupletiorem", means that it is a law of nature that one should not be enriched by causing loss or injury to another. (Vide: The Ramjas Foundation & Ors. v. Union of India & Ors., AIR 1993 SC 852; Nooruddin v. (Dr.) K.L. Anand, (1995) 1 SCC 242; and Ramniklal N. Bhutta & Anr. v. State of Maharashtra & Ors., AIR 1997 SC 1236).*
>
> ***35.*** *The judicial process cannot become an instrument of oppression or abuse, or a means in the process of the court to subvert justice, for the reason that the court exercises its jurisdiction, only in furtherance of justice. The interests of justice and public interest coalesce, and therefore, they are very often one and the same. A petition or an affidavit containing a misleading and/or an inaccurate statement, only to achieve an ulterior purpose, amounts to an abuse of process of the court.*
>
> ***36.*** *In Dalip Singh v. State of U.P. & Ors., (2010) 2 SCC 114, this Court noticed an altogether new creed of litigants, that is, dishonest litigants and went on to strongly deprecate their conduct by observing that, the truth constitutes an integral part of the justice delivery system. The quest for personal gain has*

become so intense that those involved in litigation do not hesitate to seek shelter of falsehood, misrepresentation and suppression of facts in the course of court proceedings. A litigant who attempts to pollute the stream of justice, or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.

***37.** The truth should be the guiding star in the entire judicial process. "Every trial is a voyage of discovery in which truth is the quest". An action at law is not a game of chess, therefore, a litigant cannot prevaricate and take inconsistent positions. It is one of those fundamental principles of jurisprudence that litigants must observe total clarity and candour in their pleadings. (Vide: Ritesh Tewari & Anr. v. State of Uttar Pradesh & Ors., (2010) 10 SCC 677; and Amar Singh v. Union of India, (2011) 7 SCC 69).*

7. Additionally, this Court while dismissing earlier CWP No.16013 of 2011 on 30.8.2011 had extended the time by one month for depositing the amount. The said order also remained un-complied with as the petitioner never deposited any amount in pursuance to the order dated 30.8.2011 extending the time. The appeal was dismissed by the Tribunal on 30.9.2011. Besides concealment of factum of filing of CWP No.16013 of 2011 is there on the part of the petitioner disentitling it to any discretionary relief under Articles 226/227 of the Constitution, the present writ also suffers from delay and laches as well.

8. In view of the above, we are not inclined to entertain the present writ petition and consequently, the same is hereby dismissed.

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PUNJAB & HARYANA HIGH COURT

VATAP NO. 41 OF 2015

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SANJEEV STONE CRUSHING COMPANY
Vs
STATE OF HARYANA AND OTHERS

A.K. MITTAL AND RAMENDRA JAIN, JJ.

18th November, 2015

HF ▶ Assessee

Buyer is not to be denied Input Tax Credit for deficiency in tax invoices issued by the seller.

INPUT TAX CREDIT – TAX INVOICE – ABSENCE OF DETAILS ON INVOICES – RETURNS DULY FILED BY APPELLANT – INPUT TAX CREDIT DENIED TO ASSESSEE-APPELLANT DUE TO ABSENCE OF NAME AND TIN NUMBER ON TAX INVOICES PRODUCED – APPEAL BEFORE HIGH COURT CONTENDING OPPORTUNITY TO PRODUCE EVIDENCE FOR JUSTIFYING CLAIM NOT GIVEN – HELD: – RULE 54(3) IS PROCEDURAL MEANT FOR SAFEGUARDING INTEREST OF REVENUE FROM NON GENUINE TRANSACTION – BUYER NOT TO BE MADE LIABLE FOR INVOICES ISSUED BY SELLER – NON MENTIONING OF TIN AND NAME CANNOT BE CONCLUSIVELY HELD AGAINST BUYER – MATTER REMANDED FOR FRESH DECISION – TAX INVOICES NOT TO BE REJECTED IF BUYER IS ABLE TO JUSTIFY THE GENUINENESS OF TRANSACTION - APPEAL DISPOSED OF – *RULE 54(3) OF HVAT RULES, 2005*

Facts

The appellant had purchased boulders from the selling firm registered in Haryana which was required to issue the tax invoices as per the Act. The tax invoices were issued by it and returns were filed by both the buyer. However, during assessment, Input Tax was denied to the buyer on the ground that the tax invoices were not produced by the assessee.It was alleged that the invoices in possession of the appellant did not bear its name, TIN number mentioned by the seller at the time of issue which is a mandatory requirement as per Rule 54 of the HVAT Rules, 2003.An appeal is filed before the High court.

Held

Non -mentioning of TIN on invoices cannot be taken to be fatal against the buyer as it is issued by the seller. Rule 54(3) is to safeguard interest of revenue from non genuine transactions and is procedural in nature. It is not within the control of the purchaser to ensure that the tax invoice bears his name and tin number. Unless a mandatory duty is cast on the seller, purchaser cannot be made liable for it. Non- mentioning of TIN can be a circumstance but cannot be held conclusively against the buyer. Thus matter is remanded to assessing authority to consider the matter afresh and not reject the tax invoice merely on the ground that it does not bear name of buyer and TIN if the buyer is able to justify the transaction by producing evidence before him. The appeal is disposed of.

Case followed:

- *New Devi Grit Udyog, Raiseena, Gurgaon vs. State of Haryana and others, VATAP No.37 of 2014*

Cases relied upon:

- *Marmagoa Steel Limited v/s. Union of India,* 2005(192) ELT 82 (Bom.)
- *Vimal Enterprise v/s. Union of India,* 2006(195) ELT 267 (Guj)

Case distinguished:

- *Babu Verghese and others v/s. Bar Council of Kerala and others, (1999) 3 SCC 422*

Present: Mr. S.K. Chaudhary, Advocate for the appellant.
Ms. Mamta Singla Talwar, DAG, Haryana with
Shri Saurabh Mago, AAG, Haryana.

******

AJAY KUMAR MITTAL, J.

CM No.17172 CII of 2015

1. There is a delay of 411 days in filing the appeal. Notice of the application was given to the respondents. After hearing learned counsel for the parties and for the reasons stated in the application, the delay in filing the appeal is condoned. CM stands disposed of.

VATAP No.41 of 2015

2. This order shall dispose of VATAP Nos.41 and 42 of 2015 as according to the learned counsel for the parties, the issue involved in both these appeals is identical. However, the facts are being extracted from VATAP No.41 of 2015.

3. VATAP No.41 of 2015 has been preferred by the assessee- appellant under Section 36(1) of the Haryana Value Added Tax Act, 2003 (in short, "the HVAT Act") against the orders dated 29.4.2014, 10.9.2012 and 28.2.2008, Annexures A.3, A.2 and A.1 passed by respondent Nos. 2, 3 and 4 respectively for the assessment year 2004-05, claiming following substantial questions of law:-

> *"i) Whether in the facts and circumstances of the present case, the appellant is entitled to the benefit of input tax credit under section 8 of HVAT Act, 2003?*
>
> *ii) Whether before disallowing the input tax credit, the Assessing authority ought to have conducted the complete enquiry as prescribed under Section 8?*
>
> *iii) Whether the appellant should have been allowed to produce certificate in Form C4 in support of its claim of input tax credit in case the assessing authority has any doubt about invoice produced by the appellant?"*

4. A few facts relevant for the decision of the controversy involved as narrated in the VATAP No.41 of 2015 may be noticed. The appellant-assessee is proprietorship concern. It is a dealer registered under the HVAT Act and also under the Central Sales Tax Act, 1956 (in short, "the CST Act"). It has been filing the prescribed quarterly returns and discharging its tax obligations in accordance therewith. It is engaged in the business of crushing stone builders into stone grit and dust which is used as other construction material. Proceedings for the assessment year in question i.e. 2004-05 were initiated as the case of the appellant was selected for scrutiny being stone crusher. The assessee was communicated notice in Form No. N-2. The appellant put in appearance and filed written submissions in which preliminary objection with regard to question of limitation was raised. The appellant produced all the books of account as

required. According to the appellant, the invoices produced by it were not taken into consideration by the assessing authority and the benefit of input credit was disallowed vide order dated 28.2.2008, Annexure A.1. According to the petitioner, if the assessing authority was not satisfied with the invoice, it could ask for certificate in Form C. Aggrieved by the order, the assessee filed appeal before the Joint Excise and Taxation Commissioner (Appeals) Faridabad JETC(A)]. Vide order dated 10.9.2012, Annexure A.2, the appeal was dismissed by the JETC (A). Still not satisfied, the appellant filed appeal before the Tribunal. Vide order dated 29.4.2014, Annexure A.3, the Tribunal dismissed the appeal. Hence the instant appeal by the appellant- assessee.

5. We have heard learned counsel for the parties.

6. It is not disputed by learned counsel for the parties that the issue involved in these appeals is covered by the decision of this Court in **VATAP No.37 of 2014 (M/s New Devi Grit Udyog, Raiseena, Gurgaon vs. State of Haryana and others)** decided on September 8, 2015, wherein after considering the relevant statutory provisions and the case law on the point, it was recorded as under:-

> *"8. It would be advantageous to reproduce the relevant statutory provisions which read thus:-*
>
> ***Section 2(w)***
>
> *"(w) "input tax" means the amount of tax paid to the State in respect of goods sold to a VAT dealer, which such dealer is allowed to take credit of as payment of tax by him, calculated in accordance with the provisions of section 8;*
>
> ***Section 2(zl)***
>
> *" `tax invoice' means an invoice required to be issued according to the provisions of sub-section (2) of section 28 by a VAT dealer for sale of taxable goods to another VAT dealer for resale by him or for use by him in manufacture or processing of goods for sale, and which entitles him to claim input tax in accordance with the provisions of section 8;"*
>
> ***Section 8(2)***
>
> *"8(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 subsection (3), be sufficient proof of the tax paid on such goods for the purpose of sub-section (1)."*
>
> ***Section 28(2)***
>
> *"28(2) Every dealer required to furnish returns under subsection (2) of section 14 shall, - (a) in respect of every sale of goods, effected by him*
>
> *(i) to any dealer;*
>
> *(ii) to any other person on credit;*
>
> *(iii) to any other person on cash, where the sale price of the goods exceed one hundred rupees or such other amount not exceeding five hundred rupees, as may be prescribed, compulsorily, otherwise, on demand by such person, issue to the purchaser, where he is a VAT dealer to whom the goods are sold for resale by him or for use by him in manufacture or processing of goods for sale, a tax invoice, otherwise a retail/other sale invoice, -*
>
> *(A) in the case of specific or ascertained goods, at the time the contract of*

sale is made; and

(B) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale; showing the prescribed particulars:

Provided that if the contract of sale requires that the goods be delivered over a period of time, he may issue a delivery note showing the prescribed particulars at the time of dispatch of the goods, every time such dispatch is made, and when the delivery of the goods is complete or a month closes in between, he shall issue a consolidated tax invoice or retail/other sale invoice, as the case may be, showing the prescribed particulars, in respect of the goods sold during the month or part thereof, as the case may be;

(b) maintain, in the prescribed manner, account of all sales not falling within clause (a);

(c) in respect of every dispatch of goods otherwise than by sale, issue a delivery note at the time of the dispatch showing the prescribed particulars; and

(d) preserve a carbon copy of every invoice or delivery note issued under clause (a) or clause (c) for a period of eight years following the close of the year when the sale was made and where some proceedings under this Act are pending, till the completion of such proceedings.

Rule 54(3)

"(3) An invoice or a delivery note shall at least contain the following particulars –

Tax invoice/Retail invoice/Sale invoice/Delivery Note

Serial Number: *Date: DD: MM:YY*

Time: HH:MM

Note: - Time is to be mentioned by stone crusher owners, quarry contractors/lessees in every case, and by other dealers in case the value of goods exceeds ten thousand rupees.

(i) *Full name and address of the selling dealer/consignor with his TIN, if any*

(ii) *Nature of transaction - whether sale, consignment transfer or job work etc.*

(iii) *Name and address of the purchaser/ consignee (in case he is a dealer registered under the Act, mention his TIN)*

(iv) *Description of goods*

(v) *Quantity of goods*

(vi) *Value of goods with break-up according to rate of tax applicable (In case of delivery note, approx. value may be given and no break-up is necessary.)*

(vii) *Tax, where charged separately (Not compulsory when a delivery note is issued or an invoice is issued by a lump sum dealer, an unregistered dealer, or a VAT dealer making sale to a consumer.)*

(viii) *Vehicle number (Where the goods are carried in a vehicle.)*

(ix) Name of the person carrying the goods (Where the goods are carried in a vehicle.)

Signature of the selling dealer / consignor or his authorized signatory.

Name in full and status"

9. A combined reading of the aforesaid provisions shows that under Rule 54(3) of the HVAT Rules, the buyer is required to produce the tax invoice, its name and TIN number entered on it. However, the question would be whether the purchaser can be penalized where the seller does not comply with the same. In our opinion, the answer would be in the negative. The non mentioning of the buyer's name or TIN number as it is issued by the seller cannot be taken to be fatal against the buyer and benefit of input tax credit declined to the buyer on that basis alone. The purpose of incorporating Rule 54 (3) of the HVAT Rules is to safeguard the interest of the revenue from non-genuine transactions. It is procedural in nature and does not confer any substantive right. In the event of non-mentioning of the name and TIN No. of the buyer, a heavy onus is cast on the said dealer to produce material to discharge the said onus by producing other sufficient evidence to show that the transaction was genuine and it had made payment of VAT to the seller. Moreover, it is not within the control of the purchaser to ensure that the tax invoice contains his name and TIN No. as it is issued by the seller. Unless a mandatory duty is cast on the seller to issue tax invoice with such particulars, the purchasers cannot be penalized for no fault of theirs.

10. The Gujarat High Court in ***Vimal Enterprise's*** case (supra) [(1999) 3 SCC 422] while considering grant of Cenvat/Modvat credit, observed as under:-

> *"18……..If on facts, it is possible to find out that the transaction is genuine and bonafide transaction, the identity of the supplier is established, the document showing duty paid inputs is supported by the facts, and the records of the supplier show that the supplier has purchased duty paid goods before resale and passed on the credit of duty, there is no reason why the benefit should be denied. Once the object for which a provision is enacted is satisfied merely venial or technical breach by itself should not permit the authorities to adopt a stand which frustrates the object for which the entire scheme of modvat has been framed. The endeavour must be to ensure that the scheme is made effective and not frustrated. In other words, the goods , which have been subjected to duty when used as inputs for manufacture of final product, should not be made to bear duty once again as that would have a cascading effect not intended by legislature in so far as the ultimate consumer is concerned. Therefore, even approaching from the view point of ensuring that the object with which the provision has been enacted is satisfied, if the facts of the present case are tested, the answer would be that the petitioner was entitled to avail of the modvat credit, the petitioner having done all that was possible within its powers and nothing further remained to be done so far as the petitioner was concerned.'*

11. Similarly, the Bombay High Court in ***Marmagoa Steel Limited's*** case (supra) [2005(192) ELT 82 (Bom.)] recorded thus:-

> *"10. For availing the credit of duty, what is required to be established under Rule 57G is that the inputs received are in fact duty paid. The procedure set out in Rule 57G of the Central Excise Rules is to ensure that the credit is taken on the basis of duty paid documents. The bill of entry is one such document set out in Rule 57G. The said rule does not require that the bill of entry should be in the*

name of the person claiming credit of duty. It is not in dispute that the goods imported and cleared on payment of duty by one person can be used as inputs and credit of duty can be claimed by another person by establishing that the imported duty paid goods have been received as inputs and that the importer has not taken credit of that duty. In the present case, it is established that the duty paid goods are received as inputs, however, the credit is denied on the ground that the Bill of entry is not endorsed in the name of the appellant. Rule 57G does not require that for taking credit of duty, the bill of entry should be endorsed in the name of the claimant. Counsel for the revenue could not point out any provision of law in the Act or the Rules regarding the endorsement of bills of entry. In the absence of any provision regarding endorsement on the bill of entry, the credit of duty cannot be denied on the ground that the bill of entry is not endorsed in the name of the claimant. As stated here above, what is required to be established for taking credit of duty is that the goods used as inputs are duty paid and that the credit of duty paid on the said goods has not been taken. In the facts of the present case, the evidence on record i.e. the bills of entry together with the certificates issued by excise authorities at Surat and Goa clearly show that the goods imported and cleared under the bills of entry on payment of duty were received and utilized by the appellant as inputs in its factory and that the importer has not utilized the credit of duty paid on the said goods. Thus, the appellant has established that the inputs received under the bills of entry were duty paid and therefore, the authorities below were not justified in denying the credit of duty to the appellant. The two decisions relied upon by the Tribunal do not support the case of the revenue. In the case of Balmer Lawrie & Co. (supra), the issue was not relating to the endorsement on the bills of entry and therefore, the said decision is distinguishable on facts. Similarly, the decision of the tribunal in the case of Tata Iron and Steel Co. Limited (supra) is also distinguishable on facts as the said decision is based on erroneous concession made by the counsel for the appellant therein that in the case of Balmer Lawrie & Co., it is held that the Modvat credit is not available on the basis of endorsed copies of bills of entry."

12. In the present cases, the Assessing Officer was not justified in declining the benefit of input tax credit only on the ground that the tax invoices did not contain the name of the buyer and also its TIN number. No doubt, non-mentioning of the name and the TIN number can be a circumstance, but it cannot be held to be conclusively against the purchaser. The judgment cited by learned counsel for the State in ***Babu Verghese's*** case (supra) [(1999) 3 SCC 422] was different. The question involved therein was validity of extension granted by the Bar Council of India to existing members of Kerala Bar Council (KBC) under proviso to Section 8 of the Advocates Act, 1961 and consequent validity of elections held by KBC during the extended term.

13. In such circumstances, we find that the matter requires to be remanded to the Assessing Officer who shall consider the matter afresh and shall not reject the tax invoice only on the ground that it does not contain the name of the buyer and its TIN number where the buyer is able to justify the genuineness of the transaction by producing evidence before him. Ordered accordingly. Consequently, the impugned orders Annexures A-1, A-2, A-4 and A-7 are set aside. All the appeals stand disposed of as such"

14. In view of the above, the appeals are disposed of in the same terms as in M/s New Devi Grit Udyog, Raiseena, Gurgaon's case (supra).

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PUNJAB & HARYANA HIGH COURT

CEA NO. 2 OF 2015

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COMMISSIONER OF CENTRAL EXCISE
Vs
SARON MECHANICAL WORKS

A.K. MITTAL AND RAMENDRA JAIN, JJ.

14th October, 2015

HF ▶ Assessee

The clubbing of units to deny SSI exemption without proving the unit as dummy being a question of fact warrants no interference by High Court.

EXCISE DUTY – SSI EXEMPTION –CLUBBING OF TWO UNITS FOR ESTIMATING CLEARANCES- FACTORY PREMISES OF FIRM A SEARCHED - CONCLUSION DRAWN REGARDING FIRM A AND APPELLANT FIRM HAVING JOINTLY CROSSED THE DUTY EXEMPTION LIMIT AVAILABLE TO SSI UNITS – DEMAND RAISED AGAINST BOTH RESPONDENT UNITS BY CLUBBING THEIR CLEARANCES – ORDER SET ASIDE BY COMMISSIONER HOLDING THAT UNLESS APPELLANT UNIT WAS PROVED TO BE A DUMMY UNIT, CLUBBING OF CLEARANCES NOT PERMITTED – APPEAL BY REVENUE BEFORE TRIBUNAL DISMISSED HOLDING THAT TWO UNITS WERE SEPARATE - APPEAL BEFORE HIGH COURT ALLEGING TWO UNITS IN QUESTION TO BE ONE ON THE BASIS OF HAVING COMMON RAW MATERIAL, TELEPHONE, ELECTRICITY CONNECTION, ACCOUNTANT OFFICE - HELD : FINDINGS BY COMMISSIONER AND TRIBUNAL BASED ON FACTS AND NOT SHOWN PERVERSE BY REVENUE- APPEAL DISMISSED - *S. 6 OF THE CENTRAL EXCISE ACT, 1944; R. 9 OF THE CENTRAL EXCISE RULES, 2002*

Facts

A search was conducted in the factory premises of firm A. It was found that the firm A and the appellant's firm had together crossed the duty exemption limit of Rs 1 crore applicable to SSI unit, without being registered under the Act. Consequently, by clubbing together the clearances of both units, a demand was raised alongwith interest and penalty on both appellant's firm as well as firm A. The commissioner set aside the order holding that unless the appellant's firm was proved to be a dummy unit, clearances of both the units in question could not be clubbed. Mere statement of the proprietors and employees was not enough to prove clandestine removal. The orders of the adjudicating authority were set aside holding that units of both respondents were separate to each other as appellant's unit was working since 1994 and the other firm since 2001. An appeal is thus filed by revenue.

Held

It was contended by the revenue that both respondents had stored their raw material without separate records. Even electricity, telephone, computer, office accountant were common. They were dependent on each other as they were issuing sale bills as per their requirement. They

had fragmented their sales to avail exemption fraudulently .Also, the proprietors had not retracted from their statement. On the other hand, the appellant has argued that both firms were separate manufacturers though availing certain common facilities.

It is held that the findings of the commissioner and the Tribunal are findings of fact not shown perverse in any manner by the appellant revenue. The appeal stands dismissed.

Cases referred:

- *Shiv Shakti Steel Tubes vs. Commissioner of Central Excise, Ludhiana, (2008) 221 ELT 166,*
- *Shiv Shakti Steel Tubes vs. Commissioner of Central Excise, Ludhiana, (2008) 227 ELT 122 (SC)*
- *Commissioner of Central Excise, Mumbai vs. Kalvert Foods India Pvt. Limited, (2011) 270 ELT 643 (SC)*
- *Commissioner of Central Excise, Madras vs. Systems and Components Pvt. Limited, (2004) 165 ELT 136 (SC)*

Present: Mr. Kamal Sehgal, Advocate for the appellant.
Mr. Sudeep Singh, Advocate for the respondent.

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AJAY KUMAR MITTAL, J.

1. This order shall dispose of CEA Nos.2 and 3 of 2015 as learned counsel for the parties are agreed that the issues involved in both the appeals are common. However, the facts are being extracted from CEA No.2 of 2015.

2. CEA No.2 of 2015 has been preferred by the revenue under Section 35G of the Central Excise Act, 1944 (in short, "the 1944 Act") against the order dated 10.8.2007, Annexure A.3 passed by the Commissioner (Appeals) and order dated 10.2.2014, Annexure A.4 passed by the Customs, Central Excise and Services Tax Appellate Tribunal, New Delhi (in short, "the Tribunal") in Appeal No.2916/07, claiming following substantial questions of law:-

> *"i) Whether the Hon'ble Tribunal has erred in not appreciating the statements of the proprietor of the M/s Jagatjit Agro Industries, Accountant of the M/s Jagatjit Agro Industries and Store Incharge admitting clandestine removal of the fact that the same have not been retracted during the entire proceedings? ii) Whether in the facts and circumstances of the case and clear cut admission by the proprietor of the M/s Jagatjit Agro Industries and other persons, the Hon'ble Tribunal has erred in not clubbing the clearances of both the units and ordering recovery of central excise duty as proposed in the show cause notice?"*

3. A few facts relevant for the decision of the controversy involved as narrated in CEA No.2 of 2015 may be noticed. On 10.6.2003, the Central Excise Preventive Officers, Ludhiana searched the factory premises of M/s Jagatjit Agro Industries on the strength of search warrants issued by the competent authority. It was found engaged in manufacturing of boring machines falling under sub head No.8430.00 of the Schedule to the Central Excise Tariff Act, 1985 (in short, "the 1985 Act") and exempted goods of agricultural equipment like reaper etc. It was not registered with the Central Excise department and was availing the benefit of duty exemption applicable to SSI unit in view of notification dated 1.3.2003. During search, it was found that the respondent M/s Saron Mechanical works and M/s Jagatjit Agro Industries jointly had crossed the duty exemption limit of Rs.1 crore and were clearing the dutiable goods without payment of appropriate Central Excise duty without obtaining Central Excise registration as required under section 6 of 1944 Act read with Rule 9 of the Central Excise Rules, 2002 (in short, "the 2002 Rules"). Consequently, show cause notice dated 5.1.2006 was served upon both the respondents proposing Central excise duty demand by clubbing their clearances. The adjudicating authority vide order dated 7.8.2006 confirmed the demand of duty amounting to Rs.17,37,954/- by clubbing the sale of both the respondents alongwith interest and penalty of

the equal amount of Rs.17,37,954/- on M/s Jagatjit Agro Industries. Similar amount besides penalty was imposed upon M/s Saron Mechanical Works. Aggrieved by the order, both the respondents preferred their separate appeals before the Commissioner (Appeals) who vide order dated 10.8.2007, Annexure A.3 allowed the appeals and set aside the order dated 7.8.2006. Not satisfied with the order, the department filed appeal before the Tribunal. Vide order dated 10.2.2014, Annexure A.4, the Tribunal dismissed the appeal holding that units of both the respondents were separate to each other as M/s Saron Mechanical works was working since the year 1994 whereas M/s Jagatjit Agro Industries had started working in the year 2001. Hence the instant appeals by the revenue.

4. We have heard learned counsel for the parties.

5. Learned counsel for the appellant-revenue submitted that the Tribunal failed to appreciate that the proprietors of both the units had not retracted from their statements as well as of their Accountant and Store Incharge made before the search team. Both the respondents had stored the raw material without maintaining any separate record regarding their respective manufacturing of boring machines by using raw material and machinery with the help of both the units as and when required. Even both the respondents were having common electricity connection, telephone, computer, office accountant. They were dependent on each other as they were issuing the sale bills as per their requirement. They had fragmented their sales in order to avail the benefit of SSI exemption fraudulently. The adjudicating authority had rightly clubbed the clearances of both the respondents removed by them in a clandestine manner. The Commissioner (Appeals) and the Tribunal ought to have relied upon the statements of the proprietors which were not under inducement or threat. Reliance was placed on judgments in ***Shiv Shakti Steel Tubes vs. Commissioner of Central Excise, Ludhiana,*** (2008) 221 ELT 166, ***Shiv Shakti Steel Tubes vs. Commissioner of Central Excise, Ludhiana,*** (2008) 227 ELT 122 (SC), ***Commissioner of Central Excise, Mumbai vs. Kalvert Foods India Pvt. Limited,*** (2011) 270 ELT 643 (SC) and ***Commissioner of Central Excise, Madras vs. Systems and Components Pvt. Limited,*** (2004) 165 ELT 136 (SC).

6. On the other hand, learned counsel for the respondent-assessees while supporting the impugned orders submitted that there was no justification in clubbing the clearances of both the respondents because the same could be done only when the other unit is dummy. In the present case, both the proprietors were separate manufacturers though they might be sharing certain facilities. Even otherwise, if the value shown in the show cause notice was taken as value of clearance, then also, the same did not exceed SSI benefit of Rs.1 crore by either of the two respondents even if taken on 50:50 basis.

7. While reversing the findings recorded by the assessing authority, the Commissioner (Appeals) categorically recorded that without declaring M/s Saron Mechanical works as a dummy unit, how their clearances could be clubbed with the clearances of M/s Jagatjit Agro Industries. The fact of clandestine removal of goods had not been proved. Mere quoting the statements of the proprietors and some of their employees was not enough. The value of clandestinely removed goods had not been adjudged. After considering the entire evidence on record, it was noticed by the Commissioner (Appeals) as under:-

> *"The duty from appellant No.1 has been demanded by clubbing the clearances of proprietary unit M/s Saron Mechanical Works (appellant No.2) owned by the father of Shri Jagatjit Singh, Prop. of the appellants No.1 firm. As per facts on record, during the visit on 10.6.2003 by the Central Excise officers to the appellants' units, some slips pads and loose slips relating to the appellants No.1 and 2 were recovered. The statement of one Shri Roji Thomas, was recorded on 10.6.2003 wherein he had stated that he was looking after as Store in charge in the appellant No.2 since 1.7.2001 and was also looking after the work relating*

to quality control of machines sold by the firm; that he was also Store in charge and quality controller of appellant No.2 because both the above firms had common raw material storage. The allegation of clandestine manufacture has been based on under mentioned grounds (1) manufacture and sale of 83 boring machines having value of Rs.66,00,000/- and these slip pads were issued mostly by one Shri Pala Ram and in some cases issuing person not known as detailed in Annexure 1. The date of issue was not mentioned on these slip pads but these have been considered for the year 2002-03. (2) Manufacture and sale of 13 Boring Machines valued Rs.16,25,000/- issued by Shri Roji Thomas details as per Annexure II. (3) the details of slip pads for the period 2003-04 issued by Shri Roji Thomas valued Rs. 75,00,000/-. (4) Loose slips issued during 2003-04 by Labh and Jassi. Anwar and Jassi contractors as per Annexure VII valued Rs.86,75,000/- apart from above in Annexures IV, V and VI details of machines have been mentioned which reflected the sale of machines entered in the register for the period June 2003, 2003-04 and 2002/03 respectively involving the value of Rs.24,50,000/- and Rs.3,80,000/- respectively.

In the defense, the appellants have specifically emphasized that the investigation officers had recorded the statement of Shri Roji Thomas who has been shown as writer of loose slips and he had also admitted that these machines noted in slip had been manufactured and the version was subsequently confirmed by the respective proprietor of appellants No.1 and appellant No.2. They have specifically argued that there is absolutely no such statement of writer of slips as mentioned in Annexure 1 and appellant No.2. They have specifically argued that there is absolutely no such statement of writer of slips as mentioned in Annexure 1 or by the person shown as contractor shown in Annexure 7. Their contention is that if the value of those machines listed in annexures 1 and 7 respectively is excluded even then value of the sale attributed to both the units does not exceed the duty free limit of Rs.1 crore in any financial year. That the perusal of Annexure 1 to the show cause notice would reveal that its heading is detailed of slip pads wherein date of issue was not mentioned. Therefore, the head itself suggests that the dates were not mentioned on the slips and had it not been made clear and elaborated by the adjudicating authority that how the department has included the alleged sale shown as sales for the year 2002-03. Further under heading - slips issued by - in this annexure either it has mentioned "not known" or the name Pala Ram has been mentioned. In the entire proceedings I find that there is nothing on record about any statement of the said Pala Ram who had been claimed to be the person having issued these slips by the department and why he was not confronted with these slips and why his statement was not on record. In these circumstances the plea of the appellants finds force that either author of the loose slips was unknown or it was Shri Pala Ram whose role has not been proved by any evidence. In these circumstances rather no evidence either to the effect that who has prepared/authored these loose slips or by whom these machines were made, had been brought on record, it is difficult to hold that the said machines were manufactured and removed by the appellants in a clandestine manner. For placing reliance on such records i.e. loose slips it is necessary that at least author of these slips should have been examined and their statements should have been recorded supporting the charge that they have prepared these slips. In respect of Annexure VII which carries the details of loose slips there is no mention of persons who or by whom these slips were issued rather whom these slips were issued rather this annexure bears a column "Name of contractor"

wherein certain name e.g. Labh and Jassi, Anwar and Jassi etc. have been mentioned. No statements of such persons have been brought on record in support of charge of the revenue that the machines mentioned as per this annexure were manufactured by them as discussed above. Further, these annexures are silent about to whom these machines or any of the machine was sold. In respect of annexure 1 and annexure VIII it is also observed in absence of statement of these persons who have allegedly manufactured these machines, no reliance placed on these loose slips which is relevant to issue i.e. no evidence in respect of procurement of inputs with reference to alleged clandestine manufacture/clearances of goods mentioned in these two annexure I and VIII has been brought on record. Neither there is any evidence on record to the effect that as to whom the said machines after manufacture were cleared. Therefore, thus keeping in view these facts, it is difficult to sustain charge of clandestine removal of goods mentioned in annexures I and VII. Further, the appellants also contested the issue clubbing of both the appellants as the department has clubbed the clearances of appellants M/s Saron Mechanical Works. Bhikhi Road Cheema Mandi i.e. appellant No.2 for calculating the value of the goods in a particular year. Their contention is that without declaring the unit i.e. M/s Saron Mechncial Works, Bhikhi Road Cheema Mandi as declaring unit, how the clearances of both the units are clubbed. It has been argued by the appellants that the unit is not dummy rather the unit is owned by father of the owner of the unit of appellant No.1 and No.2 have been clubbed. I find even Shri Roji Thomas, whose statements relied upon for including the clearances mentioned on slips as per annexures II and III has also stated that he was working for appellant No.2 as Store in charge since July 2001 and that he was also Quality Controller of unit No.1. This means it is not much in dispute that there existed two units one each of appellant No.1 and appellant No.2 and both were the manufacturers.

The adjudicating authority in the impugned order has not discussed annexures I to VII on the basis of which the demand has been made. The fact of clandestine removal has not been proved in the impugned order. Mere quoting the statement of the proprietors and some of their employees who have stated that they were in need of financial assistance was not enough. The value of clandestinely removed goods has not been adjudged. This case was of crossing the sale of ' 1 crore notice had contested the authority of the slip pads and loose slips which were the basis of arriving at the alleged clandestine removal and duty demand in the show cause notice. But the adjudicating authority has not discussed the annexures and their authenticity for confirming the demands."

8. The Tribunal upheld the findings recorded by the Commissioner (Appeals). The relevant findings recorded by the Tribunal read thus:-

"5. After hearing both the sides, I find that admittedly M/s Saron Mechnical Works was established in 1994, the same cannot be held a dummy unit of M/s Jagatjit Agro Industries, which was established in 2001. A unit which was already working for almost six to seven years cannot be held to be a dummy of another unit which is yet to come into existence.

Otherwise also, I find that it is not the revenue's case that both the units are not having complete machinery so as to manufacture the goods in question. Merely because a common electricity connection was used by both the units by itself will not make it a dummy of one another. Similarly, a common accountant

or a common store room for raw materials cannot be held to be a reason for clubbing the clearances of both the units when there is no dispute about both the units being complete in themselves and manufacturing goods independently of each other."

9. The findings recorded by the Commissioner (Appeals) and the Tribunal are pure findings of fact which have not been shown to be illegal or perverse in any manner by the learned counsel for the appellant. The view adopted by the Commissioner (Appeals) and the Tribunal is a plausible view based on appreciation of material on record and, therefore, does not warrant any interference by this Court. The judgments relied upon by the learned counsel for the appellant being based on individual fact situation involved therein do not come to the rescue of the appellant. Consequently, no substantial question of law arises. The appeals stand dismissed.

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PUNJAB & HARYANA HIGH COURT

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CWP NO. 6089 OF 2015

JBJ PERFUMES PVT. LTD.
Vs
UNION OF INDIA AND ANOTHER

A.K. MITTAL AND RAMENDRA JAIN, JJ.

5th October, 2015

HF ▶ None

Matter remanded for determining as to Whether Excise duty is to be paid on Toilet preparations containing alcohol despite having paid it under the Medicinal and Toilet Preparations (Excise Duty) Act, 1955

MEDICAL AND TOILET PREPARATIONS CONTAINING LIQUOR -WHETHER EXCISE DUTY IS LEVIABLE UNDER THE ACT OF 1944 – EXCISE DUTY ALREADY PAID UNDER THE MEDICINAL AND TOILET PREPARATIONS (EXCISE DUTY) ACT, 1955 - DEMAND RAISED UNDER THE CENTRAL EXCISE ACT, 1944 DESPITE EXEMPTION BEING GRANTED ON SAID GOODS – WRIT FILED CONTENDING PAYING EXCISE DUTY UNDER THE ACT OF 1944 WOULD AMOUNT TO DOUBLE TAXATION – MATTER REMANDED TO DECIDE AFRESH CONSIDERING THE POINT OF DOUBLE TAXATION - *MEDICINAL AND TOILET PREPARATIONS (EXCISE DUTY) ACT, 1955*

Facts

The petitioner had been manufacturing various toilet preparations containing alcohol in Baddi. A demand was raised under the Central Excise Act, 1944 ignoring the fact that the items were excisable under the Medicinal and Toilet Preparations (Excise Duty) Act, 1955. Also, the items were exempted from excise duty under the Act of 1944 for a period of 10 years if they were manufactured in Himachal Pradesh. The exemption had been obtained through a license from the state authorities. The department insisted that the petitioner should pay duty on its product which it did not pay but paid it under the Act of 1955.An order was passed against the petitioner. A writ is thus filed contending that paying duty under the said Act would amount to double taxation.

Held

The issue regarding exemption of goods manufactured in state of H.P under the Act has not been considered by the authorities. The case is thus remanded for fresh decision In accordance with law.

Case referred:

- *USV Ltd, Vs. State of Maharashtra, 2009 (234) E.L. T. 587 (Bom.)*

Present: Mr. Jagmohan Bansal, Advocate for the petitioner.
Mr. Kamal Sehgal, Advocate for the respondent No. 2.

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RAMENDRA JAIN, J.

1. The petitioner prays for quashing the order dated 16.03.2015 (Annexure P-7) passed by respondent No.2-Commissioner of Central Excise and Service Tax Chandigarh-I, confirming the demand of Central Excise Duty of Rs.11,53,316/- including Education Cess of Rs.22,614/- for the clearance made during the period 01.03.2005 to 16.06.2005 and recovery under Section 11A of the Central Excise Act, 1944 (for short 'the Act') along with interest under Section 11AB of the Act.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner installed a unit in the year 2003-04 at Baddi (Himachal Pradesh) for manufacturing various toilet preparations containing alcohol. Respondent No. 2 raised demand from the petitioner under Section 11A of the Act by holding that the goods manufactured by it fell under Chapter heading 33030050 and were liable to excise duty under the Act, ignoring the fact that the petitioner was not liable to pay excise duty under Medicinal and Toilet Preparations (Excise Duty) Act, 1955 (hereinafter referred to as `the Act of 1955'), because as per entry No. 84 of List-I (Union List) of 7th Schedule to Constitution of India, duty of excise on Medicinal and Toilet preparations containing alcohol or opium, Indian hemp and other narcotics drugs had been the subject matter of Union List and, thus, under Article 268 of the Constitution of India, the excise duty on the products made by petitioner had to be leviable by Government of India and not by the State, but the State Government had only been empowered to collect the same. Since, as per Entry 51 of List-II (State List) of 7th Schedule of Constitution, the State Government had right to levy duties of excise only on liquors for home consumption and not on medicinal and toilet preparations containing alcohol or opium, therefore, respondent No. 2 had acted illegally and arbitrarily in passing the impugned order. As per Notification No. 50/2003- C.E. Dated 10.06.2003 (Annexure P-1), the goods manufactured in the States of Himachal Pradesh and Uttrakhand were exempted from excise duty for a period of 10 years from the date of commencement of production. The petitioner in view of the aforesaid notification was entitled for exemption from payment of Central Excise Duty leviable under the Act, on the ground that the toiletry products made by it with the help of liquor were liable for duty under the Act of 1955 only as there was no exemption of duty under the said Act of 1955. Hence, the petitioner filed a declaration with respondent No. 2 claiming exemption from duty leviable under the Act after obtaining the license dated 04.06.2003 (Annexure P-2) from the State Excise Authorities. The petitioner during March, 2005 to June, 2005 procured liquor without payment of duty, but paid duty on finished goods leviable under the Act of 1955. However, respondent No. 2 insisted the petitioner to pay duty on its products under the Act which it did not pay because of the above reason. Hence, respondent No. 2 issued a show cause notice dated 28.03.2006 (Annexure P-5) and then slept over the matter till 24.09.2013 i.e. for around more than seven years on which date the matter was fixed for personal hearing. Thereafter, the matter was again delayed upto 12.01.2015, on which date the petitioner appeared before respondent No. 2, for personal hearing. The petitioner in its reply categorically pointed out to respondent No. 2 that the products manufactured by it containing liquor were not covered under Chapter note 1(d) of Chapter 33 and thus, were not liable to levy of duty. However, respondent No. 2 passed the impugned order illegally and arbitrarily. Hence the instant writ petition.

3.We have heard learned counsel for the parties.

4. Learned counsel for the petitioner argued that the impugned order passed by respondent No. 2 is a cryptic and whimsical order. Respondent No.2 had exceeded his jurisdiction in passing the same. The petitioner could not be taxed twice, because once it had paid the excise duty under the Act of 1955, in that event, it was not liable to pay the excise duty under the Act also, as payment of excise duty under the Act would tantamount to double

taxation. By referring to Chapter 33 of the Central Excise Tariff Act, 1985, Section 11A of the Act, Article 268 of the Constitution, entry No. 84 of List-I (Union List) of 7th Schedule to Constitution and Entry 51 of List-II (State List) of 7th Schedule of Constitution, he prayed for quashing of impugned order dated 16.03.2015 (Annexure P-7). In support of his arguments, he placed reliance upon judgment of the Bombay High Court in ***USV Ltd,* Vs. *State of Maharashtra, 2009 (234) E.L. T. 587 (Bom.).***

5. On the other hand, learned counsel for respondent No. 2 while refuting the above arguments prayed for dismissal of the petition.

6. As per entry No. 84 of List-I (Union List) of 7th Schedule of the Constitution of India, medicinal and toiletry preparations containing alcohol are made subject matter thereunder. Under Article 268 of the Constitution of India, the excise duty on such products is leviable by Government of India but the same has to be collected through the State. From the impugned order, it is evident that the petitioner manufactures various toiletry products containing alcohol. The stand of the petitioner is that it has already paid excise duty under the Act of 1955. Hence, *prima facie* it seems that demand of excise duty from the petitioner under the Act would amount to vexing it twice. More so, vide notification dated 10.06.2003 (Annexure P-1), the goods manufactured in the States of Himachal Pradesh and Uttrakhand are being exempted from excise duty for 10 years from the date of commencement of production under the Act. This issue has also not been considered by respondent No. 2. Hence, in our opinion, it would be expedient to remand the case back to respondent No. 2, for taking a decision afresh, after affording an opportunity of hearing to the petitioner and considering its stand including that raising the demand of any excise duty under the Act would tantamount to taxing it twice, more particularly, when the petitioner has already paid the excise duty under the Act of 1955.

7. Resultantly, the impugned order dated 16.03.2015 (Annexure P-7) is set aside and the matter is remanded back to respondent No. 2- Commissioner of Central Excise and Service Tax, Chandigarh-I, to pass a fresh order after affording an opportunity of hearing to the petitioner, in accordance with law. Needless to say, nothing observed herein before shall be taken to be expression of opinion on the merits of the controversy.

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PUNJAB VAT TRIBUNAL

APPEAL NO. 210 OF 2014

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SUDHIR POWER PROJECTS PVT. LTD
Vs
STATE OF PUNJAB

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

17th August, 2015

HF ▶ Revenue

Penalty upheld where factual scenario supported the contention of the authorities that goods sent for branch transfer were actually meant for sale to another firm.

PENALTY – CHECK POST/ ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – STOCK TRANSFER – GOODS SENT FROM HEAD OFFICE AT JAMMU TO MOHALI BRANCH AS PER INVOICE – VAT XXXVI GENERATED -SUBSEQUENTLY, GOODS TAKEN TO GURDASPUR – VEHICLE CHASED BY STAFF - GOODS SUSPECTED TO BE MEANT FOR SALE TO ANOTHER FIRM INSTEAD OF BRANCH TRANSFER AT MOHALI – PENALTY IMPOSED – APPEAL BEFORE TRIBUNAL- ADMISSION BY DRIVER REGARDING DIRECTION TO HIM BY OWNER TO DELIVER GOODS AT GURDASPUR TAKEN INTO ACCOUNT -NO INVOICE SHOWN WITH REGARD TO SALE TO THE GURDASPUR FIRM – INVOICE ISSUED BY MANUFACTURING UNIT AT JAMMU FOUND INGENUINE – GR MANIPULATED BY THE APPELLANT – NO TAX PAID TO STATE OF PUNJAB ON SALE OF SUCH GOODS — OBSERVATIONS OF AUTHORITIES BELOW FOUND WELL FOUNDED – ATTEMPT TO EVADE TAX ESTABLISHED - APPEAL DISMISSED – *S. 51(7)(c) OF PVAT ACT, 2005*

Facts

The goods were in transit from Jammu to Mohali. The documents were produced at Madhopur ICC showing branch transfer of these goods to Mohali. The goods were however taken to a place in Gurdaspur District. The staff chased it and found that the goods were to be unloaded at M/s Ghuman Stone Crusher. Penalty u/s 51 was imposed as the transaction in question was sale not covered by proper documents. On dismissal of appeal be the authorities below, an appeal is filed before Tribunal.

Held

The authorities below have observed that the invoice produced showed stock transfer from Jammu and Kashmir to Mohali office. It was nowhere mentioned that the goods were to be

unloaded at M/s Ghuman stone crusher. No invoice in this regard was issued by the manufacturing unit.

The driver had admitted that the owners had directed him to take the goods to Gurdaspur.

The invoice does not indicate payment of tax to the state of Punjab. The payment has been made to Haryana unit for the sale of goods. No reason is given why it is given to Haryana branch.

The GR is manipulated by the consignor as it shows the goods being taken to Mohali whereas the goods were dispatched to Gurdaspur.

Thus it is concluded from the findings of the authorities below that the appellant was engaged in various stock transfer activities on improper documents with a view to avoid tax liability. The appeal is dismissed.

Present: For the Appellant: Mr. J.S. Bedi, Advocate

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

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

1. This appeal is directed against the order dated 26.07.2013 passed by the Deputy Excise and Taxation Commissioner-cum-Joint Director (Investigation), Jalandhar (herein referred as First Appellate Authority) dismissing the appeal against the order dated 9.6.2010 passed by the Assistant Excise and Taxation Commissioner, Information Collection Centre, Madhopur (herein referred as the Designated Officer), imposing a penalty of Rs. 6,56,250/- under section 51 (7) (b) of the Punjab Value Added Tax Act, 2005 (herein referred as Act of 2005). On 28.05.2010, the driver while driving the vehicle bearing No. PB-09K-9602, carrying the generator set, came from Jammu side and reached the ICC, Madhopur and produced the following documents:-

1. *G.R. No. 12809 dated 26.05.2010.*
2. *Packing Slip No. 25351403 dated 26.05.2010 of M/s Sudhir Genset Jammu.*
3. *Invoice No. 41100268 dated 26.05.2010 of M/s Sudhir Gen Set Limited Jammu for Rs. 15,00,000/- addressed to M/s Sudhir Power Projects Pvt. Ltd. Sohana District Mohali*
4. *Lorry challan No. 11240 dated 26.05.2010.*
5. *Photo copy of entry Tax Receipt No.3120/27 dated 28.05.2010 for Rs. 1,87,500/- issued by D.O., Mohali.*

2. On scrutiny of the documents, it came to light that Form VAT-36 was generated for taking the goods to Sohana, District Mohali. However after generating VAT-36, the driver along with the vehicle took the same towards village Behariam Bajurg, District Gurdaspur. The vehicle was chased by the barrier staff by adopting the escape route and caught near the entry way of Ghuman Stone Crusher. When confronted, the driver made a statement that as per directions issued to him, he was to unload the D.G. set at M/s Ghuman Stone Crusher, Village Beharian Bejurg in Gurdaspur District. He is not in possession of any such bill which may have been issued by the firm M/s Sudhir Power Projects Pvt. Ltd., Mohali in favour of M/s Ghuman Stone crusher in order to justify and cover the present transaction regarding making of sales to him M/s Ghuman Stone Crusher, Village Beharian Bejurg.) The vehicle was brought back to the ICC, the Detaining Officer issued a notice on 29.5.2010 to the appellant in response to which the appellant appeared on 30.05.2010, but failed to explain the irregularities.

3. The Detaining Officer then forwarded the case to the Designated Officer who also

issued notice on 31.5.2010 for 8.6.2010 in response to which Shri Anil Kumar, AGM Commercial of M/s Sudhir Power Projects Mohali along with Shri Janak Raj of M/s Ghuman Stone Crusher, Beharian Bejurg, District Gurdaspur appeared. When confronted with the detection report and was asked to produce the account books as well as the relevant record, the appellant failed to explain anything and also did not produce any record, document or evidence in the shape of the account books in order to show that the transaction was recorded in the account books. Shri Janak Raj admitted before the Designated Officer that D.G. Set was infact to be unloaded at their premises and they had already made the payment while ordering the D.G. Set and driver was not equipped with all the relevant documents. He also admitted that no bill invoice or document was issued in the name of M/s Ghuman Stone Crusher by M/s Sudhir Power Projects Pvt. Ltd., Sohana S.A.S. Nagar, Mohali (Punjab.)

4. In the aforesaid circumstances, the Designated Officer made the following observations:-

1. *The goods which are meant for trade are not covered by the proper and genuine documents. There remains no doubt or delusion that attempt to evade/ avoid tax has certainly been made by the owner of the goods, therefore, it imposed penalty to tune of Rs. 6,56,250/- under section 51 (7) (b) of the Punjab Value Added Tax Act, 2005.*

5. On appeal, the Deputy Excise and Taxation Commissioner while dismissing the appeal observed as under:-

1. *The goods were actually dispatched to Beharian Bejurg. Entry Tax was paid at the ICC, but the value declared for entry tax purpose was shown as Rs. 15,00,000/- as mentioned on branch transfer invoice. Whereas the actual price was more than what was disclosed by the appellant. The appellant himself admitted that the value of the gen. set was Rs. 17,06,250/- which too was received by the Haryana Branch of the Company, the payment should have been made to the said branch. The appellant indulged in stock transfer on improper documents. The documents were manipulated just avoid the tax.*

6. Arguments heard. Record perused.

7. The appellant firm having its head office at New Delhi allegedly branch office at Mohali. The goods were being imported from unit situated in the State of Jammu and Kashmir on 28.05.2010. According to the appellants the generator set was brought as a branch transfer from Jammu to Mohali. The VAT-XXXVI was generated at Madhopur for Landra (Mohali). This place is at distance of 150 yards from place, where the driver/ actually was to unload the generator set. The vehicle was stopped by adopting the escape route by the officials of ICC Madhopur. The appellant has not produced any documents in order to prove that the manufacturing unit had issued any invoice in favour of M/s Ghuman Store Crusher or had an agreement with Sudhir Power Project (P) Ltd., Sohana, District Mohali or if there was an agreement with Sudhir Power Projects (P), Mohali or M/s Sudhir Power Projects (P) New Delhi for branch transfer of the goods. The VAT Invoice dated 26.05.2010 indicates that the goods were to be taken at Shop No.02, 1st Floor, Sood Market, Landran Road, Sohana S.A.S. Nagar, Mohali (Punjab) as sent by M/s Sudhir Gensel Jammu. As per invoice goods were to be unloaded at Sohana, Mohali and not at Beharian Bejurg. The driver did not produce any invoice in favour of M/s Ghuman Stone Crusher, Village Beharian Bejurg .He also admitted that though the Gen. Set was taken to Mohali yet the owners had directed him to unload the Gen. Set has Ghuman Stone Crusher, Village Beharian Bejurg. The driver had to gain nothing for making such a statement. The invoice does not indicate the payment of tax on sale of gen. set in Punjab. The invoice issued on 28.5.2010 by M/s Sudhir power Project (P) Ltd., Landran Road,

Sohana, S.A.S. Nagar, Mohali appears to be manipulated after the goods were checked by the ICC staff. No such invoice was produced by the driver at the time of detention. Since the date of detention i.e. 26.5.2010 till 9.6.2010, when the penalty was imposed by the Designated Officer. Had the appellant been in possession or issued the invoice after 26.5.2010 and before 28.5.2010, then he would have produced the same forth with as an evidence of payment of tax on the said transaction. The appellant has produced two invoices. The First invoice is purported to have been issued on 28.5.2010 and subsequently, it was cancelled and new invoice was issued on 10th June, 2010 for the reasons best known to the appellant. The false G.R. appears to have been prepared by the consignor of Sohana whereas the goods were actually dispatched to Beharian Bejurg. Even The payment for the gen. set was not made to the Punjab, Branch, but it was made to Haryana Unit and it is not explained as to why the payment was made to Haryana Branch of the appellant. All this goes to show that the appellant was indulging various stock transfer on improper documents which are being prepared with the intention to avoid tax liability.

8. Having gone through the orders passed by the authorities below, the same appear to be well founded and well reasoned and no grounds for interference are made out.

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

10. Pronounced in the open court.

PUNJAB VAT TRIBUNAL

APPEAL NO. 351 OF 2013

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ASHIRWAD SALES CORPORATION
Vs
STATE OF PUNJAB

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

19th October, 2015

HF ▶ Revenue

Challenge to the power of appellate authority to decide appeals cannot be raised after dismissal of the appeal by such authority during second appeal.

APPEAL – PREDEPOSIT – ENTERTAINMENT OF – APPELLATE AUTHORITY – DISMISSAL OF FIRST APPEAL DUE TO NON COMPLIANCE OF PREDEPOSIT – APPEAL BEFORE TRIBUNAL CHALLENGING POWER OF FIRST APPELLATE AUTHORITY TO DECIDE ITS MATTER CONTENDING THAT DETC WAS VESTED WITH ONLY ADMINISTRATIVE POWERS – APPELLANT STOPPED FROM TAKING SUCH PLEA AT THIS STAGE AS IT WERE NEVER TAKEN EARLIER – NON COMPLIANCE OF PREDEPOSIT U/ S 62(5) BEING MANDATORY, APPEAL WAS RIGHTLY NOT ENTERTAINED – APPELLANT GRANTED FURTHER TIME FOR PREDEPOSIT FOR ENTERTAINMENT OF ITS APPEAL BEFORE FIRST APPELLATE AUTHORITY – *S. 62(5) OF PVAT ACT, 2005 AND RULE 71(3) OF PVAT RULES*

Facts

First appeal of the appellant was dismissed on the ground of non compliance of predeposit u/s 62(5) of PVAT act, 2005. On filing of appeal before Tribunal, the appellant has contended that the DETC did not have the power of appellate authority to decide his appeal as she was vested with only administrative powers.

Held

The appellant is stopped from raising the objection regarding the authority of the DETC at this stage as it was never raised earlier. The compliance of S. 62(5) is mandatory. The requirement of predeposit was not fulfilled by the appellant due to which appeal could not be entertained by DETC. Finding no merits the appeal was rightly not entertained by the authorities below. Thus, two months time is granted to the appellant to comply with the condition of predeposit for entertainment of appeal by first appellate authority..

Presents: Mr. Hitesh Garg, Advocate counsel for the appellant.
Mr. S.S. Brar, Additional Advocate General for the State.

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

1. This appeal is directed against the order dated 15.5.2013 passed by the Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana (herein referred as First Appellate Authority) dismissing the appeal of. tee appellant against tee order dated 28.3.2013 passed by the Excise and Taxation Officer-cum-Designated Officer, Ludhiana-Ill for the assessment year 2006-07 creating additional demand of Rs.2,70,81,836/- under the Punjab Value Added Tax Act, 2005, for non compliance of Section 62 (5) of the Punjab Value Added Tax Act, 2005.

2. The Counsel for the appellant has raised the only contention that Mrs. Kanwal Preet Brar, Deputy Excise and Taxation Commissioner, Ludhiana Division, Ludhiana had only administrative powers and was not vested with the appellant powers, therefore, she was not competent to decide the appeal against the appellant.

3. To the contrary, the Counsel for the appellant has taken me through a letter issued by the Excise and Taxation Commissioner, Punjab, Chandigarh whereby, Smt. Kanwal Preet Brar, Deputy Excise and Taxation Commissioner was conferred with the powers of the appellate authority on 9.5.2013, whereas, this appeal was decided on 15.5.2013. He has also contended that even otherwise since the appeal was dismissed U/s 62 (5) of the Act ex-parte therefore, now the appellant cannot come to contend before the Tribunal in this second appeal that the Deputy Excise and Taxation Commissioner was not competent to hear and decide the appeal.

4. After hearing the arguments of both toe parties, I do not countenance the contentions as raised by the counsel for the appellant. After filing the appeal, the appellant did not appear before the Deputy Excise and Taxation Commissioner to challenge her competency to decide the appeal. Now he is estopped to raise such objection before the Tribunal. Secondly Smt. Kanwal Preet Brar was the Deputy Excise and Taxation Commissioner and vested with ail the powers under the Act. Even otherwise, she was vested with ail the appellate powers vide letter dated 9.5.2013 U/s 3 of the Act, 2005 issued by the competent authority, therefore, she cannot be said to be not competent to decide the appeal.

5. Assuming for the sake of arguments that the Deputy ***& EXCISE AND*** Taxation Commissioner was not vested with the powers of the Authority, yet the objection as raised by the State goes to the route of the case and could be checked even by the Tribunal while exercising its powers under the Act. Vide Section 62(5) of the Act and Rule 71 (3) of the Rules framed and the Act, legislature has imposed a mandatory duty upon the appellant to deposit 25% of the additional demand before the appeal is filed before the First Appellate Authority. Admittedly, no compliance under Section 62 (5) of the Act and Rule 71(3) of the Rules have been made by the appellant before filing the appeal, therefore, such appeal could not be entertained by the Deputy Excise and Taxation Commissioner, Ludhiana.

6. The merits of the case have to be seen at the time of disposal of the appeal at the final stage, but, as per the afore referred provisions, the appeal could be entertained, only if a receipt with regard to deposit of 25% of the *additional* demand is appended to the memorandum of appeal. Thus, the violation of the aforesaid Rules challenges the rights of the appellant to file the appeal.

7. Resultantly, finding no merits in the appeal, the same was rightly not entertained, however, the appellant is granted two months more time to comply with Section 62 (5) of the Act and Rule 71 (3) of the Rules framed under the Act. On doing so, the appeal shall be entertained and decided by the First Appellate Authority, Ludhiana Division, Ludhiana on merits.

8. Pronounced in the open court.

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NOTIFICATION (Chandigarh)

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NOTIFICATION REGARDING AMENDMENTS IN SCHEDULE B & E OF PUNJAB VAT ACT, 2005

CHANDIGARH ADMINISTRATION
EXCISE & TAXATION DEPARTMENT

Notification

The 11th December, 2015

No. E&T-ETO (Ref.)-2015/3646 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 in this behalf, the Administrator, Union Territory, Chandigarh, hereby makes the following amendments in Schedule 'B, and Schedule 'E appended to the said Act, by dispensing with the condition of previous notice with immediate effect, *namely:-*

AMENDMENT

1. In the said Schedule 'B, after Serial No. 157 and the entries relating thereto, the following Serial numbers and items shall be added, namely;

   "158. Coal, including coke in *all* its forms, but excluding charcoal"
   "159. Rice"
   "160. Wheat"
   "161. Paddy"

2. In the said Schedule 'E, at Serial No. 4 and the entries relating thereto, the following item and rate of tax shall be substituted, namely;

   "4. Petrol including Branded Premium Petrol - 24.74%"

3. In the said Schedule *E, Serial No, 5 and the entries relating thereto shall be deleted, namely;

   "5. Branded Premium Petrol - 22%"

4. In the said Schedule 'E, after Serial No. 10 and the entries relating thereto, the following Serial number, item and rate of tax shall be added, namely;

   "11. Automobiles - 13.2%"

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

SGA
LAW OFFICES

NOTIFICATION (Chandigarh)

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NOTIFICATION REGARDING LEVY OF LUXURY TAX ON HOTELS & BANQUETS

CHANDIGARH ADMINISTRATION
EXCISE & TAXATION DEPARTMENT

Notification

The 7th December, 2015

No. E&T/ETO (Ref.)-2015/3605 In supersession of the previous notification No. E&T/ETO (Ref.)-2011/2838 dated 20th September, 2011 and notification no. E&T/ETO (Ref.)-2011/2834 dated 20th September, 2011 and in exercise of the powers conferred by sub-section (1) of the Section 4 and sub-section (1) of the Section 5 of the Punjab Tax on Luxury Act, 2009 (Punjab Act No. 4 of 2009) as extended to the Union Territory of Chandigarh and all the other powers enabling him in this behalf, the Administrator, Union Territory, Chandigarh is pleased to levy with immediate effect, the tax @ 8% *ad valorem*, on all the proprietors of the banquet halls in respect of luxuries provided by them in the banquet halls and on all the proprietors of the hotels in respect of luxuries provided by them in the hotels.

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

NOTIFICATION (Punjab)

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THE PUNJAB DEVELOPMENT OF TRADE, COMMERCE AND INDUSTRIES (VALIDATION) ORDINANCE, 2015

PART II

GOVERNMENT OF PUNJAB

DEPARTMENT OF LEGAL AND LEGISLATIVE AFFAIRS, PUNJAB

Notification

The 14th December, 2015

No. 40-Leg./2015.-The following Ordinance of the Governor of Punjab, promulgated under clause (1) of article 213 of the Constitution of India on the 10th day of December, 2015, is hereby published for general information:-

THE PUNJAB DEVELOPMENT OF TRADE, COMMERCE AND INDUSTRIES (VALIDATION) ORDINANCE, 2015

PUNJAB ORDINANCE NO. 9 OF 2015

AN

ORDINANCE

to provide for the non discriminatory and compensatory levy of tax on the entry of specified goods into the local area for development of trade, commerce and industries and the matters connected therewith or incidental thereto.

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

Whereas the Legislative Assembly of the State of Punjab is not in session and the Governor is satisfied that 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 Punjab is pleased to promulgate the following Ordinance, namely:-

1. (1) This Ordinance may be called the Punjab Development of Trade, Commerce and Industries (Validation) Ordinance, 2015. — Short title and commencement.

(2) It shall be deemed to have come into force on and with effect from the 6th May, 2015.

2. In this Ordinance, unless the context otherwise requires,- — Definitions.

(a) "Appellate Authority" means an Authority appointed under section 3 of the Punjab Value Added Tax Act, 2005;

(b) "Board" means the Punjab Development of Trade, Commerce and Industries Board;

(c) "Business" includes,-

(i) any trade, commerce or manufacture or any venture or concern whether or not such trade, commerce, manufacture, venture or concern is carried on with a motive to make profit and whether or not any profit accrues therefrom;

(ii) any transaction in connection with or incidental or ancillary to such trade, commerce, manufacture, venture or concern; and

(iii) e-commerce transactions including direct buying and selling through electronic marketplaces and online shopping websites;

(d) "dealer" includes occasional dealer or any person, who in the course of business, whether on his own account or on account of his principal or any other person, brings or causes to be brought into a local area, goods specified in the Schedule or takes delivery or is entitled to take delivery of goods specified in the Schedule on its entry into the local area;

(e) "entry of goods" with all its grammatical or cognate expressions, means entry of goods into the State of Punjab from any place outside the State and through any mode of transport;

(f) "information collection centre" means the information collection centre or check post including temporary check post or both, as the case may be, established under section 51 of the Punjab Value Added Tax Act, 2005;

(g) "local area" means an area within the territorial boundaries of the State of Punjab;

(h) "occasional dealer" means a person who, in the course of occasional transactions of the business, whether on his own or on account of his principal or any other person, brings or causes to be brought into a local area, goods specified in the Schedule or takes delivery or is entitled to take delivery of goods specified in the Schedule on its entry into the local area;

(i) "person" includes any company or association or body of individuals whether incorporated or not, and also Hindu Undivided Family, a firm, a society, a trust, a club, an individual, a local authority, State Government, Central Government or any Union Territory or any other legal entity and also includes any person, who acts as a carrier of goods or the logistics partner, who on his own account or on account of seller or on account of any other person brings or causes to be brought or causes the

entry of goods into the local area, to be delivered to any person for consumption, use or sale;

(j) "prescribed" means prescribed by rules made under this Ordinance;

(k) "Schedule" means a Schedule appended to this Ordinance;

(l) "Scheduled goods" means any goods mentioned in the Schedule;

(m) "State" means the State of Punjab;

(n) "State Government" means the Government of the State of Punjab;

(o) "tax" means tax leviable under this Ordinance;

(p) "Tribunal" means the Tribunal constituted under section 4 of the Punjab Value Added Tax Act, 2005; and

(q) "value of goods" means the value of any goods as ascertained from purchase invoice or bill and includes value of packing material, packing and forwarding charges, insurance charges, amounts representing excise duty, countervailing duty, custom duty and other such duties, amount of any fee or tax charged, transport charges, freight charges and any other charges relating to purchase and transportation of such goods into the local area in which goods are being brought or received for consumption, use or sale therein:

Provided that where the goods ordered through e-commerce websites have been brought into the State by the seller or the logistics partner or carrier of goods, the value of goods shall be the value on original purchase invoice including value of packing material, packing and forwarding charges, amount of any fee or tax charged, transport charges, freight charges and any other charges relating to purchase and transportation of such goods into the local area.

Authorities for carrying out the purposes of this Ordinance.

3. The Commissioner, the Tribunal, the Chairman of the Tribunal, the Members of the Tribunal, the Appellate Authority, the Additional Commissioner, the Joint Commissioner, the Deputy Commissioner, the Assistant Commissioners and the Designated Officers appointed under the Punjab Value Added Tax Act, 2005 shall be the authorities for carrying out the purposes of this Ordinance.

Levy of tax.

4. (1) For the purpose of development of trade, commerce and industry in the State, there shall be levied and collected a tax, not exceeding twenty percent, on entry of goods specified in the Schedule into a local area for consumption, use or sale therein, from any place outside that local area, at such rate, as may be specified by the State Government by notification from time to time. Different rates may be specified in respect of different goods or different classes of goods :

Provided that the State Government may by notification exempt any class of persons or any transactions from payment of tax subject to such conditions, as may be notified:

Provided further that the goods being brought into the local area for further transfer outside the local area through consignment sale or branch transfer shall not be subject to this tax.

(2) The tax levied under sub-section (1), shall be payable by any person, who brings or causes to be brought into the local area, such goods, whether on his account or on the account of his principal or takes delivery or is entitled to take delivery of such goods on its entry into a local area:

Provided that tax levied under sub-section (1), shall be payable by the seller or the logistics partner or the carrier of goods, who brings or causes to be brought or causes the entry of goods into any local area, for delivery of such goods to any person for consumption, use or sale therein, on entry of such goods into the local area.

Validation of tax collected under Punjab Ordinance 1 of 2015.

5. Notwithstanding any judgment, decree or order of any court, the tax levied or collected or purported to have been levied and collected under section 4 of the Punjab Development of Trade, Commence and Industries Ordinance, 2015 (Punjab Ordinance No. 1 of 2015), during the period commencing from the 6th May, 2015 shall be deemed to have been validly levied and collected in accordance with this Ordinance and accordingly,-

(a) no suit or other proceedings shall be maintained or continued in any court for the refund of any tax so levied and collected ; and

(b) no court shall enforce any decree or order directing the refund of any of tax so paid.

Registration.

6. Every person registered under the Punjab Value Added Tax Act, 2005 Registration shall be deemed to be registered under this Ordinance. The logistics partner or the carrier of goods, who brings or causes to be brought or causes the entry of goods into any local area for any person, not registered under the Punjab Value Added Tax Act, 2005, for the value more than rupees five lacs, shall be liable for registration under this Ordinance, in the manner, as may be prescribed.

Returns.

7. (1) The returns filed by a person registered under the Punjab Value Returns. Added Tax Act, 2005 shall be treated as returns filed under this Ordinance.

(2) Any person who is liable to be registered under this Ordinance, but is not registered under the Punjab Value Added Tax Act, 2005, shall file returns under this Ordinance, as may be prescribed.

(3) A person who is registered under the Punjab Value Added Tax Act, 2005 shall declare the tax due under this Ordinance with his VAT returns and pay the same along with his returns.

(4) Notwithstanding anything contained in this section, the Commissioner or the designated officer, as the case may be, may by notice, direct a person other than a taxable person or a registered person to file returns at such intervals and in such form and containing such information, as may be required.

Administration and collection of Tax.

8. Subject to the provisions of this Ordinance and the Rules made thereunder, the authorities appointed under this Ordinance, shall be empowered on behalf of the Board to assess, revise, rectify, collect and enforce the payment of tax including interest and penalty, if any, payable by the person under this Ordinance, as if such tax, interest or penalty, if any, payable by the person, is a tax, interest or penalty payable under the

Punjab Value Added Tax Act, 2005. For this purpose, the aforesaid authorities may exercise all or any of the powers, exercisable by them under the Punjab Value Added Tax Act, 2005 and the Rules framed thereunder. The provisions of the Punjab Value Added Tax Act, 2005 relating to the information collection centre, detention of goods, returns, assessment, provisional assessment, revision, rectification, review, payment of tax in advance, registration, transfer of any business, appeals, refunds, rebates, charging or payment of interest, levy and payment of penalty, information to be furnished regarding change of business, imposition of tax liability, carrying on business on the transfer of successor to such business, transfer of any liability of any firm or Hindu Undivided Family to pay tax in the event of dissolution of such firm or partition of family, recovery of tax from

third parties, review references, compounding of offences and treatment of documents furnished as confidential, seeking information from any person shall apply mutatis mutandis.

Manner of payment of tax.

9. (1) In case entry into the local area is made through road, by a registered person, the tax shall be paid by such person along with returns.

(2) In case entry into the local area is made through road, by a unregistered person, he shall have the option to pay tax under this Ordinance either at the information collection center at the time of entry of goods into the local area or at the Office of the Assistant Excise and Taxation Commissioner of the concerned district in the manner, as may be prescribed.

(3) In case entry into the local area is made through Railway Stations, tax under this Ordinance shall be paid by the person at the information collection center located at Railway Stations or at the Office of the Assistant Excise and Taxation Commissioner of the concerned district in the manner, as may be prescribed.

(4) For any other kind of entry of goods into the local area by any other mode of transport, the tax shall be paid in the Office of the Assistant Excise and Taxation Commissioner of the concerned district in the manner, as may be prescribed.

Constitution of the Board

10. The Board shall consist of the following, namely:-

(i)	the Chief Minister of Punjab;	:	Chairman
(ii)	the Minister of Industries and Commerce, Punjab;	:	Vice-Chairman
(iii)	the Minister of Excise and Taxation, Punjab;	:	Member
(iv)	the Minister of Finance, Punjab;	:	Member
(v)	the Minister of Local Government, Punjab	:	Member
(vi)	the Chief Secretary, Punjab	:	Member
(vii)	the Principal Secretary Industries and Commerce, Punjab	:	Member
(viii)	the Principal Secretary Finance, Punjab; and	:	Member
(ix)	the Director Industries and Commerce, Punjab	:	Member Secretary

Functions of the Board

11. The functions of the Board shall be such, as may be prescribed.

Utilization of the proceeds of the tax

12. (1) The proceeds of the tax levied under this Ordinance shall be utilized exclusively for the development or facilitating trade, commerce and industry in the State and for other welfare measures for the general public in the local area, which shall include the following:-

(a) developing industrial estates, focal points and industrial clusters being developed by the State Government, providing financial aids, grants, incentives and subsidies to financial, industrial and commercial units;

(b) creating infrastructure for supply of electricity and water to specified trades, marketing and other commercial complexes;

(c) creating, development and maintenance of other infrastructure for the furtherance of specified trades;

(d) providing financial aids, grants and subsidies for creating, developing and maintaining pollution free environment in the local area;

(e) providing finance, aids, grants and subsidies to the local bodies and government agencies for the purposes specified in clauses (a), (b),(c) and (d);

(f) providing amenities to the public in the local area;

(g) implementing the social welfare schemes for public in the local area; and

(h) any other purpose connected with the development of trade, commerce and industry or for facilities relating thereto which the State Government may specify by notification.

(2) The proceeds of the levy under this Ordinance shall be transferred to the Consolidated Fund of the State and shall be utilized exclusively for the development of trade, commerce and industries of specified trade in the State.

Power to amend the Schedule.

13. The State Government, after giving fifteen days notice of its intention so to do, may, by like notification add to or omit goods and thereupon, the Schedule shall be deemed to have been amended accordingly:

Provided that if, the State Government is satisfied that circumstances exist, which render it necessary to take immediate action, it may, for reasons to be recorded in writing, dispense with the condition of previous notice.

Power of the State Government to make rules.

14. (1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing powers, the State Government may make such rules, as may provide for any other matter which has to be or may be prescribed.

(3) Every rule made under this Ordinance shall be laid, as soon as may be, after it is made, before the House of the State Legislature, while it is in session, for a total period of fourteen days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the successive sessions as aforesaid, the House agrees in making any

modification in the rules, or the House agrees, that the rules should not be made, the rules shall thereafter have effect only in such modified form or be of no effect, as the case may be. However, any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

Bar of jurisdiction.

15. No civil court shall have jurisdiction to entertain or decide any action relating to matters arising under this Ordinance.

Repeal and savings

16. (1) The Punjab Development of Trade, Commerce and Industries Ordinance, 2015 (Punjab Ordinance No. 1 of 2015), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Ordinance referred to in sub-section (1), shall be deemed to have been done or taken under this Ordinance.

"SCHEDULE"
[See section 2 (k) and 4(1)]

Serial No.	Name of the goods
1.	Sugar

Chandigarh,
The 10th December, 2015

PROF. KAPTAN SINGH SOLANKI,
Governor of Punjab.

H.P.S. MAHAL,
Secretary to Government of Punjab,
Department of Legal and Legislative Affairs.

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NOTIFICATION (Punjab)

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NOTIFICATION REGARDING AMENDMENT IN SEC. 25 OF PIDRA ACT, 2002

PART I
GOVERNMENT OF PUNJAB
DEPARTMENT OF LEGAL AND LEGISLATIVE AFFAIRS, PUNJAB

NOTIFICATION

The 27th November, 2015

No. 32-Leg./2015.-The following Act of the Legislature of the State of Punjab received the assent of the Governor of Punjab on the 10th day of November, 2015, is hereby published for general information:-

THE PUNJAB INFRASTRUCTURE (DEVELOPMENT AND REGULATION) AMENDMENT ACT, 2015.

(Punjab Act No. 27 of 2015)

AN

ACT

further to amend the Punjab Infrastructure (Development and Regulation) Act, 2002.

B*E* it enacted by the Legislature of the State of Punjab in the Sixty-sixth Year of the Republic of India as follows:-

Short title and commencement.

1. *(1)* This Act may be called the Punjab Infrastructure (Development and Regulation) Amendment Act, 2015.

(2) It shall come into force on and with effect from its publication in the Official Gazette.

Substitution of Section 25 of Punjab Act 8 of 2002

2. In the Punjab Infrastructure (Development and Regulation) Act, 2002, for section 25, the following section shall be substituted, namely:-

"25. *(1)* With effect from the date of coming into force of this Act, and

Levy of fee.

subject to the provisions of this Chapter, every person shall be liable to pay a fee levied under this Act on the sale or purchase of the goods specified in Schedule III, on the value of consumption of electricity being supplied by the Punjab State Power Corporation Limited and purchase of immovable properties, within the State of Punjab at a rate, not exceeding six rupees for every one hundred rupees of the value of goods, electricity consumed and purchase of

immovable property as the State Government may, by notification, direct.

(*2*) The fee shall be payable at the stage, mentioned in respect of goods in Schedule-III.

(*3*) Subject to the provisions of this Act and the rules made thereunder, the authorities for the time being empowered to assess, reassess, collect and enforce payment of tax under the Punjab Value Added Tax Act, 2005, shall, on behalf of the Punjab Infrastructure Development Board, assess, reassess, collect and enforce payment of fee, including any interest or penalty, payable by a person under this Act, as if such fee or penalty or interest payable by such a person, is a tax or penalty or interest, payable under the Punjab Value Added Tax Act, 2005, and for this purpose, the aforesaid authorities may exercise all or any of the powers, exercisable by them under the Punjab Value Added Tax Act, 2005 and the rules framed thereunder and the provisions of the Punjab Value Added Tax Act, 2005 relating to the returns, provisional assessment, assessment, reassessment, rectification, review, advance payment of tax, registration of transfree of any business, imposition of the tax liability, carrying on the business on the transfer of successor to such business, transfer of any liability of any firm or Hindu Undivided Family to pay tax in the event of dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, rectifications, references, refunds, rebates, interest or penalty, charging or payment of interest, compounding of offences and treatment of documents, furnished by a person as confidential, shall apply accordingly.

(*4*) *(i)* Subject to other provisions of this Act and the rules made thereunder, the authorities for the time being empowered to assess, reassess and collect and enforce electricity duty under the Punjab Electricity (Duty) Act, 2005 shall on behalf of Punjab Infrastructure Development Board also assess, reassess and collect and enforce payment of Infrastructure Development fee on the value of consumption of electricity including any interest or penalty payable by a person under this Act, as if, the fee or penalty or interest payable by such a person under this Act is a duty or penalty or interest payable by such a person under the Punjab Electricity (Duty) Act, 2005; and

(ii) Subject to other provisions of this Act and the rules made thereunder, such authorities, who are presently engaged in the collection of Stamp Duty, Social Infrastructure Cess shall also be empowered to assess, reassess and collect and enforce Infrastructure Development fee on purchase of immovable properties.

(5) The fee collected under sub-section *(1)*, shall be deposited by the authorities, specified in sub-section *(3)* and sub-section *(4)* in the Development Fund within a period of one week from the date of its collection.

(6) The person shall deposit the amount of fee due from him either in cash or by cheque in a specified bank account.

Explanation.- (1) For the purposes of this Act, the expressions "sale", "purchase" and "person" shall have the same meanings as have been assigned to them in the Punjab Value Added Tax Act, 2005.

(2) In respect of levy of Infrastructure Development fee on the value of consumption of electricity, the exemptions granted in respect of levy of electricity duty shall *mutatis mutandis* apply to the levy of

Infrastructure Development fee on electricity consumed.".

Repeal and savings

3. *(1)* The Punjab Infrastructure (Development and Regulation) Amendment Ordinance, 2015 (Punjab Ordinance No.2 of 2015), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Ordinance referred to in sub-section *(1)*, shall be deemed to have been done or taken under this Act.

H.P.S. MAHAL,
Secretary to Government of Punjab,
Department of Legal and Legislative Affairs.

NOTIFICATION (Punjab)

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NOTIFICATION REGARDING TAX ON PAPER BOARD UNDER THE CST ACT

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

Notification

The 2nd December, 2015

No.S.O.56/C.A.74/1956/S.8/2015.- Whereas the Governor of Punjab is satisfied that it is necessary so to do in public interest;

Now, therefore, in exercise of the powers conferred by sub-section (5) of section 8 of the Central Sales Tax Act, 1956 (Central Act No. 74 of 1956), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to direct that the rate of tax payable under sub-section (2) of the said section 8, in respect of the sale of paper board in the course of Inter state trade or commerce, by a dealer having his place of business within the State of Punjab, to any other dealer having his place of business out side the State of Punjab, shall be calculated @ of one percent of his turn over or any part thereof, subject to the production of declaration in Form 'C', as specified under the Central Sales Tax (Registration and Turn over) Rules, 1957.

ANURAG AGARWAL,
Financial Commissioner Taxation and
Secretary to Government of Punjab,
Department of Excise and Taxation.

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NOTIFICATION REGARDING AMENDMENT SCHEDULES 'B' AND 'E' OF THE PUNJAB VALUE ADDED TAX ACT, 2005

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

Notification

The 2nd December, 2015

No.S.O.57/P.A.8/2005/S.8/2015.-Whereas the State Government is satisfied that circumstances exist, which render it necessary to take immediate action in public interest;

Now, therefore, in exercise of the powers conferred by the proviso of sub section (3) of section 8 of the Punjab Value Added Tax Act, 2005, (Punjab Act No. 8 of 2005) and all other powers enabling him in this behalf, the Governor of Punjab is pleased to make the following amendment in Schedules 'B' and 'E' appended to the said Act, with immediate effect by dispensing with the condition of previous notice namely:-

AMENDMENT

1. In the said Schedule 'B':-

   (i) serial No. 32 and the entries relating thereto shall be omitted; and

   (ii) after Serial No. 173 and entries relating thereto, the following serial

No. and the entries relating thereto shall be added, namely:-

"174. LED Lights."

2. In the said Schedule 'E', after serial No. 27 and the entries relating thereto, the following serial No. and the entries relating thereto shall be added, namely:-

"28. Dry Fruits 4.5 per cent".

ANURAG AGARWAL,
Financial Commissioner Taxation and
Secretary to Government of Punjab,
Department of Excise and Taxation.

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GOVT PANEL KEEPS GST RATE AT 17-18%, DROPS 1% ADDL LEVY

Sets stage for building consensus on getting Bill passed in winter session

NEW DELHI, DECEMBER 4: To end the impasse on the Goods and Service Tax (GST) Bill, a panel headed by Chief Economic Adviser Arvind Subramanian has recommended a standard GST rate of 17-18 per cent and scrapping of the 1 per cent additional tax on inter-state sales — key demands of the Congress.

If accepted, the recommendations of the panel will provide the government with a face saver to accept the demands of the Congress, whose support is important to get the Constitutional Amendment Bill passed in Parliament. The Congress has been demanding a GST rate of 18 per cent and the band proposed by the Finance Ministry panel is within that purview. However, on the Congress' demand for putting the GST rate in the Bill, the panel has suggested that the GST should not constitutionalise the specifics of tax policy like many other countries due to macroeconomic conditions in future.

The committee has recommended that the Revenue Neutral Rate (RNR) should range between 15 per cent and 15.5 per cent (Centre and states combined), but with a preference for the lower end of that range. The RNR refers to the single rate that preserves revenue at desired (current) levels.

The panel said these were just recommendations and the prerogative of deciding the precise numbers would be that of the future GST Council. A GST rate of 6 per cent has been proposed for precious metals and a low rate of 12 per cent for public goods or for targeted sections.

The standard rate in a GST regime is applied to all goods and services whose taxation is not explicitly specified. Typically, the majority of the base, majority of goods and services will be taxed at the standard rate. The committee submitted its report to the Finance Minister today. In its concluding observations, it said: "This is a historic opportunity for India to implement a game-changing tax reform." Subramanian said: "Domestically, it will help improve governance, strengthen tax institutions, facilitate "Make in India by Making One India," and impart buoyancy to the tax base. It will also set the global standard for a value-added tax (VAT) in large federal systems in the years to come." The panel has also suggested to levy sin or demerit rates at about 40 per cent (Centre plus states), which can apply to luxury cars, aerated beverages, paan masala, and tobacco and tobacco products (for the states).

The panel said it would be advisable at an early stage in future, and taking account of the experience of the GST, to consider bringing fully into the scope of the GST commodities that were proposed to be kept outside. It said bringing items such as alcohol and real estate within the scope of the GST would further the government's objectives of improving governance and reducing black money generation without compromising on states' fiscal autonomy. "Bringing electricity and petroleum within the scope of the GST can make Indian manufacturing more competitive; and eliminating the exemptions on health and education will make tax policy more consistent with social policy objectives," it said.

Courtesy: The Tribune
4th December, 2015

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TERMINATON OF SERVICE OF EXCISE & TAXATION OFFICIALS

The excise and taxation department on Monday terminated the services of assistant excise and taxation commissioner (AETC) G S Tiwana of Amritsar and excise and taxation officer (ETO) Ruby Singh, who was posted in Jalandhar.

According to department sources, both the officers have been indicted in separate inquiries for their lapses in performing duty. Inquiries were held in Fatehgarh Sahib and Jalandhar.

Anurag Verma, excise and taxation commissioner (ETC), Punjab, said, "After studying the report in both the cases, services of both were terminated."

It is pertinent to mention here that a month back, the department had also suspended an AETC on the charges of causing loss to the department and lapse in duty by issuing excess VAT refund to a private firm.

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WINTER SESSION: GST TALKS STUCK, ARUN JAITLEY FEARS ANOTHER WASHOUT

A luncheon meeting between the government and the Congress made no progress with Mallikarjun Kharge, Congress floor leader in the Lok Sabha, away in Karnataka.

As talks between the government and the Opposition failed to resolve the deadlock over GST, Finance Minister Arun Jaitley expressed a worry that the winter session is headed for a washout. It has eight days left.

A luncheon meeting between the government and the Congress made no progress with Mallikarjun Kharge, Congress floor leader in the Lok Sabha, away in Karnataka. Those who joined Parliamentary Affairs Minster M Venkaiah Naidu included Jaitley, Leader of the Opposition in the Rajya Sabha Ghulam Nabi Azad, his deputy Anand Sharma and Congress chief whip in the Lok Sabha Jyotiraditya Scindia. According to Naidu, both sides "decided to meet after Khargeji returns".

Read | GST logjam: Arun Jaitley invokes Nehru, reminds Congress of responsibility of MPs

"The issues on which we were having ongoing parleys… those issues remain inconclusive and is a work in progress," Sharma said. "We didn't have a structured discussion today… It will not be proper to have a formal discussion in the absence of Khargeji." Sharma said there should not be "this over-obsession" with the passage of only one bill.

Jaitley, meanwhile, posted on Facebook: "The last session of Parliament did not function. The current session of Parliament is also threatened with a wash-out. The reasons for the wash-out of the current session keep changing by the hour. The nation is waiting for Parliament to discuss public issues, to legislate and approve a historic Constitution Amendment enabling the GST. All this is being indefinitely delayed. The question we need to ask ourselves is are we being fair to ourselves and this country?"

He alluded to a speech by Jawaharlal Nehru who, according to him, had said in the Lok Sabha on March 28, 1957: "Here, we have sat in this Parliament, the sovereign authority of India, responsible for the governance of India… All of us, if not always, at any rate from time to time, must have felt this high sense of responsibility and destiny to which we had been called…" Jaitley wrote, "Those who claim the legacy of Pandit ji must ask themselves the question, what kind of history are they making."

Naidu expressed "disappointment" over the disruption of Parliament and said "it appears that the Congress is inventing some excuse or the other on a daily basis to do so". Naidu told reporters that one day it was the National Herald issue, the next day it was a demand for the resignations of Sushma Swaraj, Vasundhara Raje and Shivraj Chouhan, and the third day a demand for the ouster of V K Singh from the Union cabinet.

The latest, according to him, was the "silly complaint that a private organisation had not invited Kerala CM Oomen Chandy to a function". The Centre, Naidu maintained, was nowhere in the picture, but still the Congress was protesting over the matter.

Courtesy: The Indian Express
15th December , 2015

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AMBIGUITY OVER SELF-SERVICE TAX CONTINUES TO HAUNT GST

Govt mum on the reverse charge, which would be levied for services exchanged between different offices of a company; Tax to impact IT firms most

GST Levying taxes on all types of tranfers

The clamour for the Goods and Services Tax (GST), which will subsume all the current indirect levies to create a single nationwide tax market, may be getting louder but the issue of whether self-service activity would be taxed still remains unclear.

And despite tax experts having repeatedly posed this query to the policy makers, they haven't been able to eke out a clear response from them.

Amit Kumar Sarkar, partner, Grant Thornton India LLP, said the government has been "painfully" mum on this issue even when all indications were pointing to its occurrence once the GST rolled out. Even the partial leak of the draft GST does not throw light on this niggling issue.

"They (policy makers) have been painfully silent on it for the last four-and-a-half years. The government authorities from North Block, bureaucrats, policy makers – none of them have either said yes or no to it. Not even a slight hint from them on it. This is one of the 101 unanswered questions on GST," he told dna.

If self-service activities of a business entity are taxed under the GST, then a company would end up paying what is termed as reverse charge on services exchanged between its branches at different locations. So, if a particular entity has five offices in different places, then exchange of services between them would attract a reverse charge, credit for which could be claimed later.

While this would not impact a firm's bottomline or topline, it would be a drain on its working capital and disturb its cash flow management as entities would be effectively paying their GST liabilities in advance.

Such a levy already exists since 2006 under the current service tax law for overseas branches of Indian companies. So, if an Indian company has a branch abroad, which is providing service support to it, then the local company is required to pay service charge on that as the activity is construed as import of service.

Therefore, as self-service tax already exists under service tax, which will become part of new indirect tax regime, experts are expecting it to be stretched to GST.

"There is a technical possibility that this (self-service tax) could occur. But when we speak to the government officials in the public, they have always left it open-ended. So, we do not know whether this fear is actually real or it is something we, as tax experts, are imagining, but the fear exists," said Sarkar.

As per the current Reserve Bank of India (RBI) regulation, there is no billing required, only a mere accounting entry is sufficient.

On the other hand, there is full clarity that the self-service tax would be charged on supply of goods under the GST. What this means is when a company does a stock transfer of goods from one state to another even within its own organisation, then there will be an inter-state GST (IGST) on it.

Uday Pimprikar, tax partner, EY, argued that if GST is supposed to treat goods and services in the same way, then if there is IGST on stock transfer of goods between offices or branches of a company, then it could be stretched to services too.

Consultancy firms and information technology (IT) companies, which have low-cost offshore offices across the country and have massive exchange of services between them, could get impacted most by the self-service tax under GST.

Courtesy: DNA

11th December, 2015

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FM REACHES OUT TO CONGRESS ON GST, SAYS IT CAN HELP INDIA REACH 8-9% GROWTH

DELHI: Finance minister Arun Jaitley on Tuesday reached out to principal opposition party Congress to end the logjam over the goods and services tax (GST) and urged the party to think about the "legacy and history" it would leave behind by opposing the landmark reform.

Replying to a debate on the supplementary demands for grants in Lok Sabha, Jaitley said implementation of GST had the potential to add to the country economic growth and help it realize its potential of 8-9% growth.

"It is not difficult for India to grow at 8-9%. It is not impossible," Jaitley said as he lauded the support of West Bengal chief minister Mamata Banerjee and Bihar CM Nitish Kumar.

The FM said the best way to fight poverty was to accelerate growth to create jobs. "Those who try to create impediments want to poverty to perpetuate... By short-sighted vision, we end up hurting the poor in this country," he said.

Jaitley's latest bid to end the stalemate over GST comes at a time when doubts are being raised about passage of the Constitution amendment bill for implementing GST in the ongoing winter session. Some experts say it would be difficult for the government to meet the deadline of rolling out GST by April 1, 2016.

"I would urge the current leadership of Congress party also to look at the history and legacy they want to leave behind. Support these measures so that we are able to grow faster. We have more money to get rid of poverty much faster," Jaitley said. The government has made several efforts to break the deadlock over GST but the Congress is yet to signal its support.

Detailing the economic situation in the country, the FM said growth in the current fiscal year would be in the 7-7.5% range and the government would meet the fiscal deficit target of 3.9% of gross domestic product. He said the government would achieve a better quality of fiscal deficit without resorting to a cut in expenditure and had stepped up spending on social sectors.

He said there could be some shortfall in direct tax receipts but indirect tax collections were robust even after deducting the impact of additional revenue mobilization efforts.

Jaitley backed attracting investment to ensure robust growth and said several states were making efforts to lure investors.

"If dollars stop coming to India, then rupee-dollar parity will also be disturbed," he said while noting that FDI had increased by 40% compared to last year.

The FM said state-run banks were facing a challenging situation and the government was taking steps to resolve issues in sectors such as highways, steel and power which were burdened by bad loans.

"Banks are facing a challenging situation. I have no hesitation in taking the House into confidence. Some people feel best appointments were not made either as executives or at the board level," he said.

"A large number of loans were given indiscriminately. NPAs at around 6%, stressed assets at around 6% and actual figure could be slightly more. Banks need to be corrected and needs to be recapitalized," Jaitley said and vowed that the government would provide more funds to state-run banks in the third supplementary demand for grants.

Courtesy: The Times of India

16th December, 2015

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GST IMPLEMENTATION HOPES IN NEXT YEAR: JAITLEY

After a prolonged tussle over the deadlock on Good and Services Tax (GST) bill in Parliament, Union Finance Minister, Arun Jaitely has said, the bill will hopefully be implemented by next year.

"India has right to grow faster, achieve full potential; nobody has right to stop, halt or slow down the process," Jaitley told PTI.

He said, if by sheer noise and disturbance, session after session Parliament is not going to function, then it will set precedence for all opposition in future.

Also read: FM Says Almost Certain GST Rate Will be Much Less Than 18 Percent

The fear of washout of Parliament's winter session seems to be on a better edge after the announcement of GST bill's implementation followed by the failure of talks between government and Congress Party officials.

A lunch meeting between government and party members of Congress did not lead to any resolution on the deadlock of the GST bill.

Congress party has earlier cleared its stand and said, the proposed GST bill is “anti-people” and hence it is unacceptable.

The party officials earlier said, the GST rate of 17-18 percent is not in the favour of traders and common man.

Congress said, the major products like alcohol, electricity, petroleum products and real estates should also to be brought under the calculation of taxes.

Courtesy: The Indian Express

16th December, 2015