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COMPOSITE NEWSLETTER
(Jan Issue 1 to Mar Issue 6)

NOMINAL INDEX

STATUTES, CIRCULARS AND NOTIFICATIONS

NEWS OF YOUR INTEREST

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SUBJECT INDEX

TEST STILL APPLICABLE FOR TRANSACTIONS WHICH DO NOT SPECIFICALLY INCLUDED IN ARTICLE 366(29A)– THEREFORE, SUPPLY OF MEDICINES/DRUGS/STENTS ARE INTEGRAL TO A MEDICAL SERVICE OR PROCEDURE AND CANNOT BE SEVERED TO INFER A SALE UNDER PUNJAB VAT ACT OR HARYANA VAT ACT - WRIT PETITION ALLOWED - **FORTIS HEALTH CARE LIMITED AND ANOTHER Vs. STATE OF PUNJAB AND OTHERS** 80

ASSESSMENT – C-FORMS – EXTENSION OF TIME FOR PRODUCTION OF FURTHER C-FORMS SOUGHT – APPEAL BEFORE FIRST APPELLATE AUTHORITY POST ASSESSMENT SEEKING PERMISSION FOR PRODUCTION OF C-FORMS IN POSSESSION – PERMISSION GRANTED REMANDING THE CASE THEREBY – APPEAL BEFORE TRIBUNAL SEEKING TIME AS FURTHER C-FORMS WERE TO BE AVAILABLE IN FUTURE - APPEAL REJECTED AS NO SUCH PRAYER MADE BEFORE THE FIRST APPELLATE AUTHORITY – APPEAL BEFORE HIGH COURT – PLEA OF THE APPELLANT THAT C-FORMS WERE AVAILABLE AND THAT NO FURTHER TIME WOULD BE SOUGHT BY IT ACCEPTED – ASSESSING OFFICER TO PASS FRESH ORDER TAKING INTO CONSIDERATION THE ADDITIONAL C-FORMS PRODUCED UPTO THE DATE FIXED BY THE COURT – HENCE, ONE MORE OPPORTUNITY GRANTED TO THE ASSESSEE – APPEAL ALLOWED - **DELTON CABLES LTD Vs. STATE OF HARYANA AND OTHERS** 120

CONDONATION OF DELAY – APPEAL – ASSESSMENT ORDER PASSED RAISING DEMAND – DISMISSAL OF 1ST APPEAL ON THE GROUND OF LIMITATION – DELAY OF 17 DAYS OCCURRING DUE TO MISBEHAVIOUR OF COUNSEL NOT CONSIDERED SUFFICIENT CAUSE – COPY OF ORDER RECEIVED BY SOMEONE NOT AUTHORIZED BY APPELLANT – CONSEQUENT DELAY OF 30 DAYS IN FILING OF APPEAL BEFORE TRIBUNAL – DELAY NOT CONDONED – HELD BY HIGH COURT THAT EXPLANATIONS TENDERED WERE PLAUSIBLE – UNINTENTIONAL DELAY AS CIRCUMSTANCES STOOD BEYOND CONTROL – DELAY IN BOTH CASES CONDONED – MATTER REMITTED TO 1ST APPELLATE AUTHORITY TO ADJUDICATE ON MERITS – *SECTION 5 OF LIMITATION ACT, 1963* - **STANDARD STEELS, FARIDABAD Vs. STATE OF HARYANA AND OTHERS** 68

CONDONATION OF DELAY – APPEAL – SICKNESS OF APPELLANT – DISALLOWANCE OF ITC – ORDER UPHELD BY FIRST APPELLATE AUTHORITY – DELAY OF 159 DAYS IN FILING APPEAL BEFORE TRIBUNAL – APPLICATION FOR CONDONATION OF DELAY REJECTED – HELD BY HIGH COURT THAT MENTAL SICKNESS OF REPRESENTATIVE OF APPELLANT SUFFICIENT CAUSE FOR DELAYED FILING – DELAY CONDONDED IT BEING UNINTENTIONAL AND BEYOND CONTROL OF APPELLANT – MATTER REMITTED TO TRIBUNAL TO ADJUDICATE ON MERITS – *SEC. 5 OF LIMITATION ACT, 1963* - **SUPER METAL, FARIDABAD Vs. STATE OF HARYANA AND OTHER** 62

DELEGATED LEGISLATION – RETROSPECTIVE AMENDMENT - RATE OF TAX – SCOPE OF POWER OF STATE GOVERNMENT TO AMEND RETROSPECTIVELY – PETITIONER MANUFACTURING AND TRADING BEVERAGES AND SNACKS – NOTIFICATION DATED 25.03.2014 ISSUED BY GOVERNMENT RAISING RATE OF TAX ON THESE ITEMS WITH RETROSPECTIVE EFFECT FROM 01.03.2014 – NO NOTICE FOR AMENDMENT ISSUED BY STATE AS REQUIRED U/S 8 – HELD THAT STATE HAD NO POWER TO AMEND THE RATE OF TAX RETROSPECTIVELY BY WAY OF NOTIFICATION UNLESS PROVIDED BY THE ACT – PERUSAL OF SECTION 8 SHOWS ABSENCE OF ANY LEGISLATION CONFERRING POWER ON CONCERNED AUTHORITY TO ISSUE A NOTIFICATION WITH RETROSPECTIVE EFFECT – IMPUGNED NOTIFICATION SET ASIDE TO THE EXTENT OF RETROSPECTIVITY – WRIT ALLOWED – *SECTION 8 OF PVAT ACT* - **PEPSICO INDIA HOLDINGS (P) LTD Vs. STATE OF PUNJAB AND OTHERS** 127

ENTRIES IN SCHEDULE – MOBILE PHONE CHARGER – RATE OF TAX – MOBILE PHONE CHARGER SOLD IN A COMPOSITE PACK / SOLO PACK ALONGWITH CELLPHONE – TAX @ 4% APPLICABLE ON SALE OF CELLPHONE AS PER SCHEDULE B – SAME RATE OF TAX PAID ON SALE OF COMPOSITE PACKS CONSIDERING CHARGER TO BE A PART OF CELLPHONE – TAX IMPOSED HOLDING CHARGERS TO BE AN ACCESSORY TO CELLPHONES TAXABLE @ 12.5% - HIGH COURT HELD CHARGER TO BE A PART OF COMPOSITE PACKAGE OF CELLPHONE – APPEAL BY REVENUE BEFORE SUPREME COURT - TAX @ 12.5% PAID ON SUCH CHARGERS WHEN SOLD SEPARATELY – CHARGER NOT A PART OF CELLPHONE AS THE LATTER DOES NOT REQUIRE IT AT TIME OF OPERATION – ALSO, CELLPHONE BATTERY IS CHARGEABLE FROM OTHER MEANS LIKE LAPTOP IMPLYING IT TO BE JUST ACCESSORY – HENCE, CHARGERS ARE 'INDEPENDENT PRODUCT' CAPABLE OF BEING SOLD SEPARATELY AND NOT COMPOSITE PART OF CELL PHONE – TAX @ 12.5% APPLICABLE - **STATE OF PUNJAB &ORS. Vs. NOKIA INDIA PVT. LTD.** 10

EXEMPTION – EXEMPTED UNIT - NOTIONAL TAX LIABILITY – SCOPE OF RULE 2(xxi) OF PGST RULES – WHETHER CALCULATION OF NOTIONAL TAX LIABILITY ON BRANCH TRANSFER LEADS TO ACTUAL PAYMENT OF TAX WHEN THEY STAND EXEMPTED UNDER PARENT ACT – CERTIFICATE GRANTED FOR DEFERRED PAYMENT OF TAX – DEFERMENT PARAMETER FIXED UPTO 2007 OR A PREVIOUSLY FIXED AMOUNT, WHICHEVER EARLIER – LIABILITY CLEARED OFF TO THE SATISFACTION OF DEPARTMENT AS ALLEGED – IN 2007 NOTIONAL SALE TAX LIABILITY CALCULATED FOR DEFERRED PERIOD AND DEMAND FOR SALE TAX ON BRANCH TRANSFER OUTSIDE STATE

EXAMINATION - HELD BY HIGH COURT THAT RELEVANT INFORMATION THAT FORMED THE BASIS OF ADVERSE ORDER NOT CONFRONTED TO ASSESSEE – AUTHORITY NOT ABSOLVED OF THE OBLIGATION TO ALLOW CROSS-EXAMINATION EVEN IF CERTAIN DOCUMENTS PRODUCED BY ASSESSEE – VIOLATION OF NATURAL JUSTICE AND SECTION 31 OF HGST ACT – APPEAL DISMISSED - *SECTION 31 OF HGST ACT, 1973* - **STATE OF HARYANA Vs. HARI KEWAL VANASPATI MILLS** 45

NATURAL JUSTICE – VIOLATION OF – ASSESSMENT ORDER – NO NOTICE ISSUED TO ASSESSEE FOR FRAMING ASSESSMENT - ASSESSMENT FRAMED AND TAX DEMAND NOTICE SERVED ON ASSESSEE – WRIT FILED PRAYING QUASHING OF ORDER ON GROUNDS OF LACK OF OPPORTUNITY – DEPARTMENT CONCEDING THAT NO NOTICE ISSUED - WRIT ALLOWED – ORDER SET ASIDE – DEPARTMENT TO GIVE ADEQUATE OPPORTUNITY TO PETITIONER - **VISION INDIA REALOTRS (P) LTD. Vs. STATE OF PUNJAB & OTHERS** 26

NOTICE – PENALTY UNDER SECTION 51(7) PVAT ACT – GOODS IN TRANSIT SEIZED – PENALTY U/S 51(7)(B) IMPOSED BY AETC BY ISSUING UNDATED NOTICE TO DEALER – IGNORANCE OF RULE 47 REQUIRING 10 DAYS CLEAR NOTICE – ORDER PASSED AGAINST APPELLANT WITHOUT CALLING FOR EVIDENCE – FINDINGS RECORDED WITHOUT CONSIDERING ANY DOCUMENTS PRESUMING THAT THE COMPUTERISED BILL WAS SUSPECTED TO BE DELETED FROM THE CPU – ORDERS PASSED BY AETC SET ASIDE BY TRIBUNAL BEING CRYPTIC IN NATURE – CASE REMITTED TO DECIDE AFRESH – *SECTION 51(7) OF PVAT ACT 2005, RULE 47 OF PVAT RULES* - **OM STEELS Vs. STATE OF PUNJAB** 150

PENALTY – ATTEMPT TO EVADE TAX – CHECK POST – CLERICAL MISTAKE IN DOCUMENTS – GOODS (TV SETS) MEANT FOR BRANCH TRANSFER FROM NOIDA TO LUDHIANA IN TRANSIT – DOCUMENTS VOLUNTARILY PRODUCED AT ICC – ONE OUT OF TWO INVOICES BEARING DESTINATION CODE INDICATING DESTINATION AS LUCKNOW INSTEAD OF LUDHIANA – GOODS DETAINED – PENALTY IMPOSED U/S 51 – ERROR CONTENDED TO HAVE OCCURRED DUE TO CLERICAL COMPUTER MISTAKE – CLERICAL MISTAKE DUE TO LUD BEING TYPED AS LUC – ALLOWING THE APPEAL, INADVERTENT MISTAKE HELD TO HAVE OCCURRED ON PART OF APPELLANT – VOLUNTARY FURNISHING OF COMPLETE DOCUMENTS ALONGWITH PACKING LIST AT THE ICC TAKEN INTO ACCOUNT - NO TAX LIABILITY AT THE STAGE OF ENTRY GOODS INTO PUNJAB – TRIBUNAL TAKING TWO DIFFERENT VIEWS IN SIMILAR CIRCUMSTANCES WITHOUT ANY JUSTIFICATION – PENALTY DELETED - **LG ELECTRONICS INDIA PVT. LIMITED Vs. STATE OF PUNJAB AND ANOTHER** 106

PENALTY – ATTEMPT TO EVADE TAX – FURNISHING OF INFORMATION AT VIRTUAL ICC – HANDLING OF CARGOES BY PETITIONER COMPANY ON BEHALF OF CUSTOMS DEPARTMENT – PENALTY IMPOSED FOR NON FURNISHING INFORMATION AS REQUIRED U/R 64-C OF PUNJAB VAT RULES 2005 – PETITIONER CONTENDED AS NOT BEING LIABLE TO FURNISH INFORMATION UNDER THE RULE – HOWEVER, PETITIONER AGREED TO FURNISH INFORMATION IN ITS POSSESSION – NO OBJECTION RAISED BY STATE AGAINST THIS – ORDER IMPOSING PENALTY QUASHED – WRIT PETITION ALLOWED - **GATEWAY RAIL FREIGHT LTD. Vs. UNION OF INDIA AND OTHERS.** 96

PENALTY – ATTEMPT TO EVADE TAX – GOODS IN TRANSIT INTERCEPTED – G.R. SHOWING DESTINATION AS MANDI GOBINDGARH FROM MOGA – INVOICE SHOWING DESTINATION AS DELHI – GOODS DETAINED AND PENALTY IMPOSED SUSPECTING TAX EVASION – EVIDENCE PRODUCED BY DEALER SHOWING EARLIER SALES TOO ROUTED THROUGH MANDI GOBINDGARH TO SAVE FREIGHT CHARGES TAKEN INTO CONSIDERATION – DOCUMENTS FOUND COMPLETE IN ALL RESPECTS BY TRIBUNAL - ICC RECORDS SHOWING EARLIER TRANSACTIONS BEING DULY REPORTED AT BARRIER WHILE LEAVING THE STATE – PENALTY DELETED - APPEAL BY REVENUE TO HIGH COURT – ON BASIS OF FINDINGS RECORDED BY TRIBUNAL, HIGH COURT HELD NO PERVERSITY FOUND AGAINST DEALER – NO GROUND FOR INTERFERENCE – APPEAL DISMISSED - **STATE OF PUNJAB AND ANOTHER Vs. T.R. INDUSTRIES** 103

PENALTY – CHECK POST – EVASION – INGENUINE DOCUMENTS – CANCELLATION OF AGENCY OF APPELLANT BY PRINCIPAL COMPANY - CONSEQUENTLY GOODS RETURNED BY AGENT APPELLANT – VOLUNTARY REPORTING AT ICC - GOODS DETAINED ON GROUNDS THAT BILLS PRODUCED NOT ISSUED FROM REGULAR BILL BOOK – STOCK SUSPECTED TO BE MEANT FOR TRADE – PENALTY U/S 14(B)(7) OF PGST ACT IMPOSED – ASSESSMENT ORDER DECLARING THE BILLS IN QUESTION DULY VERIFIED AND ACCEPTED TAKEN INTO ACCOUNT BY TRIBUNAL – CREDIT NOTE ISSUED TO AGENT BY PRINCIPAL ON RECEIVING GOODS BROUGHT ON RECORD – HELD BY HIGH COURT THAT ONCE ASSESSING AUTHORITY HAD FINALISED ASSESSMENT AND ACCEPTED THOSE BILLS AS VERIFIED AND RECORDED A FINDING THAT GOODS RETURNED AS PER BILLS IN QUESTION WERE ONLY ON ACCOUNT OF TERMINATION OF AGENCY, NO LIABILITY TO PAY TAX AROSE – PENALTY DELETED AND REFUND ALONGWITH INTEREST GRANTED – *SEC. 14(B)(7) OF PGST ACT* - **PREM NARAIN AND COMPANY Vs. STATE OF PUNJAB** 48

PENALTY – IMPOSING OF – FAILURE TO COMPLY WITH PROVISIONS OF THE ACT – APPEAL AGAINST IMPOSITION OF PENALTY AS NO SEPARATE NOTICE BEING ISSUED – HELD LIST OF SALES MADE SUBMITTED BY DEALER – NO EXPLANATION TENDERED ON BEING ASKED WHY PENALTY ACTION NOT BE TAKEN – THEREFORE, PENALTY UPHELD – *SECTION 23 PGST ACT, 1948* - **INTERNATIONAL TRACTORS LTD. Vs. STATE OF PUNJAB AND OTHERS** 109

PRE DEPOSIT – APPEAL – ENTERTAINMENT OF – REQUIREMENT OF 25% WAIVED OFF WHEN ASSESSMENT BARRED BY LIMITATION – ASSESSMENT FOR THE YEAR 2005-06 FRAMED IN 2010 – LEVY OF TAX, INTEREST AND PENALTY – DISMISSAL OF FIRST APPEAL ON GROUNDS OF NON COMPLIANCE OF SEC. 62(5) OF PVAT ACT – APPEAL FILED BEFORE TRIBUNAL – REQUIREMENT OF PRE DEPOSIT WAIVED OFF BY COURT WHEN ASSESSMENT IS CLEARLY TIME BARRED – NOTHING TO SHOW EXISTENCE OF CIRCUMSTANCES PREVENTING THE OFFICER TO PASS ORDER WITHIN TIME FRAME OF 3 YEARS – NO USEFUL PURPOSE WOULD BE SERVED BY COMPELLING FOR PRE DEPOSIT FOR ENTERTAINING OF APPEAL – APPELLATE AUTHORITY DIRECTED TO DECIDE AFRESH WITHOUT REQUISITE OF PRE DEPOSIT – APPEAL ALLOWED - **SAMRAT PLYWOOD LTD Vs. STATE OF PUNJAB** 137

PRE-DEPOSIT – APPEAL – ENTERTAINMENT OF – 25% OF DEMAND RAISED ALLEGEDLY DEPOSITED BY APPELLANT FOR ENTERTAINMENT OF APPEAL - DISMISSAL OF APPEAL FOR NON-COMPLIANCE OF SECTION 62(5) OF THE ACT BY THE LD. DETC – APPEAL BEFORE TRIBUNAL – DETC DIRECTED TO ENTERTAIN APPEAL PROVIDED REQUIREMENT OF PRE-DEPOSIT FULFILLED – OTHERWISE, PREVIOUS ORDERS PASSED BY THE LD. DETC AGAINST THE APPELLANT TO PREVAIL – APPEAL ACCEPTED BY THE TRIBUNAL - **MANAK CHAND GOBIND RAM Vs. STATE OF PUNJAB** 144

PRE-DEPOSIT – APPEAL – ENTERTAINMENT OF – APPEAL BEFORE TRIBUNAL AGAINST THE ORDER DECLINING ENTERTAINMENT OF APPEAL WITHOUT DEPOSIT OF 25% ON PART OF APPELLANT – TIME GIVEN FOR PAYMENT OF PRE-DEPOSIT – SECOND APPEAL DISMISSED FOR FAILURE TO DEPOSIT 25% WITHIN THE TIME FIXED BY THE COURT – REQUISITE AMOUNT DEPOSITED BY THE APPELLANT LATER – EVENTUALLY, BOTH APPEALS FILED BEFORE TRIBUNAL ACCEPTED ON THIS GROUND – 1ST APPELLATE AUTHORITY DIRECTED TO HEAR APPEAL ON MERITS - **RELIANCE INDUSTRIES LTD. Vs. STATE OF PUNJAB** 146

PRE-DEPOSIT – APPEAL – ENTERTAINMENT OF – DEMAND RAISED ON ACCOUNT OF SHORTAGE OF TAX DEPOSITED - PENALTY AND INTEREST LEVIED – MORE THAN HALF OF OUTPUT TAX ASSESSED CONTENDED TO HAVE BEEN PAID – PRAYER FOR ENTERTAINMENT OF APPEAL WITHOUT ANY FURTHER PRE-DEPOSIT AS MORE THAN 25% OF TAX, INTEREST AND PENALTY CONTENDED TO BE ALREADY DEPOSITED – AMOUNT ALREADY PAID ALLEGED BY DEPARTMENT AS NOT INCLUSIVE OF INTEREST AND PENALTY AMOUNT THAT HAD BEEN LEVIED – HELD, APPELLANT LIABLE TO PAY 25% OF TAX, PENALTY AND INTEREST AS DUE AGAINST IT – FIRST APPELLATE AUTHORITY DIRECTED TO ENTERTAINMENT APPEAL IF 25% AMOUNT OF TAX, PENALTY AND INTEREST DUE PAID BY APPELLANT – *SECTION 62(5) OF PVAT ACT, 2005* - **INDIAN SUCROSE LTD Vs. STATE OF PUNJAB** 148

PUBLIC INTEREST LITIGATION – MAINTAINABILITY OF – *LOCUS STANDI* – PIL FILED FOR ISSUANCE OF DIRECTIONS TO RESPONDENTS FOR VAT REFUNDS ETC. – NO CLAIM MADE BY VAT PAYERS THEMSELVES FOR REFUND – NO *LOCUS STANDI* TO FILE WRIT PETITION – HELD PIL NOT MAINTAINABLE AS CRITERION NOT FULFILLED AS PER MAINTAINABILITY OF PUBLIC INTEREST LITIGATION RULES, 2010 - **TARLOCHAN SINGH SETHI Vs. STATE OF PUNJAB AND OTHERS** 72

REASSESSMENT – RAID CONDUCTED ON TRANSPORT COMPANY BY DEPARTMENT – DOCUMENTS RELATED TO APPELLANT FIRM FOUND AND CROSS VERIFIED FROM CHECK POST REGISTER – INGENUINE BILLS FOUND HAVING BEEN ISSUED – PRIOR NOTICE SERVED BEFORE REASSESSMENT FRAMED – FAILURE ON PART OF ASSESSEE TO PRODUCE BOOKS OF ACCOUNTS AND REPLYING TO SHOW CAUSE NOTICE RESULTED IN ADVERSE ORDER – SUFFICIENT OPPORTUNITY PROVIDED BEFORE FRAMING REASSESSMENT – DEFINITE INFORMATION BASED ON DOCUMENTARY EVIDENCE IMPOUNDED POINTED TOWARDS TAX EVASION – APPEAL DISMISSED - **TOSHIBA INDUSTRIES (INDIA) FARIDABAD Vs. STATE OF HARYANA AND OTHERS** 22

RECOVERY OF TAX – ATTACHMENT OF BANK ACCOUNTS – STATUTORY CORPORATION – DISPUTE REGARDING ENTITLEMENT OF EXEMPTION U/S 10 (23C)(IV) – PROCEEDINGS REGARDING REFUSAL OF EXEMPTION PENDING – PENALTY LEVIED – BANK ACCOUNT ATTACHED FOR RECOVERY – APPROPRIATION BY DEPARTMENT OF CERTAIN AMOUNT – APPLICATION FOR STAY REJECTED BY CIT - HELD BY HIGH COURT THAT PRAYER FOR REFUND OF AMOUNT APPROPRIATED AS INTEREST NOT TO BE ENTERTAINED AT THIS STAGE – HOWEVER, PETITIONER BEING A STATUTORY CORPORATION RECEIVING GRANTS ALSO FROM CENTRE, NO COERCIVE ACTION SHOULD BE TAKEN

COMPOSITE NEWSLETTER

(Jan Issue 1 to Mar Issue 6)

SUPREME COURT OF INDIA

CIVIL APPEAL NOS. 11486-11487 OF 2014

STATE OF PUNJAB &ORS.

Vs.

NOKIA INDIA PVT. LTD.

SUDHANSU JYOTI MUKHOPADHAYA AND MADAN B.LAKUR, JJ

17th December, 2014

HF ▶ Revenue

ENTRIES IN SCHEDULE – MOBILE PHONE CHARGER – RATE OF TAX – MOBILE PHONE CHARGER SOLD IN A COMPOSITE PACK / SOLO PACK ALONGWITH CELLPHONE – TAX @ 4% APPLICABLE ON SALE OF CELLPHONE AS PER SCHEDULE B – SAME RATE OF TAX PAID ON SALE OF COMPOSITE PACKS CONSIDERING CHARGER TO BE A PART OF CELLPHONE – TAX IMPOSED HOLDING CHARGERS TO BE AN ACCESSORY TO CELLPHONES TAXABLE @ 12.5% - HIGH COURT HELD CHARGER TO BE A PART OF COMPOSITE PACKAGE OF CELLPHONE – APPEAL BY REVENUE BEFORE SUPREME COURT - TAX @ 12.5% PAID ON SUCH CHARGERS WHEN SOLD SEPARATELY – CHARGER NOT A PART OF CELLPHONE AS THE LATTER DOES NOT REQUIRE IT AT TIME OF OPERATION – ALSO, CELLPHONE BATTERY IS CHARGEABLE FROM OTHER MEANS LIKE LAPTOP IMPLYING IT TO BE JUST ACCESSORY – HENCE, CHARGERS ARE 'INDEPENDENT PRODUCT' CAPABLE OF BEING SOLD SEPARATELY AND NOT COMPOSITE PART OF CELL PHONE – TAX @ 12.5% APPLICABLE.

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

****

SUDHANSU JYOTI MUKHOPADHAYA, J.

Leave granted.

2. These appeals have been preferred by the appellants- State of Punjab and others against the impugned orders dated 17th November, 2010 passed by the High Court of Punjab and Haryana at Chandigarh. By the impugned orders the Division Bench of the High court allowed the appeals preferred by the respondent-assessee, and held that cell phone battery charger is sold as composite package along with cell phone, and hence said charger cannot be excluded from the Entry for concessional rate of tax which applies to cell phones and parts thereof.

3. The factual matrix of the case is as follows:

The respondent-M/s. Nokia India Pvt. Ltd. (hereinafter referred to as the "Company") is a dealer registered under the Punjab Value Added Tax Act, 2005 (hereinafter referred to as the "Act") in the District Mohali and is doing business of sale of cell phones and their accessories. During the year 2005-06, the Company had made sales of 1,07,2679 pieces of cell phones with battery chargers and had paid tax at the rate of 4% on the sale value of battery chargers, the rate at which the tax on the sale of cell phone was paid. The value of the each of the battery charger if separately taken was to be Rs.120/- per piece as quoted by the respondent-Company itself. It comes to Rs.12,87,21,480/-. The scrutiny proceedings were initiated under Section 26 of the Act, 2005 read with Rules 36 and 43 of the Punjab Value Added Tax Rules, 2005 by issuing notice to the respondent separately for the Assessment Years 2005-06 and 2006-07. The Assessing Authority had held that the battery charger was an accessory chargeable to tax at the rate of 12.5%. The difference of 8.5% was calculated and it came to Rs.1,09,41,325/-. Interest under Section 32(1) was charged on the said amount amounting to Rs.21,25,491/-. Further penalty under Section 53 of the Act at the rate of 2% per month was imposed amounting to Rs.85,01,964/- The total demand for the assessment year 2005-06 was raised to Rs.2,15,68,780/-.

4. For the year 2006-07, the number of battery chargers sold were taken to be 1807725 pieces, the value at the rate of Rs.120/- per piece came to Rs.21,69,27,000/-. Differential amount of tax at the rate of Rs.8.5% was calculated to be Rs.1,84,38,795/-. Interest as per Section 32(1) of the Act was charged which came to Rs.25,24,175/-. Further, penalty under Section 53 of the Act at the rate of 2% per month was calculated which came to Rs.1,00,96,750/- and total demand raised vide order of Assessing Authority for that year had been Rs.3,10,59,720/-.

5. Respondent-Company filed reply on 26th November, 2008, 24th December, 2008 and 9th January, 2009, inter alia, stating that the product was being sold as mobile/cellular phone under a single solo pack unit and was covered under Entry No.60 of Schedule 'B' of the Act and that no separate amount for battery charger was being claimed from the customers, and that only amount charged was for handsets. It was also stated by the respondent that for subsequent sale of the battery charger and the battery in the State of Punjab, Tax/VAT at the rate of 12.5% was being deposited. The respondent stated that the battery charger is an accessory to the main product that is mobile phone.

6. The Assessing Authority vide detailed common order dated 2nd March 2009 held that the battery charger being a separate item was liable to be taxed at general rate i.e. 12.5% and not at concessional rate applicable to the cell phones inter alia on the premise that the

respondents were selling more than one product which were exigible in different rate of tax in a single pack and had themselves admitted the battery charger as a separate commodity was liable to payment of tax at the rate of 12.5% applicable to the goods in residuary Schedule 'F' to the Act. The Assessing Authority further observed that even according to Entry 60 of Schedule 'B', the product included is only the cellular phone and not accessories thereof.

7. The respondent filed Appeal Nos. 804 and 805/2009-10 under Section 62(1) of the Act before the Deputy Excise & Taxation Commissioner(Appeals), Patiala Division, Patiala, inter alia, challenging the above said order dated 2nd March, 2009. The Dy. Excise & Taxation Commissioner (Appeals), Patiala vide judgment and order dated 26th August, 2009 dismissed both the appeals. The respondent being aggrieved by the above filed Appeal Nos.656-657 of 2009 under Section 63(1) of the Act before the Value Added Tax, Tribunal, Chandigarh, Punjab. The Tribunal by a detailed order dated 11th February, 2010 dismissed both the appeals, inter alia, observing that the battery charger is not a part of the cell phone. The Tribunal further held that the penalty under Section 53 of the Act should not have been imposed and thus set aside the same viz. Rs.85,01,964/- for the year 2005-06 and Rs.1,00,96,750/- for the year 2006-07.

8. The respondent, against the above concurrent finding filed VAT Appeal Nos.54 & 55 of 2010 (O&M) before the High Court of Punjab and Haryana at Chandigarh. By the impugned orders dated 17th November, 2010, the Division Bench of the High Court allowed the appeals holding that the battery charger is a part of the composite package of cell phone.

9. Similar pleas as taken before the High Court have been taken by both the parties before this Court. Learned counsel appearing on behalf of the respondent demonstrated the composite package of cell phone, cell phone and battery charger and some other accessories like head phone.

10. The contention of the respondent had been that battery charger not being independently sold, was sold with the cell phone in same packing and hence tax chargeable was at the rate of 4% and proper tax had been paid and, therefore, there was no good ground to charge tax at the rate of 12.5% on sale of those battery chargers which are free with the cell phone in the composite package.

11. On the other hand, according to the counsel for the appellant-State a battery charger is not a part of the cell phone but merely an accessory thereof even as per the respondents themselves, who had separately paid tax at the rate of 12.5% on the battery chargers sold separately. According to him, the battery charges are not covered under Entry 60(6)(g) in Schedule 'B' of the Act and was thus liable to be taxed at the rate of 12.5% on its value under Schedule 'F' of the Act which covers all residuary items not falling in any of the classifications of other Schedules of the Act.

12. We have heard rival contentions made on behalf of the parties and perused the record. Schedule 'B' of the Act contains list of goods taxable at the rate of 4%. Cell phone is mentioned in the said schedule and it finds further place at Serial No.6(g) under Entry 60 and is thereby liable to be charged at the rate of 4%.

13. According to the counsel for the respondent, charger is an integral part of the cell phone and the cell phone cannot be operated without the charger and when any person comes for cell phone, he purchases the cell phone and then automatically takes away the charger for which no separate money is charged. However, it is admitted that whenever Company sells chargers separately then 12.5% tax is charged which is applicable to goods in residuary Schedule 'F' of Act.

14. On behalf of the State it was rightly argued that when Entry 60(6)(g) of Schedule 'B' of the Act does not mention accessories for the purpose of taxing the

item/product at the rate of 4%, they need to be charged at 12.5% as per Schedule 'F'. It was contended that the battery chargers are not covered under Entry 60(6)(g) and even otherwise there is no mention of the charger in HMS Code 8525.20.17 under the Excise Act, and therefore, charger is liable to be taxed at the rate of 12.5%.

15. Sub-sub heading code 8525 and tariff no. 8525.20.17 of the Central Excise Duty Act, is as under:

Chapter 85	**Sub-heading Code 8525**	**Sub-subheading Code 8525.20.17**	**Tariff No. 8525.20.17**
Electrical machinery and equipment and parts thereof, radio-telegraphs sound recorders and reproducers and parts and accessories of such articles.	Transmission apparatus for radio-telephony, radio-broadcasting or television, whether or not incorp.	"Transmission apparatus incorporating reception apparatus	Cellular Telephones

'Cellular telephone' is in schedule B at Entry No.60(6)(g) vide HSN Code No.8525.20.17. The Tariff No.8525.20.17 only relates to cellular telephone and not the accessories. The Schedule 'B' does not indicate that the cellular phone includes the accessories like the chargers either in the HSN Code or by elaborating in words.

16. The Assessing Authority, Appellate Authority and the Tribunal rightly held that the battery charger is not a part of the mobile/cell phone. If the charger was a part of cell phone, then cell phone could not have been operated without using the battery charger. But in reality, it is not required at the time of operation. Further, the battery in the cell phone can be charged directly from the other means also like laptop without employing the battery charger, implying thereby, that it is nothing but an accessory to the mobile phone. The Tribunal noticed that as per the information available on the website of Nokia, the Company has invariably put the mobile battery charger in the category of an accessory which means that in the common parlance also, the mobile battery charger is understood as an accessory. It has also been noticed by the Tribunal that a Nokia make battery charger is compatible to many models of Nokia mobile phones and also many models of Nokia make battery chargers which are compatible to a particular model of Nokia mobile phone, imparting various levels of effectiveness and convenience to the users.

17. Learned counsel for the respondent referred to General Rules for interpretation of the First Schedule of the Import Tariff under the Customs Tariff Act, 1975. The classification of the goods in the Schedule for the purpose of Rule 3(b) in the general rules for interpretation of import tariff reads as follows:

> *"3(b) mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material of component which gives them their essential character, insofar as this criterion is applicable."*

It was contended that composite goods being used consisting of different materials and different components, and goods put up in sets for retail sale, cannot be classified by

reference to clause (a). However, such submission cannot be accepted as it cannot be held that charger is an integral part of the mobile phone making it a composite good. Merely, making a composite package of cell phone charger will not make it composite good for the purpose of interpretation of the provisions. The word 'accessory' as defined in the Webster's Comprehensive Dictionary (International) Volume-I is defined as:

> *"a person or thing that aids subordinately; an adjunct; appurtenance; accompaniment (2) such items of apparel as complete an outfit, as gloves, a scarf, hat or handbag.(3) A person who, even if not present, is concerned, either before or after, in the perpetration of a felony below the crime of treason. Adj.(1) Aiding the principal design, or assisting subordinately the chief agent, as in the commission of a crime.(2) contributory; supplemental; additional: accessory nerves".*

18. In M/s. Annapurna Carbon Industries Co. vs. State of Andhra Pradesh, (1976)2 SCC 273, this Court while examining the question whether "Arc Carbon" is an accessory to cinema projectors or whether comes under other cinematography equipments under Entry 4 of Schedule I to the A.P. General Sales Tax Act, 1957, defined accessories as:

> *"an object or device that is not essential in itself but that adds to the beauty, convenience or effectiveness of something else".*

19. In view of the aforesaid facts, we find that the Assessing Authority, Appellate Authority and the Tribunal rightly held that the mobile/cell phone charger is an accessory to cell phone and is not a part of the cell phone. We further hold that the battery charger cannot be held to be a composite part of the cell phone but is an independent product which can be sold separately, without selling the cell phone. The High Court failed to appreciate the aforesaid fact and wrongly held that the battery charger is a part of the cell phone.

20. In view of the finding recorded above, we have no other option but to set aside the impugned orders dated 17th November, 2010 in VAT Appeal Nos.54 & 55 (O&M) of 2010 passed by the High Court of Punjab and Haryana at Chandigarh. The order passed by the Tribunal is affirmed. The appeals are allowed. No costs.

PUNJAB & HARYANA HIGH COURT

VATAP No 110-2013

STATE OF PUNJAB AND OTHERS

Vs.

THE PATIALA COOPERATIVE SUGAR MILLS LIMITED

AJAY KUMAR MITTAL AND ANITA CHAUDHRY

26th February, 2014

HF ▶ Assessee

LIMITATION – ASSESSMENT – FRAMING OF – AMENDMENT OF SEC 11 OF PGST ACT – EFFECT OF – ASSESSMENT YEAR 1989-90 - ASSESSMENT FRAMED U/S 11 OF PGST ACT ON 29.08.2003 – DEMAND RAISED ON ACCOUNT OF PURCHASE TAX – MEANWHILE VIDE AMENDMENT IN SECTION 11(3) W.E.F. 3.3.98, PERIOD FOR FRAMING ASSESSMENT PRESCRIBED AS THREE YEARS FROM FILING OF RETURNS – ASSESSMENT ORDERS SET ASIDE BY TRIBUNAL BEING TIME BARRED – APPEAL BY STATE ON THE GROUND THAT PERIOD PRESCRIBED VIDE AMENDMENT NOT APPLICABLE TO ASSESSMENT PERIODS PRIOR TO AMENDMENT – HELD BY COURT THAT FOR YEARS UPTO 1997-98, ASSESSMENT ORDER IS TO BE PASSED LATEST BY 30.04.2001 - REVENUE APPEAL DISMISSED.

An assessment order was passed for the year 1997-98 raising demand on account of non deposit of purchase tax. The assessment order was passed on 29.08.2003. In year 1998 an ordinance was passed as per which limitation period of 3 years u/s 11 of PGST Act was prescribed for framing of assessment from date of filing of returns w.e.f. 03.03.1998. It was appealed by the State that since the ordinance was promulgated in 1998 the same would not be applicable to the assessment year in question and period prior to 03.03.1998. Following the judgment passed in the case of Des Raj Bhim Sain it is held that law of limitation is a procedural law and operates retrospectively unless it is provided differently in the amending statute. The amendment would govern all assessment pending relating to periods before the amendment came into operation. Therefore, for assessment years following upto 1997-98 no assessment order could be validly passed after 30.04.2001.

Present: Ms. Radhika Suri, Addl. A.G. Punjab for the appellants-State.
Mr. G.R. Sethi, Advocate for Morinda Coop. Sugar Mills.
Mr. M.R. Sharma, Advocate for Patiala Coop. Sugar Mills.
Mr. S.K. Mukhi, Advocate for Doaba Coop. Sugar Mills

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AJAY KUMAR MITTAL,J.

1. The delay in filing VATAP Nos.110 to 113, 117 to 120 and 127 of 2013 is condoned.

2. This order shall dispose of a bunch of 14 appeals i.e. VATAP Nos.110 to 113, 117 to 120, 147 to 151 and 127 of 2013, as learned counsel for the parties are agreed that the issue involved in all these appeals is identical. However, the facts are being extracted from VATAP No.110 of 2013.

3. VATAP No.110 of 2013 has been preferred by the State under Section 68 of the Punjab Value Added Tax Act, 2005 (in short, "the Act") against the order dated 11.3.2013, Annexure A.5 passed by the Value Added Tax Tribunal, Punjab (in short, "the Tribunal"), claiming following substantial questions of law:-

i) Whether the order passed by the learned Tribunal is sustainable in law?

ii) Whether the order passed by the learned Tribunal by relying upon the judgment of this Hon'ble Court in the case of '***M/s Shubh Timb Steels Limited and others v. The State of Punjab***' is sustainable in law when in the present case, the respondent had intentionally withheld the legitimate purchase tax due to be deposited alongwith the returns?

iii) Whether the learned Tribunal had rightly allowed the appeal of the respondent when the amendment dated 20.4.1998 is applicable w.e.f the date of notification i.e. prospectively and not retrospectively?

iv) Whether the dealer is entitled to relief of legitimate tax payable by the respondent voluntarily alongwith the returns, but avoided its payment wilfully, solely on the ground of limitation?

v) Whether the respondent is entitled to pocket the purchase tax withheld intentionally but while selling their finished products and by products the said element was kept in mind and added the same in the sale price of particular item produced out of Sugar cane which had ultimately been encashed by the respondent?

4. Briefly, the facts necessary for adjudication of the controversy involved as narrated in VATAP No.110 of 2013 are that the respondent dealer is engaged in manufacturing of sugar, molasses, press mud etc. It has been authorized to purchase various goods for use in the manufacture of these goods. The sugarcane is the main raw material. It filed its quarterly returns for the year 1989-90 in accordance with the provisions of Section 10 of the Punjab General Sales Tax Act, 1948 (in short, "the PGST Act") read with Rule 20 of the Punjab General Sales Tax Rules, 1949 (in short, "the PGST Rules") but did not deposit the purchase tax leviable on the purchase of sugarcane alongwith the returns. Accordingly, notice under Section 11 of the PGST Act was issued to the respondent by the assessing authority. The file was transferred to Assistant Excise and Taxation Commissioner (Insp.) (AETC) by the Excise and Taxation Commissioner, Punjab vide order dated 12.12.2002. The respondent appeared alongwith its books of account. As per the returns, the respondent had shown the purchase of sugarcane to the tune of Rs. 5,77,18,035/- on which purchase tax payable at the rate of 8.8% comes to Rs.50,79,187/-, which was payable by the respondent alongwith the returns. Since the respondent did not deposit the purchase tax alongwith the returns, it was determined by way of framing assessment for the year 1989-90 by the AETC under Section 11 of the PGST Act vide order dated 29.8.2003 creating an additional demand of Rs.51,75,730/- including the demand of Rs.50,79,187/- on account of purchase tax leviable on the purchase of Sugarcane. The assessment order alongwith demand notice was sent to the respondent to deposit the amount within 30 days from the date of the order. The respondent instead of depositing the amount filed appeal under section 20 of the Act

before the Deputy Excise and Taxation Commissioner (DETC), which was dismissed vide order dated 20.5.2005, Annexure A.3. The respondent filed second appeal before the Tribunal which was accepted vide order dated 11.3.2013, Annexure A.5 on the ground of limitation holding that after the expiry of five years, the assessing authority did not have the jurisdiction to frame the assessment. Hence the instant appeals by the State.

5. We have heard learned counsel for the parties and perused the record.

6. Learned counsel for the appellants submitted that the issue which arises for consideration in these appeals is whether the assessment which has been framed beyond the period of three years from 3.3.1998 when Ordinance No.1 of 1998 had been promulgated by the State of Punjab whereby limitation period of three years had been prescribed by it for framing of assessment, the same would not be applicable relating to the assessment year and period prior to 3.3.1998. Learned counsel further argued that the longer period of limitation is an accrued right and it cannot be taken away by any amendment which is procedural in nature. Reference was made to judgments in ***The Indian Aluminium Cables Limited and another v. The Excise and Taxation Officer and another,*** AIR 1977 SC 540, ***T.Kaliamurthi and another v. Five Gori Thaikkal Wakf and others,*** 2008(9) SCC 306, ***Thirumalai Chemicals Limited v. Union of India and others,*** AIR 2011 SC 1725, and CWP No.16890 of 1995, ***Sadhu Singh Hamdard Trust v. Assistant Commissioner of Income Tax, Jalandhar and another,*** decided on 4.7.2013.

7. Learned counsel for the assessee on the other hand submitted that once the period of limitation for framing of assessment of three years was prescribed by Ordinance No.1 of 1998 dated 3.3.1998, which was replaced by Punjab Act 12 of 1998 published on 20.4.1998, any assessment framed for assessment years prior thereto after the expiry of three years from the last date prescribed for furnishing the last return in respect of such period i.e. 30.4.1998 would be barred by time after 30.4.2001. Reliance was placed on judgments in ***Additional Commissioner (Legal) and another v. Jyoti Traders and another,*** (1999)112 STC 277 (SC), ***Black Store Rubber Industries Pvt. Limited v. State of Rajasthan and others***, (2001) 124 STC 130 and ***Ballarpur Industries Limited vs. State of Punjab and others,*** (2010) 35 PHT 5 (P&H).

8. The primary issue that arises for consideration in these appeals is whether in view of amendment of Section 11 of the Punjab General Sales Tax Act, 1948 (in short, "the 1948 Act") by Ordinance of 1998 issued and effective from 3.3.1998 which was replaced by Punjab Act 12 of 1998 published on 20.4.1998 whereby limitation of three years for completion of the assessment has been prescribed, any assessment order for assessment years upto 1997-98 can be passed after 30.4.2001.

9. In order to appreciate the controversy in its true perspective, it would be apposite to refer to the unamended provisions of Section 11(1), (2) and (3) of the 1948 Act and the amended provisions whereby amendment has been made in the provisions by Ordinance of 1998 issued on 3.3.1998 which was replaced by Punjab Act 12 of 1998 published on 20.4.1998.

Section 11 (1), (2) & (3) (unamended)

"(1) If the Assessing Authority is satisfied without requiring the presence of dealer or the production by him of any evidence that the returns furnished in respect of any period are correct and complete, he shall assess the amount of tax due from the dealer on the basis of such returns.

(2) If the Assessing Authority is not satisfied without requiring the presence of dealer who furnished the returns or production of evidence that the returns furnished in respect of any period are correct and complete, he shall serve on such dealer a notice in the prescribed manner requiring him, on a date and at place specified therein, either to attend

in person or to produce or to cause to be produced any evidence on which such dealer may rely in support of such returns.

(3) On the day specified in the notice or as soon afterwards as may be, the Assessing Authority shall, after hearing such evidence as the dealer may produce, and such other evidence as the Assessing Authority may require on specified points, assess the amount of tax due from the dealer."

Section 11 (1), (2) & (3) (amended)

"(1) If the Assessing Authority is satisfied without requiring the presence of dealer or the production by him of any evidence that the returns furnished in respect of any period are correct and complete, he shall pass an order of assessment on the basis of such returns within a period of three years from the last date prescribed for furnishing the last return in respect of such period.

(2) If the Assessing Authority is not satisfied without requiring the presence of dealer who furnished the returns or production of evidence that the returns furnished in respect of any period are correct and complete, he shall serve on such dealer a notice in the prescribed manner requiring him, on a date and place specified therein, either to attend in person or to produce or to cause to be produced any evidence on which such dealer may rely in support of such returns.

(3) On the day specified in the notice or as soon afterwards as may be, the Assessing Authority shall, after hearing such evidence as the dealer may produce, and such other evidence as the Assessing Authority may require on specified points, pass an order of assessment within a period of three years from the last date prescribed for furnishing the last return in respect of any period."

10. There is no dispute that prior to the amendment of provisions of section 11 of the PGST Act w.e.f 3.3.1998 there was no limitation prescribed for assessing the amount of tax due from the dealer on the basis of returns where the Assessing Officer was satisfied that the returns furnished by the dealer were correct and complete. There was also no limitation provided for the assessing authority to assess the dealer under sub section (3) of section 11 after issuance of statutory notice in the prescribed form under sub section (2) of section 11 of the Act and consideration of evidence produced by the dealer and the evidence which the assessing authority may require the dealer to produce if he was not satisfied with the returns filed by the dealer. However, the position was changed w.e.f 3.3.1998 which provided that the assessing authority was required to pass an order of assessment on the basis of returns filed within a period of three years from the last date prescribed for furnishing the last return in respect of such return for both assessment of tax due under sub section (1) as well as sub section (3) of Section 11 of the PGST Act. Sub Section (2) of Section 11 of the Act remains unamended. Under sub section (2), wherever the Assessing Officer is not satisfied that return furnished by the assessee is correct and complete and his presence would be required for production of evidence relying in support of such return, shall serve a notice on such dealer requiring him to produce the relevant material on a date and place specified therein to substantiate the return.

11. Rule 20 of the PGST Rules prescribes that every registered dealer shall furnish return in Form VIII quarterly within thirty days from the expiry of the quarter where the tax due is deposited in cash into the Government treasury or within twenty days from the expiry of each quarter where payment of tax due is by crossed cheque or bank draft. Under the proviso, a registered dealer exclusively dealing in goods liable to tax at the first stage of the sale and has paid the tax on the purchase of such goods within the State of Punjab shall furnish return in Form VIII annually within thirty days of the expiry of each year. Further, it has been provided that where a registered dealer has turnover below rupees two lacs in a year shall furnish return in

Form ST VIII (in pink colour) annually within thirty days of the expiry of each year. Rule 20 reads thus:-

> "Every registered dealer shall furnish return in form ST VIII quarterly within a period of thirty days from the expiry of each quarter, if the amount of tax due as per returns is deposited in cash into the Government Treasury, or the Reserve Bank of India; and within a period of twenty days from the expiry of each quarter, if the amount of tax due is only paid through crossed cheque or bank draft, as the case may be, drawn on a local Scheduled Bank in favour of Assessing authority at the District Excise and Taxation office.
>
> Provided that a registered dealer dealing exclusively in goods liable to tax at the first stage of sale and who has paid tax on the purchase of such goods within the State of Punjab shall furnish returns in form ST VIII annually within thirty days of the expiry of each year;
>
> Provided further that a registered dealer whose gross turnover does not exceed two lacs rupees in a year shall furnish return in form ST VIII (in pink colour) annually) within thirty days of the expiry of each year. Authority may, for reasons to be recorded in writing, fix monthly returns for a dealer who would otherwise be required to furnish returns quarterly under these rules and such order shall remain in force for a period of one year whereafter the Assessing Authority shall review the case of each such dealer.
>
> Provided that the Commissioner may, with the prior approval of the Government in each case,fix monthly returns for a group or class of dealers."

12. It is well settled that law of limitation is a procedural law and operates retrospectively unless it has been provided differently in the amending statute. In other words, unless there is a contrary intention manifested by express or necessary implication of the legislation itself, procedural law is generally retrospective. Procedural law is not a substantive right and its object is not to create any right but to prescribe periods within which legal proceedings be initiated or completed for enforcement of rights existing under substantive law. Statutes of limitation are thus retrospective insofar as they apply to all legal proceedings brought after their operation for enforcing cause of action accrued earlier. The Apex Court in ***Thirumalai Chemicals Limited v. Union of India and others,*** AIR 2011 SC 1725, dealing with law of limitation has succinctly laid down as under:-

> "19. Law of limitation is generally regarded as procedural and its object is not to create any right but to prescribe periods within which legal proceedings be instituted for enforcement of rights which exist under substantive law. On expiry of the period of limitation, the right to sue comes to an end and if a particular right of action had become time barred under the earlier statute of limitation the right is not revived by the provision of the latest statute. Statutes of limitation are thus retrospective insofar as they apply to all legal proceedings brought after their operation for enforcing cause of action accrued earlier, but they are prospective in the sense that neither have the effect of reviving the right of action which is already barred on the date of their coming into operation, nor do they have effect of extinguishing a right of action subsisting on that date. Bennion on Statutory Interpretation 5th Edn.(2008) Page 321 while dealing with retrospective operation of procedural provisions has stated that provisions laying down limitation periods fall into a special category and opined that although prima facie procedural, they are capable of effectively depriving persons of accrued rights and therefore they need be approached with caution."

Thus, the effect of the amendment by Ordinance dated 3.3.1998 which was replaced by Punjab Act 12 of 1998 published on 20.4.1998 would be that the amended provisions prescribing

limitation would operate retrospectively and would govern all assessments pending relating to periods before the amendment came into operation.

13. Further, once a period of limitation prescribed by law expires, the right to sue or pass an order comes to an end. Resultantly, a vested or an accrued right arises in favour of a party. On expiry of the period of limitation, the right to sue comes to an end and if a particular right of action had become time barred under the earlier statute of limitation the right is not revived by the provision of the latest statute. The Statutes of limitation are prospective in the sense that they neither have the effect of reviving the right of action which is already barred on the date of their coming into operation, nor do they have effect of extinguishing a right of action subsisting on that date. The legal position has been enunciated by the Apex Court in ***T.Kaliamurthi's*** case (supra) as under:-

> "It is well settled that no statute shall be construed to have a retrospective operation until its language is such that would require such conclusion. The exception to this rule is enactments dealing with procedure. This would mean that the law of limitation, being a procedural law, is retrospective in operation in the sense that it will also apply to proceedings pending at the time of the enactment as also to proceedings commenced thereafter, notwithstanding that the cause of action may have arisen before the new provisions came into force. However, it must be noted that there is an important exception to this rule also. Where the right of suit is barred under the law of limitation in force before the new provision came into operation and a vested right has accrued to another, the new provision cannot revive the barred right or take away the accrued vested right."

Further, Apex Court in ***Vinod Guridas Raikar v. National Insurance Co. Limited and others,*** (1991) 4 SCC 333 observed as under:-

> "So far the period of limitation for commencing a legal proceeding is concerned, it is adjectival in nature, and has to be governed by the new Act – subject to two conditions. If under the repealing Act the remedy suddenly stands barred as a result of a shorter period of limitation, the same cannot be held to govern the case, otherwise the result will be to deprive the suitor of an accrued right. The second exception is where the new enactment leaves the claimant with such a short period for commencing the legal proceeding so as to make it unpractical for him to avail of the remedy."

14. As noticed before, there was no limitation prescribed under Section 11 of the PGST Act for passing an assessment order before the amendment. Therefore, the period of three years prescribed for passing an assessment order would be counted for all those assessment years as per the amended provision effective from 3.3.1998. In other words, in respect of assessment years falling upto 1997-98, no assessment order could be validly passed after 30.4.2001.

15. Identical issue in respect of assessment years prior to amendment of Section 11(3) of the PGST Act with effect from 3.3.1998 came up for consideration before this court in ***Ballarpur Industries Limited'***s case (supra), wherein it was held as under:-

> "29. There is no dispute that prior to the amendment of provisions of Section 11 of the PGST Act w.e.f 3.3.1998 there was no limitation provided amount of tax due from the dealer on the basis of returns where the Assessing Officer was satisfied with the returns furnished by the dealer. There was also no limitation provided for the assessing authority to assess the dealer under sub section (3) of section 11 if he was not satisfied with the returns by issuance of statutory notice in the prescribed form under sub section (2) of Section 11 of the Act and consideration of evidence produced, if any. However, the position was materially altered w.e.f 3.3.1998 which provided that the assessing authority was required to pass an order of assessment on the basis of returns within a period of

three years from the last date prescribed for furnishing the last return in respect of such return for both assessment of tax due under sub section (1) as well as sub section (3) of section 11 of the PGST Act.

30. It is also not disputed that the notices in form ST XIV for the assessment years 1995-96 and 1996-97 were issued on 26.4.2001 and 21.4.2001 respectively. The assessment orders under Section 11(3) assessing demand of tax for a sum of Rs.18,18,318/- and Rs.10,51,851/- for the respective assessment years were passed on 27.7.2001. Therefore, it is not disputed that even if the three years' period of limitation was to be computed w.e.f 3.3.1998, the assessment orders for both the assessment years were beyond the period of limitation as per the amended provisions of section 11(3) of the Act. It is also not disputed that the learned Tribunal has on consideration of the provisions of PGST Act and ratio of judgments of cited case law has upheld the contention of the petitioner dealer that the amended period of limitation provided under sub section (3) being a piece of procedural law would be applicable to the pending cases like the present case. Learned Tribunal has also held that the assessments made by the assessing authority are not legally sustainable. It is also the admitted case of the State that the aforesaid findings of the Tribunal have not been challenged by the Sale Tax Department/Revenue. Thus, we do not consider it necessary to go into the question as to whether the amended provisions of sub section (1) and (3) of Section 11 providing a period of limitation would apply to the pending assessments for the years prior to 3.3.1998 or not as even if the amended provisions are made applicable prospectively and limitation of three years is assumed to commence w.e.f 3.3.1998, admittedly, the assessment orders dated 27.7.2001 are clearly beyond the period of limitation of three years and thus not sustainable in the eyes of law. Hence there is no ascertainment/determination of the amount of tax due for the said two assessment years either by the assessee petitioner company under sub section (4) of Section 10 or by the assessing authority under Section 11 of the PGST Act.

31. Therefore, in view of the above discussion, we are of the considered opinion that the findings recorded by the learned Tribunal vide its impugned order (Annexure P.15) that there exists no justification for giving any relief to the petitioner company even after taking into account the limitation concept on the ground that the petitioner company cannot be absolved of their liability to pay purchase tax as per their returns by filing misleading statements, cannot be countenanced and thus are set aside. As a sequel thereto, impugned order dated 30.1.2005 (Annexure P.15) qua the demand of tax for the assessment years 1995-96 and 1996-97 is set aside."

16. Referring to the judgments relied upon by learned counsel for the State, suffice it to notice that there are no two opinions with regard to the legal principles enunciated therein but the factual matrix involved being different, the same do not help the proposition as canvassed by the State.

17. We now proceed to examine the facts involved in the present case. The assessment year involved herein is 1989-90. The assessment under Section 11(3) of the PGST Act was framed on 29.8.2003 which is clearly beyond the period of limitation of three years from the date of amendment and thus not sustainable in the eyes of law.

18. In view of the above, the issue is decided against the appellant and in favour of the assessee. The substantial questions of law stand answered accordingly.

19. Accordingly, finding no merit in these appeals, the same are hereby dismissed.

PUNJAB & HARYANA HIGH COURT

VATAP No. 116-2013

TOSHIBA INDUSTRIES (INDIA) FARIDABAD

Vs.

STATE OF HARYANA AND OTHERS

AJAY KUMAR MITTAL AND JASPAL SINGH

14th July, 2014

HF ▶ Revenue

REASSESSMENT – RAID CONDUCTED ON TRANSPORT COMPANY BY DEPARTMENT – DOCUMENTS RELATED TO APPELLANT FIRM FOUND AND CROSS VERIFIED FROM CHECK POST REGISTER – INGENUINE BILLS FOUND HAVING BEEN ISSUED – PRIOR NOTICE SERVED BEFORE REASSESSMENT FRAMED – FAILURE ON PART OF ASSESSEE TO PRODUCE BOOKS OF ACCOUNTS AND REPLYING TO SHOW CAUSE NOTICE RESULTED IN ADVERSE ORDER – SUFFICIENT OPPORTUNITY PROVIDED BEFORE FRAMING REASSESSMENT – DEFINITE INFORMATION BASED ON DOCUMENTARY EVIDENCE IMPOUNDED POINTED TOWARDS TAX EVASION – APPEAL DISMISSED.

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

Present: Mr. Rajiv Agnihotri, Advocate for the appellant

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AJAY KUMAR MITTAL,J.

1. This appeal has been preferred by the revenue under Section 36 of the Haryana Value Added Tax Act, 2003, (in short, "the Act") against the orders dated 31.8.1994, 30.6.2003 and

8.7.2013, Annexures A.4, A.5 and A.10 respectively in STR No.41 of 2007-08 for the assessment year 1988-89, claiming following substantial questions of law:-

"i) Whether the different notices issued showing different basis for initiation of proceedings under section 31 are not illegal, as proceedings under section 31 can be issued only on the basis of 'definite information'?

ii) Whether best judgment assessment can be framed when the terms of the notice are complied with?

iii) Whether best judgment assessment can be framed in absence of any jurisdiction under the provision and moreover there is use of specific words 'definite information' related to 'turnover' have been given under Haryana General Sales Tax Act, 1973, and particularly when subsequent legislation Value Added Tax Act, 2003 specifically provides for best judgment assessment?

iv) Whether best judgment assessment can be framed in reassessment proceedings when the turnover though not disclosed in returns but was part of balance sheet and books of account at the time of assessment?

v) Whether the best judgment reassessment is in accordance with the principles of natural justice when the written submissions filed and request for cross examination of third party, being relied upon solely, is made but instead the judgment is reserved and best judgment is framed without affording any opportunity?

vi) Whether the judgment of Hon'ble Supreme Court in 32 STC 77 (SC) relied upon by the respondents against the petitioner appellant rather favour the petitioner appellant in present circumstances?

vii) Whether observations in judgment of Hon'ble P&H High Court in case cited as (2009) 34 PHT 159 that no best judgment assessment can be framed if the terms of notice are complied with?

viii) Whether the penalty imposed under section 48 of the Act for suppression is not illegal?

ix) Whether penalty can be levied on assumed turnover in best judgment assessment or it is leviable on 'definite information' on 'turnover' allegedly not disclosed?

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant is a proprietorship concern. It is engaged in the trading of iron and steels goods which were being purchased from M/s Steel Authority of India Limited, Faridabad after payment of tax. The goods were being levied to tax at the rate of 4% at first stage of sale in the State of Haryana and there was no liability on subsequent sales of such goods in the State of Haryana. Regarding the Inter State Sales, tax was leviable at the rate of 4% against C form and hence tax paid on the purchase of goods could be set off against the tax payable on the Inter State Sales. Hence in both the cases there was almost no liability of any tax in the prevailing circumstances. The appellant had been filing prescribed quarterly returns and discharging tax obligations in accordance therewith. Assessment was framed by the assessing authority vide order dated 18.2.1993, Annexure A.1. All the purchases from Steel Authority of India were acknowledged and consequential tax paid sales were allowed within the State of Haryana and similarly sales in the course of Inter State Trade and commerce were accepted. Thereafter, the appellant was issued notices dated 10.1.1994, 27.1.1994, 3.8.1994 and 23.8.1994, Annexure A.2 (Colly) for initiating reassessment proceedings. According to the appellant, all the notices had different subject matter which is not permissible in reassessment proceedings which is purely based on definite information. Even the notices merely provided details from the record

of transport companies and there was not a single documentary evidence. In response to the notices, the assessee appeared and requested for cross examination of the transporters and documents in possession of the assessing authority. No opportunity was provided to the assessee. Vide order dated 31.8.1994, Annexure A.4, assessment order was passed. Aggrieved by the order, the assessee filed appeal before the Joint Excise and Taxation Commissioner (Appeals), Faridabad [JETC (A)]. Vide order dated 30.6.2003, Annexure A.5, the JETC(A) rejected the appeal of the appellant. Still not satisfied, the assessee filed appeal before the Tribunal on 28.8.2003. Vide order dated 3.1.2007, Annexure A.8, the Tribunal dismissed the appeal. The appellant filed review application dated 5.7.2007 which was also dismissed vide order dated 8.7.2013, Annexure A.10. Hence the present appeal by the assessee.

3. Learned counsel for the appellant dealer submitted that the Tribunal had erroneously come to the conclusion that no reply was filed and books of account were not produced. It was urged that the findings of fact recorded by the Tribunal were vitiated being based on wrong premises.

4. The authorities on consideration of material on record, have concurrently concluded that the appellant had been indulging in the activities of evasion of tax. The findings recorded by the Tribunal in its order dated 3.1.2007, Annexure A.8 could be read with advantage:-

> "Keeping in view the above mentioned plea taken by the learned counsel for the appellant, we have gone through the assessment order and the impugned order. A perusal of the order passed by Assessing authority reveals that a show cause notice was issued by the Assessing authority on 2.1.1994, wherein he made very clear the sequence of events that the raid was conducted on the transport company and the documents relating to the appellant firm were detected and these were cross verified from the register maintained at Sales Tax Check barrier Faridabad. The list of documents impounded alongwith the bills and the details collected from the barrier in respect of the same bills were confronted to the dealer and he was asked to appear before him before any action is taken in this regard. All the details were confronted to him to the Annexure attached with the show cause notice. As per the documents impounded, the same bill nos. have been issued in the name of local dealers whereas as per barrier's record from the same bill these have been dispatched to Delhi. The details have been enumerated in the impugned order in detail by the first appellate authority. Hence the argument given by the learned counsel for the appellant that the assessing authority was not in possession of definite information is not substantiated by the facts on record. It is also a fact as borne out from the record that the reassessment proceedings were initiated on 4.10.1993 and on one occasion Shri D.B.Garg, Advocate appeared without the books of accounts, he was confronted with the information in possession of the Assessing authority but after then neither the books of account were produced nor any reply to the show cause notice issued was given by the appellant. Hence the plea that the appellant was not given sufficient opportunity before framing the assessment is also carried no weight. Once the notice was issued, the information was confronted and the appellant did not come forward with any reply, the allegation of biased and prejudiced mind cannot be levelled against the Assessing authority and it cannot be said that the assessment has been framed in an arbitrary manner in view of the facts as borne out from the record, the judgment cited by the learned counsel for the appellant as reported in 28 STC 567 is not applicable and further cited as 32 STC 77 (SC) and 30 STC 211 (P&H at page 227 are also not applicable because the appellant was given sufficient opportunities to produce the books of account to rebut the information with which he was confronted by the Assessing authority. No application or prayer was made to cross examine any party involved in this case, hence there was no question of calling the persons as contended by the learned counsel for the appellant. Again the judgments cited as 42 STC 348 (SC), 48 STC 369 (P&H) and 32

STC 107 are not applicable in the present case because the assessment is not based on mere suspicions but on the facts as collected from the extraneous sources. In fact, it is a case which is based on the definite information and facts and different points of law decided in different circumstances will not automatically be applicable in this case. The order of the Assessing authority is detailed one and he has given the date, commodity, quantity, truck no, bill no. and amount involved in these transactions. It is very clear from these details that the appellant has been indulging in the activities of evasion of tax and he has nothing much to say or there is no material in his possession to prove that the findings of the assessing authority are factually wrong. Once the case is very clear and proper opportunity was given to the appellant dealer and hence the orders of both the authorities below do not call for any interference. The case is disposed of accordingly."

5. A perusal of the findings recorded by the Tribunal shows that the assessee was given sufficient opportunity by the assessing authority before framing the reassessment. The list of documents impounded alongwith the bills and the details collected from the barrier were confronted to the assessee. It has been further recorded by the Tribunal that neither the books of account had been produced nor any reply to the show cause notice was given by the assessee. Learned counsel for the appellant has not been able to show that aforesaid findings are illegal or perverse in any manner. Thus, no substantial question of law arises and consequently, the appeal stands dismissed.

PUNJAB & HARYANA HIGH COURT

CWP-24291-2014

VISION INDIA REALOTRS (P) LTD.

Vs.

STATE OF PUNJAB & OTHERS

RAJIVE BHALLA AND B.S. WALIA

10th December, 2014

HF ▶ Assessee

NATURAL JUSTICE – VIOLATION OF – ASSESSMENT ORDER – NO NOTICE ISSUED TO ASSESSEE FOR FRAMING ASSESSMENT - ASSESSMENT FRAMED AND TAX DEMAND NOTICE SERVED ON ASSESSEE – WRIT FILED PRAYING QUASHING OF ORDER ON GROUNDS OF LACK OF OPPORTUNITY – DEPARTMENT CONCEDING THAT NO NOTICE ISSUED - WRIT ALLOWED – ORDER SET ASIDE – DEPARTMENT TO GIVE ADEQUATE OPPORTUNITY TO PETITIONER.

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

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

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

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RAJIVE BHALLA, J

1. The petitioner prays for issuance of a writ of certiorari for quashing order dated 01.08.2014 (Annexure P-10) and Tax Demand Notice dated 01.08.2014 (Annexure P-11) primarily on the ground of lack of adequate opportunity to rebut the show cause notice, violation of principles of natural justice and certain serious allegations with respect to interpolation and manipulation of the record.

2. Mr. Jagmohan Bansal, Addl. A.G., Punjab has produced the record but before we could appraise the record, has made a statement on instructions from Ms.Anupreet Kaur, Excise and Taxation Officer-cum-Assessing Authority that the impugned order dated 01.08.2014 and Tax Demand Notice dated 01.08.2014 may be treated as withdrawn and an opportunity to pass a fresh order on the show cause notice may be granted.

3. We have heard counsel for the parties and as it is conceded that adequate opportunity of hearing was not afforded to the petitioner and the order and/or demand notice have been withdrawn, allow the writ petition, set aside the order dated 01.08.2014 (Annexure P-10), the Tax Demand Notice dated 01.08.2014 (Annexure P-11) and leave it to the respondents to pass a fresh order after granting adequate opportunity to the petitioner. The petitioner would be required to cooperate with the respondents and produce all relevant documents/record including the books of accounts etc.

SGA
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PUNJAB & HARYANA HIGH COURT

VATAP-132-2013

H.R. STEELS P LIMITED

Vs.

STATE OF HARYANA AND OTHERS

AJAY KUMAR MITTAL AND FATEH DEEP SINGH

19 August, 2014

HF ▶Appellant - Assessee

REVISION – LIMITATION – PERIOD TO BE CALCULATED FROM DATE OF DEEMED ASSESSMENT – ANNUAL RETURNS FOR THE YEAR 2003-04 FILED ON *19.11.2004* – ASSESSMENT DEEMED TO HAVE BEEN FRAMED VIDE ORDER DATED *30.11.2004* AS PER RULE 27(3) OF HVAT RULES, 2003 – FORMAL ORDER PASSED ON *25.11.2005* WITHOUT ANY NOTICE U/S 15(2) OF THE ACT – REVISIONAL PROCEEDINGS INITIATED – ORDER PASSED ON *13.06.2008* – HELD, IN ABSENCE OF NOTICE REQUIRED U/S 15(2) OF THE ACT, ASSESSMENT ORDER PASSED ON *25.11.2005* CONSIDERED INVALID – PERIOD FOR FRAMING ASSESSMENT OUGHT TO BE CALCULATED FROM THE DATE OF DEEMED ASSESSMENT I.E. *19.11.2004* AND NOT FROM THE DATE OF FORMAL (INVALID) ORDER – THEREFORE, ORDER BEING PASSED AFTER 2007 SET ASIDE BEING BEYOND LIMITATION PERIOD.

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

Present: Mr. Rajiv Agnihotri, Advocate for the appellant.
Ms. Mamta Singla Talwar, AAG, Haryana

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AJAY KUMAR MITTAL, J.

1. This order shall dispose of VATAP Nos.132 and 162 of 2013, as according to the learned counsel for the parties, the facts and the issues involved are similar. However, the facts are being extracted from VATAP No.132 of 2013.

2. VATAP No.132 of 2013 has been preferred by the assessee under Section 36 of the Haryana Value Added Tax Act, 2003 (in short, "the HVAT Act") against the orders dated 13.6.2008, 5.3.2009 and 8.5.2013, Annexures A.3, A.5 and A.7 respectively passed by the authorities below for the assessment year 2003-04, claiming following substantial questions of law:-

> "i) Whether in the facts and circumstances of the case, the Haryana Tax Tribunal was not wrong in not allowing the appeal on preliminary objection raised by the appellant that the Revisional proceedings are barred by limitation?
>
> ii)Whether in the facts and circumstances of the case, the Haryana Tax Tribunal was not wrong in not appreciating the provision of Section 15(1) of the Haryana Value Added Tax Act, 2003 read with Rules 27(3) of the Rules?
>
> iii) Whether in the facts and circumstances of the case, the Tribunal was not wrong in not appreciating provisions of Review in Section 35 of the Act and in passing a mechanical order?"

3. A few facts relevant for the decision of the controversy involved, as narrated in VATAP No.132 of 2013 may be noticed. The appellant is a company registered under the Companies Act, 1956. It is also registered under the HVAT Act as well as the Central Sales Tax Act, 1956 (CST Act). It is engaged in the manufacturing and trading of iron and steel. The Annual return was filed on 19.11.2004. Assessment for the assessment year 2003-04 was framed as deemed assessment vide order dated 30.11.2004 with the filing of the annual return in Form R.2 in view of Rule 27(3) of the Haryana Value Added Rules, 2003 (in short, "the HVAT Rules"). A formal order was passed on 25.11.2005, Annexure A.1 under Section 15(1) of the Act as deemed assessment. Thus the assessment was framed in accordance with the returns filed by the dealer and as per turnover disclosed, as deemed assessment with the filing of annual return. Thereafter, the revisional authority took up the matter suo motu and issued notice dated 30.1.2007, Annexure A.2 alleging certain irregularities and improprieties. The assessee filed submissions but the revisional authority passed order dated 13.6.2008, Annexure A.3 against the appellant and communicated the same to the appellant on 1.7.2008. Aggrieved by the order, the appellant filed appeal before the Tribunal. The appellant raised preliminary objection regarding limitation and jurisdiction of the revisional authority to pass order beyond the provisions of law on the subject. The Tribunal vide order dated 17.3.2009, Annexure A.5 rejected the preliminary objection. The appellant filed review petition before the Tribunal which was also rejected vide order dated 8.5.2013, Annexure A.7. Hence the instant appeals by the assessees.

4. We have heard learned counsel for the parties and perused the record.

5. The issue that arises for consideration is whether the revisional authority had initiated action under Section 34 of the HVAT Act within the period of limitation of three years.

6. Learned counsel for the appellant submitted that the annual return in the present case was filed on 19.11.2004 relating to the assessment year 2003-04. It was urged that the assessment order Annexure A.1 passed on 25.11.2005 was *non est* as no notice under sub section (2) of section 15 of the HVAT Act was issued and in such a situation, the filing of the return was the assessment order in terms of Section 15(1) of the HVAT Act. The period of three years for invoking revisional jurisdiction reckoned from 19.11.2004 i.e. the date of filing of return and deemed assessment, would render the revisional proceedings barred by limitation.

7. On the other hand, learned counsel for the State supported the order passed by the Tribunal.

8. It would be apt to refer to relevant statutory provisions i.e. Sections 15 and 34 of the HVAT Act and Rule 27 of the HVAT Rules :-

Section 15. "(1) The returns furnished by a dealer shall be duly acknowledged in the manner prescribed, and where all the returns relating to an assessment year have been filed and are complete in material particulars, the dealer shall, subject to the provisions of sub-section (2), be deemed to have been assessed for that year:

Provided that where the returns are not complete in material particulars, the dealer shall be given an opportunity to complete them.

Explanation.– A return is complete in material particulars if it contains the information required to be furnished therein, is correct arithmetically, accompanied with the statutory lists, documents and proof of payment of tax due according to the return in full and is duly signed by the dealer.

(2) Subject to the rules which the State Government may frame for selection of cases for scrutiny in respect of dealers required to file returns under sub-section (2) of section 14, the assessing authority shall, in respect of each selected case, serve on the dealer concerned the prescribed notice in the prescribed manner requiring him, on a date and at a place specified therein, either to attend in person or to produce or to cause to be produced any evidence on which such dealer may rely in support of the returns filed by him relating to the period under assessment (hereinafter referred to in this section as 'assessment period'):

Provided that the assessment period covered by a notice referred to in the foregoing provision shall not exceed one year and such notice shall be served on the dealer before the expiry of one year from, the last date prescribed for filing the last return relating to the assessment period or, the actual date when any return relating to the assessment period has been filed last, whichever is later.

(3) to (7) xx xx xx xx xx xx xx"

Section 34. "(1) The Commissioner may, on his own motion, call for the record of any case pending before, or disposed of by, any taxing authority for the purposes of satisfying himself as to the legality or to the propriety of any proceeding or of any order made therein which is prejudicial to the interests of the State and may, after giving the persons concerned a reasonable opportunity of being heard, pass such order in relation thereto as he may think fit:

Provided that no order passed by a taxing authority shall be revised on an issue which on appeal or in any other proceeding from such order is pending before, or has been settled by, an appellate authority or the High Court or the Supreme Court, as the case may be:

Provided further that no order shall be revised after the expiry of a period of three years from the date of the supply of the copy of such order to the assessee except where the order is revised as a result of retrospective change in law or on the basis of a decision of the Tribunal in a similar case or on the basis of law declared by the High Court or the Supreme Court.

(2) xx xx xx xx xx xx xx xx"

Rule 27. "(1) The following categories of cases may be taken up for scrutiny,

(i) gross turnover exceeding five hundred lakh rupees in a year;

(ii) claim of input tax exceeding ten lakh rupees in a year;

(iii) claim of refund exceeding three lakh rupees in a year;

(iv) claim of sales made in the course of inter-State trade and commerce or in the course of export of goods out of the territory of India or in the course of import of goods into the territory of India exceeding twenty five lakh rupees in a year;

(v) cases of industrial units availing any tax concession under clause (d) of subsection (2) of section 61 till such units are subject to the relevant provisions in the 1975 Rules;

(vi) fall in gross turnover or payment of tax compared to last year;

(vii) claim of sale, purchase or consignment of goods not matching with the accounts of the other party to the transaction;

(viii) exception cases in which ratio between purchases and sales or between input tax and output tax or between stocks and sales is way out of the general trend in the trade or industry;

(ix) cases based on definite intelligence about evasion of tax;

(x) cases selected at random;

(xi) cases of any particular trade or trades which the Commissioner may select; and

(xii) cases in which the dealer fails to complete the return(s) in material particulars after being given an opportunity for the same.

(2) The Commissioner may, with the approval of the State Government, change the criteria laid down in sub-rule (1) for selection of cases for scrutiny. Any change made in the criteria shall be publicised by uploading on the website.

(3) Save the cases selected for scrutiny under sub-rule (1), all other cases shall be deemed to have been assessed to tax under sub-section (1) of section 15 and in respect of such cases acknowledgment of the annual return shall be deemed to be the copy of the assessment order:

Provided that in respect of cases covered under the proviso to sub-section (1) of section 15, the assessing authority shall, after the required documents have been furnished to him and/or arithmetical mistake, if any, has been corrected and tax due, if any, as a result thereof has been paid, pass an order recording his satisfaction about the completeness of the relevant returns in material particulars and supply a copy of such order to the dealer concerned.

(4) xx xx xx xx xx xx xx xx xx xx"

9. Under Sub section (1) of Section 15 of HVAT Act, the returns filed by the dealer are duly acknowledged in the prescribed manner and subject to provisions of Sub section (2) shall be deemed to have been assessed for that year. Sub section (2) of Section 15 provides that the cases may be selected for scrutiny as per rules framed by the State Government and a notice shall be served in the prescribed manner for producing the record and the evidence in support of the returns. It further provides that assessment period covered by such notice shall not exceed one year and shall be served on the dealer before the expiry of one year from the last date prescribed for filing the last return relating to the assessment period or the actual date of filing of the last return, whichever is later.

10. Section 34 of the HVAT Act empowers the Commissioner to exercise revisional jurisdiction *suo motu*. He can call for the record of any pending case or disposed of to satisfy himself about the legality or proprietary of any proceedings or of any order made which is prejudicial to the interests of the revenue. A reasonable opportunity of hearing is to be provided to the concerned person before passing the order. It has also been provided that the revisional

jurisdiction can be exercised within three years from the date of supply of the copy of the order to the assessee. The period of limitation of three years shall not be applicable where the jurisdiction is being invoked as a result of retrospective amendment in law or on the basis of decision of the Tribunal, High Court or the Supreme Court. However, the revisional jurisdiction cannot be exercised on an issue where an appeal or any other proceedings are pending or settled by an appellate authority or the High Court or the Supreme Court.

11. Rule 27 of the HVAT Rules prescribes the categories of cases which may be taken up for scrutiny. The criteria for selection of cases for scrutiny can be changed by the Commissioner with the approval of the State Government and the same shall be published by uploading on the website in terms of Sub rule (2) of Rule 27. Under Sub rule (3) of Rule 27, where the case has not been selected for scrutiny under rule (1), it shall be deemed to have been assessed to tax under Sub section (1) of Section 15 of HVAT Act and the copy of acknowledgment of the annual return shall be deemed to be the copy of the assessment order. However, so far as returns covered by proviso to Section 15(1) are concerned, the Assessing Officer shall pass an order recording his satisfaction about the completeness of the relevant returns and supply a copy of the order to the dealer.

12. A combined reading of the aforesaid shows that wherever the return has been filed and which is complete in all respects, the acknowledgment issued to the assessee would be deemed to be an assessment order. It was not disputed by the learned State counsel that no notice under sub section (2) of section 15 of the HVAT Act was issued for scrutiny of the return to the dealer. In such a situation, the State counsel was unable to explain and justify as to how the order on 25.11.2005 came to be passed and what was the nature of the same. Thus, it could not be termed to be a valid assessment order. Once the acknowledgment is deemed to be assessment order as discernible from Section 15(1) of the HVAT Act in the present case which is dated 19.11.2004, limitation for passing order under Section 34 of the HVAT Act was upto 30.11.2007 i.e. three years from the last date of 30.11.2004 of filing the return for the assessment year 2003-04. The same having been passed on 13.6.2008 was clearly beyond limitation. The Tribunal was thus in error in holding that the order passed on 13.6.2008 was within limitation. The substantial questions of law are answered against the State and in favour of the assessee. The appeals stand allowed.

SGA
LAW OFFICES

PUNJAB & HARYANA HIGH COURT

VATAP NO-109 of 2013

STATE OF PUNJAB AND OTHERS

Vs.

BHAGWANPURA SUGAR MILLS

AJAY KUMAR MITTAL AND FATEH DEEP SINGH

11th August, 2014

HF ▶ Assessee

LIMITATION – ASSESSMENT – FRAMING OF – SCOPE OF SECTION 29(4-A)OF PVAT ACT, 2005 - RETURNS FILED FOR THE YEAR 2005-06 – THREE YEARS OF LIMITATION PERIOD EXPIRED ON 20.11.2009 – ASSESSMENT FRAMED U/S 29 OF THE ACT ON 25/11/2010 - ORDER SET ASIDE BY TRIBUNAL AS ASSESSMENT BARRED BY LIMITATION IN VIEW OF SEC 29(4-A) OF THE ACT - EXTENSION OF LIMITATION PERIOD GRANTED BY COMMISSIONER U/S 29(4) OF PVAT ACT – HELD SEC 29 (4-A) IS *NON OBSTANTE* CLAUSE – EXTENSION GRANTED RENDERED INVALID AS SEC 29 (4-A) IS AN OVERRIDING SECTION – ASSESSMENT HELD TIME BARRED – APPEAL DISMISSED.

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

Present: Mr. Jagmohan Bansal, Additional Advocate General, Punjab, for the appellants.

Mr. Aman Bansal, Advocate for the respondent.

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AJAY KUMAR MITTAL, J.

C.M. No. 18919-CII of 2013

Allowed as prayed for.

C.M. No. 18920-CII of 2013

This is an application for condonation of 138 days' delay in filing the appeal.

After hearing learned counsel for the parties and perusing the application, the delay of 138 days in filing the appeal is condoned.

CM stands disposed of accordingly.

1. The State of Punjab has filed this appeal under Section 68 (2) of the Punjab Value Added Tax Act, 2005 (in short "the Act") against the order dated 23.11.2012 (Annexure A-5) passed by the Value Added Tax Tribunal, Punjab (hereinafter referred to as "the Tribunal") claiming the following substantial questions of law:-

"(i) Whether the order passed by the Ld. Tribunal is sustainable in law?

(ii) Whether the order passed by the Ld. Tribunal by relying upon judgment of this Hon'ble Court in the case of M/s Des Raj Bhim Sain the facts of which are not applicable to the facts of this case is sustainable in law?

(iii) Whether the Tribunal has rightly allowed the appeal of the Respondent when the Commissioner had exercised the power in accordance with Section 29(4) of the Punjab Value Added Tax Act, 2005?

(iv) Whether the provision of Section 29(4) is directory in nature especially when the legislature has empowered the Commissioner to extend the period of limitation by exercising the powers of Section 29(4) of the Punjab Value Added Tax Act, 2005?

(v) Whether the dealer is entitled to relief of legitimate tax payable by the Respondent voluntarily along with the returns, but avoided its payment willfully, solely on the ground of limitation?"

2. A few facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee filed its quarterly returns for the year 2005-06 and had also filed annual statement in Form VAT-20 by the stipulated date. It had not deposited the purchase tax leviable on the purchase of sugarcane along with the returns. The assessment was framed on 25.11.2010 (Annexure A-1) creating an additional demand of tax amounting to Rs. 2,34,86,759/- after issuing notice under Section 29 of the Act. The assessee filed an appeal before the Deputy Excise and Taxation Commissioner (Appeals), Patiala Range, Patiala who vide order dated 14.9.2012 (Annexure A-3) dismissed the appeal. Against the order dated 14.9.2010 (Annexure A-3), the assessee filed an appeal (Annexure A-4) before the Tribunal. The Tribunal vide order dated 23.11.2012 allowed the appeal holding that the assessment had not been framed within three years from the date of filing of the annual return. Hence, the present appeal by the revenue.

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

4. The point that arises for consideration in this appeal is whether in view of incorporation of sub-section (4-A) to Section 29 of the Act, the appropriate authority under the Act had the power to extend period of limitation for framing assessment for the assessment year 2005-06 beyond 20.11.2009.

5. The issue raised herein for the assessment year i.e. 2005-06 stands concluded against the revenue by the decision of this Court in **State of Punjab and another v. M/s Des Raj Bhim Sain (2012) 43 PHT 1 (P&H)**

6. In view of the above, no substantial question of law arises in this appeal. Accordingly, finding no merit in the appeal, the same is hereby dismissed.

PUNJAB & HARYANA HIGH COURT

CWP-1753-2012

GODREJ & BOYCE MFG. CO. LTD

Vs.

STATE OF PUNJAB AND OTHERS

RAJIVE BHALLA AND DR.BHARAT BHUSHAN PARSOON JJ.

5th December, 2014

HF ▶ Assessee

EXEMPTION – EXEMPTED UNIT - NOTIONAL TAX LIABILITY – SCOPE OF RULE 2 (xxi) OF PGST RULES – WHETHER CALCULATION OF NOTIONAL TAX LIABILITY ON BRANCH TRANSFER LEADS TO ACTUAL PAYMENT OF TAX WHEN THEY STAND EXEMPTED UNDER PARENT ACT – CERTIFICATE GRANTED FOR DEFERRED PAYMENT OF TAX – DEFERMENT PARAMETER FIXED UPTO 2007 OR A PREVIOUSLY FIXED AMOUNT, WHICHEVER EARLIER – LIABILITY CLEARED OFF TO THE SATISFACTION OF DEPARTMENT AS ALLEGED – IN 2007 NOTIONAL SALE TAX LIABILITY CALCULATED FOR DEFERRED PERIOD AND DEMAND FOR SALE TAX ON BRANCH TRANSFER OUTSIDE STATE DEMANDED IN VIEW OF RULE 2 (xxi) – ORDER AFFIRMED IN APPEALS BY TRIBUNAL - WRIT FILED ALLEGING NO ACTUAL LIABILITY IS FASTENED BY RULES AS BRANCH TRANSFER EXEMPTED UNDER THE ACT – HELD IF TAX IS NOT LEVIABLE AS PER PARENT STATUTE 1948, A RULE CANNOT BE INTERPRETED TO IMPOSE TAX – 'NOTIONAL' WORD IN RULE 2 (xxi) SIGNIFIES FICTIONAL CHARACTER AND IS NOT ACTUAL CHARGING PROVISION TO CALCULATE FRESH LIABILITY – ONLY METHODOLOGY FOR CALCULATING NOTIONAL TAX IS PROVIDED TO DETERMINE WHETHER QUANTUM OF DEFERMENT LIMIT IS REACHED – WRIT ALLOWED – MATTER REMITTED TO DECIDE AFRESH – *RULE 2 (xxi) OF PGST RULES.*

The petitioner had received an eligibility certificate from the Government of Punjab for deferment of sale tax liability upto 9 years i.e. upto 2005 or for maximum amount of Rs. 127,12,57,500/- whichever is earlier. The period was extended for 2 more years i.e. upto 2007. After expiry of the period of deferment, despite entire deposit of deferred sale tax liability, demand for sales tax on branch transfers for years 2004-05 was raised as per 'Notional Sales Tax Liability' in view of Rule 2(xxi) of the Rules and the order was affirmed in appeal before Tribunal . Aggrieved by the orders of the authorities below, a writ is filed on the ground that Rule 2 only provides for a methodology for calculating whether an assessee has reached the quantum of deferred tax. Allowing the writ, it is held that liability to pay tax on branch transfer is not set out in parent Act, therefore, a rule, policy or instruction can not be interpreted to impose a tax. A notional liability is fictional and does not become a charging provision to create fresh liability to pay tax. Sub Rule (i) of Rule 2(xxi) and proviso of the Rule in question are only to calculate notional liability to determine whether assessee has attained the amount of deferment. Hence, writ is allowed and matter is remitted to assessing officer to decide afresh.

Present: Mr.M.L.Sarin, Senior Advocate, with
Mr.Vikas Suri, Advocate, and Ms.Ankita Sambyal, Advocate, for the petitioner.

Ms.Radhika Suri, Addl.A.G., Punjab, for the respondents.

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RAJIVE BHALLA, J.

1. By way of this order, we shall decide CWP-1753-2012 and VATAP-64-2011. For the sake of convenience, facts are being taken from CWP-1753-2012.

2. The petitioner prays for issuance of a writ in the nature of certiorari to quash Rule 2 (xxi) of the Punjab General Sales Tax (Deferment & Exemption) Rules, 1991 (hereinafter referred to as the 'Rules') by holding that it ultra vires, or in the alternative, to read down the provision or to clarify that "notional sale's tax liability" referred to in Rule 2(xiii) of the Rules does not fasten actual liability. The petitioner also prays that orders dated 31.03.2009, 06.05.2010 and 28.04.2011, passed by the Excise & Taxation Officer-cum-Assessing Authority, SAS Nagar, Mohali, the Deputy Excise & Taxation Commissioner (Appeals) and the Value Added Tax Tribunal, Punjab, Chandigarh, respectively, may be quashed.

3. Before referring to the diametrically opposing stands of the parties, it would be appropriate to delimit the facts. Admittedly, in accordance with the Package of Incentives, 1992, the Government of Punjab, through the Industries Department and M/s Godrej-GE Appliances Limited (the original name of the petitioner), entered into a memorandum of understanding, dated 08.03.1994, agreeing to defer sales tax liability for nine years, subject to a fixed capital investment of 150%. Admittedly, the petitioner set up a manufacturing unit at Mohali and commenced production on The State of Punjab notified an amendment, dated to Clause 7 of the Package of Incentives, 1992 and Rule 8 of the Punjab Industrial Incentive Code, 1992, granting sales tax deferment to the petitioner. Accordingly, an eligibility certificate dated 20.02.1998 was issued to the petitioner granting deferment for nine years or for a maximum amount of Rs.127,12,57,500/- whichever is earlier, to be calculated from 22.03.1996. The petitioner in the meanwhile had deposited Rs.5,80,00,000/- towards sales tax from 22.03.1996 upto 31.03.1998 (the date of issuance of the eligibility certificate). The State of Punjab notified the Package of Incentives, 1996 and included incentives granted under the Package of Incentives, 1992, in the new policy. The petitioner was also informed on 18.10.2003 that the empowered committee had in its meeting dated 11.09.2003, decided that the period of sales tax deferment shall be extended by two years or till Rs.5.48 crores of sales tax exemption whichever is achieved earlier.

4. The Punjab Value Added Tax Act, 2005 came into force on 06.04.2005. The Punjab Value Added Tax, 2005 incorporates benefits of sales tax deferment already granted. The petitioner was required to file an application in form VAT (D and E)-I for issuance of an entitlement certificate to continue availing benefits of deferment upto 30.04.2005. The petitioner filed the requisite application and was issued an entitlement certificate valid from 22.03.2005 to 21.03.2007. The petitioner's period for availing deferment of sales tax expired on 21.03.2007.

5. The petitioner claims that despite deposit of the entire deferred sales tax liability it was served with notices for assessment years 2004-05 and 2005-06, both dated 10.08.2007, demanding sale tax on branch transfers by pointing out that the expression "notional sale tax liability" requires it to pay sale tax on branch transfers and consignment sales made outside the State of Punjab.

6. Aggrieved by the aforesaid notices, the petitioner filed representations, dated 17.08.2007 to the Chief Secretary, Government of Punjab, Principal Secretary Industries and Commerce, Government of Punjab and the Financial Commissioner Taxation, Punjab, objecting to the tax demanded on branch transfers by asserting that branch transfers are exempted from sale tax and "notional sales tax" is to be calculated only to determine whether the amount of deferment has been achieved. The Government of Punjab, however, did not take any decision in the matter. The Excise and Taxation Officer, vide order dated 31.03.2009, demanded Rs.8,44,16,501/- as tax on branch transfers by relying upon Rule 2(xxi)(ii) of the Rules.

7. The petitioner filed an appeal before the Deputy Excise and Taxation Commissioner (Appeals) which was dismissed on 06.05.2010. The petitioner filed another appeal before the Value Added Tax Tribunal, Punjab, Chandigarh, which was dismissed by holding that as vires of Rule 2(xxi)(ii) of the Rules have been impugned, the Tribunal does not have jurisdiction to record an opinion thereon.

8. VATAP-64-2011 has been filed to challenge order dated 22.03.1996, passed by the Value Added Tax Tribunal, Punjab, Chandigarh whereas the writ petition has been filed to challenge the vires of the Rules.

9. Counsel for the petitioner/appellant submits that liability to pay sales tax was deferred by fixing the quantum of deferment and providing for an outer period of deferment whichever is achieved earlier. The latter period was nine years and the former amount was Rs.137 crores. The period of deferment, including the extended period expired on 21.03.2007. The petitioner has deposited the entire deferred sales tax liability to the satisfaction of authorities but the respondents have demanded sales tax on branch transfers made outside the State of Punjab by asserting that the explanation to Rule 2(xxi) of the Rules and the proviso appended thereto provide that branch transfers outside the State shall be liable to tax. Counsel for the petitioner contends that Rule 2(xxi) of the Rules provides a methodology for calculating "notional sales tax" liability for the purpose of calculating whether an assessee has achieved the quantum of deferred tax. Rule 2(xxi) of the Rules does not fasten a liability to pay tax on branch transfers which are exempted under the Punjab General Sales Tax Act, 1948 (hereinafter referred to as the '1948 Act'). Rule 2 (xxi) cannot, in the absence of any taxing provision in the Act fasten liability to pay tax. The words used in the Rule, the explanation and the proviso are "tax payable" i.e. tax payable under the Act.

10. Counsel for the State of Punjab submits that as the explanation and the proviso clearly provide that notional sales tax liability shall be calculated on branch transfers, these transfers are exigible to sale tax. The State is, therefore, statutorily empowered to demand sales tax on branch transfers.

11. We have heard counsel for the parties, perused the impugned orders, averments in the appeal as well as in the writ petition and appraised the statutory provisions.

12. The question, that calls for an answer, is whether Rule 2 (xxi) (ii) of the Rules which provides for calculation of "notional sale tax liability" by including branch transfers, fastens a liability to pay tax on branch transfers or merely provides a methodology for calculating notional tax liability for the purpose of achieving the amount of deferred tax?

13. Admittedly, the payment of sales tax was deferred by reference to two parameters

namely achieving a specified amount of sales tax or the period of deferment, whichever is earlier. The State of Punjab, however, relies upon the proviso to Rule 2(xxi) (ii) of the Rules to contend that as the proviso unequivocally provides that the petitioner shall be liable to pay sales tax on branch transfers or consignments sales outside the State of Punjab, the petitioner is liable to pay tax on branch transfers made outside the State of Punjab. The petitioner, on the other hand, contends that as branch transfers are exempted under the Act from payment of sales tax, Rule 2(xxi) (ii) of the Rules or the proviso cannot be read to fasten a liability to pay tax on branch transfers and merely prescribes a methodology for calculating "notional tax" so as to determine expiry of the quantum of deferment.

Rule 2(xxi) of the Rules, reads as follows: -

" (xxi) "Notional sales tax liability" shall mean: -

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

EXPLANATION - The sales made on consignment basis within the State of Punjab, or branch transfer within the State of Punjab, shall be deemed to be sales made with the State and liable to tax.

(ii) the amount of tax payable under the Central Sales Tax Act, 1956 on the sale of finished products of the eligible units made in the course of inter-State trade of commerce computed at the rate of tax applicable under the aforesaid Act;

PROVIDED THAT on branch transfer or consignment sales outside the state of Punjab, notional sales tax liability shall be computed at the rate of four per cent on the production of the certificate in Form "F" and at the rate of ten per cent in the event of non-production of certificate in Form "F" specified in the Central Sales Tax Act, 1956 on the presumption that these transactions are eligible to tax under the aforesaid Act.

14. Admittedly, branch transfers outside the State of Punjab are exempted from the payment of sales tax. The State of Punjab has from time to time, notified schemes for deferment and exemption from payment of sales tax and for the said purpose, has enacted Section 10-A of the 1948 Act. A perusal of Section 10-A of the 1948 Act, reveals that the State Government may defer the payment of "tax due" if it is necessary or expedient to do so in the interest of industrial development subject to such conditions as may be prescribed. Admittedly, branch transfers outside the State of Punjab are not exigible to sales tax. A taxing statute imposes tax by enacting a taxing provision that sets out the taxing event. The exigibility of a transaction to tax must flow from the statute and, therefore, requires legislature to enact a specific provision setting out the contours of the event/transaction that would invite tax. If liability to pay tax is not set out in the parent statute, a rule, a policy, an instruction or a clarification cannot whether by intent or by interpretation, be used to impose a tax. The words "subject to such conditions" used in Section 10-A of the Act while referring to the deferment, cannot be construed to confer power to prescribe a fresh tax by way of a rule.

15. Rule 2(xxi) (i) of the Rules defines "Notional sale tax liability" to mean the amount of "tax payable under the Act", thereby, in our considered opinion leaving no ambiguity as to its intent and purpose i.e. tax as payable and set out under the Act. Rule 2(xxi) of the Rules commences with the words "Notional" thereby inhering a fictional amount to be calculated for attaining the quantum of the deferment limit as prescribed in the deferment certificate. A notional liability is always fictional and must retain its fictional character without transforming into a reality as a charging provision to create a fresh liability to pay tax. The word "notional" used in the title of Rule 2 (xxi) of the Rules and the words "shall be deemed" and "on the presumption that these transactions are eligible to tax under the aforesaid Act" clarify the word "notional". This notional calculation of sales tax liability cannot possibly be read to confer a fresh liability to pay tax. Even otherwise, Section 10-A of the 1948 Act places an obligation upon the party granted a deferment certificate to pay "tax due" i.e. tax as determined by the statue and, therefore, the stand taken by the State that Rule 2(xxi) of the Rules, the proviso and the explanation thereto requires the petitioner to pay tax on branch transfers, can neither be countenanced nor do the words and expressions used in the explanation and the proviso lend themselves to such an interpretation.

16. The explanation to sub Rule (i) which clarifies that branch transfers within the State of Punjab shall be deemed to be sales made within the State of Punjab and liable to tax does appear to suggest that branch transfers shall be deemed to be sales under the Act and liable to tax. The proviso to sub rule (ii), which sets out the rate of "notional tax liability" on branch transfers or consignment sales outside the State of Punjab clarifies that sale tax liability on branch transfers shall be sales under the Act, by raising a presumption that these transactions are "eligible to tax under the aforesaid Act". The sub rule and the proviso, in our considered opinion, merely enable the State to include branch transfers while calculating a "notional liability" to determine whether the assessee has attained the amount of deferment. The sub rule or the proviso to Rule 2 (xxi) of the Rules cannot, in our opinion, by reference to the presumption be read as imposing a tax on branch transfers outsideestimated purchase of raw material otherwise liable to purchase, of the eligible unit during the year for the purpose of deferment of, or, exemption from, tax computed at the rates specified under the Act; and,

> *EXPLANATION- The sales made on consignment basis within the State of Punjab, or branch transfer within the State of Punjab, shall be deemed to be sales made with the State and liable to tax.*
>
> *(ii) the amount of tax payable under the Central Sales Tax Act, 1956 on the sale of finished products of the eligible units made in the course of inter-State trade of commerce computed at the rate of tax applicable under the aforesaid Act;*
>
> *PROVIDED THAT on branch transfer or consignment sales outside the state of Punjab, notional sales tax liability shall be computed at the rate of four per cent on the production of the certificate in Form "F" and at the rate of ten per cent in the event of non-production of certificate in Form "F" specified in the Central Sales Tax Act, 1956 on the presumption that these transactions are eligible to tax under the aforesaid Act.*

17. Admittedly, branch transfers outside the State of Punjab are exempted from the payment of sales tax. The State of Punjab has from time to time, notified schemes for deferment

and exemption from payment of sales tax and for the said purpose, has enacted Section 10-A of the 1948 Act. A perusal of Section 10-A of the 1948 Act, reveals that the State Government may defer the payment of "tax due" if it is necessary or expedient to do so in the interest of industrial development subject to such conditions as may be prescribed. Admittedly, branch transfers outside the State of Punjab are not exigible to sales tax. A taxing statute imposes tax by the State of Punjab or setting out a taxing event beyond the terms of the statue. As referred to before branch transfers are exempted from payment of sale. Rule 2(xxi) of the Rules, therefore, only provides for the methodology for calculating notional tax in cases of deferment and cannot be construed as a charging provision foisting a fresh liability upon an assessee, dehors any provision in the statue or in derogation to the exemption granted to such transfers. An exigibility to tax must flow from the statute and not from any provision whether direct or presumptive in a Rule and, therefore, we cannot construe the proviso to Rule 2 (xxi) of the Rules as imposing an obligation to pay sales tax on branch transfers outside the State of Punjab dehors the Act.

18. It would also be appropriate to point out that the words "and liable to tax" used in the explanation and the words "on the presumption that these transactions are exigible to tax under the aforesaid Act" used do not lend themselves to an interpretation that raises them to the status of a charging provision thereby imposing a fresh charge or tax rendering an assessee exigible to a tax that is not imposed by the parent statue. It is, therefore, apparent that Rule 2(xxi) of the Rules is a provision that aids and assists the assessee and the State in calculating notional tax liability for deferment and empowers the State Government while calculating the limit of deferment to include sale tax on branch transfers outside the State of Punjab on a presumption that they shall be deemed to be taxable but only for the purpose of calculating the quantum of deferred tax achieved by the assessee. The proviso cannot whether by interpretation or by reference to the presumption be assigned the status of a taxing provision rendering an assessee liable for a taxing event which is exempted under the parent statute i.e. the 1948 Act. Consequently, we allow the writ petition as well as the appeal, set aside the impugned orders and remit the matter to the assessing officer to decide the matter afresh and in accordance with law.

PUNJAB & HARYANA HIGH COURT

CWP No. 9566 of 2001

ODEAN RESTAURANT

Vs.

STATE OF PUNJAB AND OTHERS

AJAY KUMAR MITTAL. AND FATEH DEEP SINGH JJ

4th August, 2014

HF ▶ Petitioner

SALE TAX – LEVY OF – FOOD SUPPLY BY RESTAURANT / EATING HOUSE – PETITIONER RUNNING RESTAURANT – FOOD SUPPLIED NOT CONSIDERED SALE AS PER PGST ACT 1948 – W.E.F. 1987 MEALS SUPPLIED BY RESTAURANT MADE TAXABLE AS PER AMENDMENT – HOWEVER, NO TAX PAYABLE FOR PERIOD UPTO DATE OF AMENDMENT IF TAX NOT COLLECTED BY DEALER FOR THAT PERIOD – ASSESSMENT FRAMED FOR YEAR 1985-86 – BASED ON RECORD PRODUCED DECLARATION BY DEPARTMENT THAT NO TAX FOUND COLLECTED BY DEALER FOR THE YEAR IN QUESTION – THEREFORE, NO TAX LEVIED ON PETITIONER – TAX AND INTEREST LEVIED IN REVISIONAL PROCEEDINGS – ORDER UPHELD BY TRIBUNAL ON GROUNDS OF DEALER'S FAILURE TO PROVE THAT TAX WAS NOT COLLECTED BY IT FOR PERIOD PRIOR TO AMENDMENT – HELD BY HIGH COURT THAT FINDING BY ASSESSING AUTHORITY REGARDING NO TAX BEING COLLECTED BY DEALER FOR THE YEAR IN QUESTION IGNORED BY TRIBUNAL – LIABILITY TO BE FASTENED FOR PERIOD PRIOR AMENDMENT ONLY IF TAX STOOD COLLECTED BY DEALER – SURRENDERING OF REGISTRATION CERTIFICATE BY PETITIONER IN 1985 TAKEN INTO ACCOUNT – ONUS THUS STOOD ALREADY DISCHARGED – LEVY OF TAX AND INTEREST SET ASIDE - WRIT PETITION ALLOWED – SECTION 2 (h) OF PGST ACT 1987; SECTION 4(2) (a) OF PGST ACT 1987 .

The petitioner was running a restaurant and was not liable to tax as per section 2(h) of PGST Act, 1948 as supply of food by eating houses was not considered as sale. In 1987, vide amendment, supply of foods by eating place was made taxable. However, any dealer who had not been collecting tax from its customers for the period upto date of amendment was not liable to pay tax if it could discharge the onus to prove the same. The petitioner was assessed for the period of 1985-86 whereby no tax was levied by the assessing authority declaring that based on books of accounts shown, it was proved that the dealer had charged no tax for the year in question from its customers. The revisional authority levied tax and interest which was upheld by Tribunal holding that the petitioner had failed to discharge the onus to prove that he had not charged tax for the period prior amendment. Allowing the writ, the High Court has held that the assessing authority has already given a finding based on material record regarding nil collection of tax from customers by the dealer during assessment year. Therefore, the onus stands discharged. Also, registration certificate was surrendered in 1985 by the dealer which was corroborated with the fact recorded by the assessing authority. Therefore writ is allowed.

Present: Mr. K.L. Goyal, Senior Advocate with

Mr. Naveen Rattan, Advocate for the petitioner.

Mr. Piyush Kant Jain, Additional Advocate General, Punjab.

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AJAY KUMAR MITTAL, J.

1. In this petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ of certiorari for quashing the orders dated 29.5.1992 (Annexure P-5) passed by respondent No.3 and dated 30.3.1994 (Annexure P-6) passed by respondent No.2.

2. The facts, in brief, necessary for adjudication of the instant appeal as narrated therein are that the petitioner is a partnership firm running a restaurant at Amritsar. The petitioner was registered as a dealer under the Punjab General Sales Tax Act, 1948 (hereinafter referred to as "1948 Act") with registration No. AMR/556 during the year 1985-86. It claimed exemption from payment of tax under the 1948 Act for the receipts on account of meals served to the customers in view of the judgments of the Hon'ble Supreme Court in **Northern Indian Caterers (India) Ltd. v. Lt. Governor of Delhi (1978) 42 STC 386** and **State of Himachal Pradesh and others v. Associated Hotels India Ltd. (1972) 29 STC 474** wherein it was observed that the transactions in question are not 'sales' as defined in Section 2(h) of the 1948 Act. The Parliament by way of 46th Amendment, inserted Clause (29-A) in Article 366 defining the term 'sale'. It came into force w.e.f. 2.2.1983 and the States were empowered to impose tax on the transactions relating to meals served to the customers in the restaurants as 'sales'. The State of Punjab vide notification dated 13.4.1987 (Annexure P-2) amended the 1948 Act by enacting Punjab General Sales Tax (Amendment and Validation) Act, 1987 (in short "the Act") and changed the definition of sale given in Section 2(h) therein. Vide Section 4(2)(a) of the amending Act, it was provided that no tax shall be payable for the period upto the date on which the amended Act had come into force if the dealer had not collected any tax from the customers. The assessing authority vide order dated 5.5.1989 (Annexure P-4) framed the assessment of the dealer for the year 1985-86 declaring the transactions as not liable to payment of tax as no tax had been collected by the dealer from the customers. Therefore, in view of the Section 4(2)(a) of the amended Act, the assessing authority had not levied any tax despite the amendment of the 1948 Act. Respondent No.3 initiated ***suo motu*** revisional proceedings on the ground that even after the amendment of the Act, the dealer was liable to pay tax and vide order dated 29.5.1992 (Annexure P-5) not only assessed the tax amounting to ' 56,237/- but also levied interest to the tune of ' 69,688/- on the dealer. Feeling aggrieved, the dealer filed revision before the Tribunal. The Tribunal vide order dated 30.3.1994 (Annexure P-6) upheld the order of respondent No.3 and dismissed the revision holding that the onus to prove that the tax was not collected from the dealer was upon him which he had failed to do. Aggrieved by the order dated 30.3.1994 (Annexure P-6), the dealer filed reference under Section 22(1) of the Act for referring certain questions of law to this Court for opinion. During the pendency of the reference application, the dealer moved rectification application regarding interest. However, the Tribunal vide order dated 3.11.1998 (Annexure P-8) dismissed the said application being time barred. The Tribunal vide exparte order dated 30.9.1999 (Annexure P-9) dismissed the reference application. Thereafter, the dealer filed restoration application for recalling the order dated 30.9.1999 (Annexure P-9). The Tribunal vide order dated 19.10.2000 (Annexure P-10) dismissed the said application. Hence, the present writ petition.

3. Upon notice of motion having been issued, written statement was filed by respondents No.1 and 3. It was pleaded therein that the petitioner was charging tax and depositing the same. The revisional authority took up the case of the petitioner and after examination of the record, the petitioner was assessed under Section 21 of the 1948 Act and an additional demand of ' 1,25,925/- was created because the petitioner had failed to discharge its onus to show that as to why it stopped

charging tax when there was no change in the law between 1983 to 1985. It was further pleaded that the order of the revisional authority was upheld by the Tribunal and the reference application as well as rectification application regarding interest filed by the petitioner were also dismissed by the Tribunal. The other averments made in the writ petition were denied and a prayer for dismissal of the same was made.

4. The averments made in the written statement were controverted and that of the writ petition were reiterated by the petitioner by filing replication.

5. Learned counsel for the petitioner submitted that the Parliament by 46th Constitutional Amendment had sought to bring within the tax net the restaurants and the food etc. sold by them w.e.f. 2.2.1983. However, the State Legislature by virtue of the Amendment Act made effective from 3.3.1987 had levied sales tax on the food articles sold by the restaurants. However, by virtue of Section 4 (2)(a) of the amended Act, it was stipulated that the dealer-restaurant owners shall not be liable to pay tax where the said tax has not been collected on supply on the ground that no such tax could have been levied or collected at that time. It was urged that the Assessing Officer in the order had categorically recorded a finding that after perusal of the books of account produced by the dealer, it was noticed that no tax was collected during the year under assessment. Reference was also made to the letter dated 21.5.1985, Annexure P-1, whereby the petitioner had surrendered registration certificate w.e.f. 21.5.1985. It was argued that the revisional authority and the Tribunal had without any material recorded a finding that the assessee had failed to show that no tax was collected which was not borne out from the record. The levy of interest was also challenged in view of judgment of the Hon'ble Apex Court in **J.K. Synthetics Ltd. v. Commercial Taxes Officer, 94 STC 422 (SC)**.

6. On the other hand, learned State counsel supported the orders passed by the revisional authority and the Tribunal.

7. After hearing learned counsel for the parties, we find substance in the submission of learned counsel for the petitioner. It would be advantageous to refer to Section 4(2) of the Act amended Act which reads thus:-

> *"4(2) Notwithstanding anything contained in subsection (1), any supply of the nature referred to therein shall be exempt from the aforesaid tax,-*
>
> *Where such supply has been made by any restaurant or eating house (by whatever name called) at any time on or after the 7th day of September, 1978 and before the commencement of the Punjab General Sales Tax (Amendment) Act, 1987 and the aforesaid tax has not been collected on such supply on the ground that no such tax could have been levied or collected at that time; or*
>
> *Where such supply, not being any such supply by any restaurant or eating house (by whatever name called), has been made at any time on or after the 4th day of January,1972, and before such commencement and the aforesaid tax has not been collected on such supply on the ground that no such tax have been levied or collected at that time:*
>
> *Provided that the burden of providing that the aforesaid tax was not collected on any supply of the nature referred to in clause (a) or, as the case may be, clause (b), shall be on the person claiming the exemption under this sub-section.*

8. Section 4(2) of the amended Act specifically provides that before the commencement of the Punjab General Sales Tax (Amendment) Act, 1987, the dealer-restaurant owner was not liable to pay tax on the supply of goods where no such tax had been collected on such supply by him on the ground that no such tax could have been levied or collected at that time. In other words, for the period prior thereto, liability could only be fastened where the dealer had collected the tax. The

Assessing Officer on the basis of material and after examining the books of account had recorded a categorical finding that no tax was collected during the assessment year in question. This fact was corroborated by the petitioner with reference to letter dated 21.5.1985 (Annexure P-1) where the dealer had surrendered the registration certificate w.e.f. 21.5.1985. The onus upon the dealer had, thus, been discharged. The findings recorded by the revisional authority and the Tribunal to the contrary are not borne out from the record and, thus, cannot legally be sustained.

9. In view of the above, no liability could be fastened on the petitioner for the period in question. As a necessary corollary, the levy of interest is also unsustainable.

10. Writ petition stands disposed of in the aforesaid terms.

PUNJAB & HARYANA HIGH COURT

VATAP No. 173 of 2013

STATE OF HARYANA

Vs.

HARI KEWAL VANASPATI MILLS

RAJIVE BHALLA AND B.S. WALIA, JJ

5th December, 2014

HF ▶ Assessee

NATURAL JUSTICE – REASSESSMENT – OPPORTUNITY OF CROSS-EXAMINATION – VIOLATION OF SECTION 31 OF HGST ACT – REASSESSMENT PROCEEDINGS CONCLUDED WITH RAISING OF ADDITIONAL DEMAND ON ACCOUNT OF SUPPRESSED PURCHASES – INFORMATION POINTING TOWARDS SUPPRESSED PURCHASES NOT TESTED FOR GENUINENESS – VIOLATION OF NATURAL JUSTICE OBSERVED BY TRIBUNAL – APPEAL BY REVENUE - C-FORMS AND DRAFTS BEING ISSUED BY ASSESSEE HIMSELF CONTENDED TO HAVE NEGATED THE NEED TO ALLOW CROSS-EXAMINATION - HELD BY HIGH COURT THAT RELEVANT INFORMATION THAT FORMED THE BASIS OF ADVERSE ORDER NOT CONFRONTED TO ASSESSEE – AUTHORITY NOT ABSOLVED OF THE OBLIGATION TO ALLOW CROSS-EXAMINATION EVEN IF CERTAIN DOCUMENTS PRODUCED BY ASSESSEE – VIOLATION OF NATURAL JUSTICE AND SECTION 31 OF HGST ACT – APPEAL DISMISSED - *SECTION 31 OF HGST ACT, 1973.*

An additional demand on account of suppressed purchases was raised during reassessment. On appeal before Tribunal it was held that the information gathered from the third party and relied upon by the Assessing Authority for reassessment needed to be tested through a detailed enquiry to ascertain the genuineness of the purchases alleged to have been suppressed. Violation of principals of natural justice was observed and the matter was remanded. The revenue appealed before the Hon'ble High Court that since the assessee itself had issued bank draft and C-forms without asserting to the contrary, there was no need to allow any further cross-examination. The High Court, dismissing the appeal, has held that the assessee was not confronted with the relevant information that formed the foundation of the reassessment order. The question whether C-forms and drafts were issued by the assessee or not, did not absolve the assessing officer of its obligation to grant an opportunity to cross examine the source of this information. As per Sec. 31 of HGST Act 1973 'reasonable opportunity' has to be provided before an adverse order is passed against assessee on reassessment. Appeal filed by State was dismissed.

Present: Ms. Mamta Singhal, AAG, Haryana, for the appellant.

Mr. Avnish Jhingan, Advocate, for the respondent.

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RAJIVE BHALLA, J.

1. The State of Haryana is surprisingly before us advancing a plea that adequate opportunity should not be granted to the assessee or in the alternative as adequate opportunity has been granted, the impugned order dated 3.10.2012, passed by a Full Bench of the Tribunal may be set aside.

2. The Assessing authority concluded reassessment proceedings against the assessee by holding that the assessee has suppressed purchases of Rs. 2,36,40,414/- and, therefore, assessed a gross-profit @ 8.33%, enhanced the gross turn over to Rs.2,60,00,000/- and raised an additional demand of Rs.18,20,000/-. The assessee filed an appeal before the Joint Excise and Taxation Commissioner(Appeals), Hisar, which was disposed of by marginally reducing the additional demand. The assessee, thereafter, filed an appeal before the Haryana Tax Tribunal. A difference of opinion between members of the Tribunal led to the matter being placed before a Full Bench of the Tribunal, which by majority, passed order dated 3.10.2012 holding as follows:-

> *"Hence, from the legal position as discussed, it would follow that it is not mandatory in every case that the crossexamination of the third party should invariably be allowed by the Assessing Authority. Decidedly, the assessment proceedings are quasi judicial proceedings and subject to observance of the principles of natural justice. Whether crossexamination of a person providing information is required or not will depend on the facts and circumstances of the case under assessment. However, in the present case as pointed out in paras 8, 10 and 14 above, there was deficiency in the observance of the principles of natural justice amounting to violation thereof. The information gathered from the third party and relied upon by the Assessing Authority for reassessment needed to be tested through a detailed enquiry to ascertain the genuineness of the purchases alleged to have been suppressed. Therefore, in view thereof and in view of the ratio of the judgments cited by the appellant, we hold that the cross-examination of the third party was warranted in this case. "*

3. Counsel for the State of Haryana submits that as the Tribunal has itself held that an opportunity to cross-examine a person who provides information need not be allowed in each and every case, it has erred in holding that the assessing authority did not observe the principles of natural justice. Counsel for the State of Haryana further contends that as the dealer himself issued the bank drafts etc., there was no need for granting any further opportunity. It is also argued that as C-Forms, relied by the Assessing Officer were issued by the assessee and the assessee had not asserted to the contrary, findings recorded by the Tribunal are contrary to the evidence on record and, therefore, may be set aside.

4. Counsel for the assessee, however, submits that a perusal of findings recorded by the Tribunal prove that the assessee was not confronted with relevant material, that formed the foundation of the reassessment order. The question whether the C-Forms and drafts were issued by the assessee or not, did not absolve the Assessing Officer of its obligation to confront the assessee with relevant material and to grant an opportunity to cross-examine the source of this information.

5. A fundamental principle that governs all quasi judicial determinations is strict adherence to principles of natural justice. Thus, where an Assessing Authority collects material against an assessee and then proceeds to nullify an already concluded assessment to fasten additional lability, the Assessing Authority would be required to confront the assessee with all relevant material that is likely to form the basis of his consideration. The question whether documents relied by the Assessing Authority were prepared by the assessee or that the assessee did not ask for an opportunity, are questions relating to the final order to be passed and therefore, do not absolve an Assessing Authority of its obligation to confront the assessee with relevant material. The Tribunal

has recorded a clear finding that the assessee was not granted adequate opportunity to rebut material collected by the authority. Section 31 of the Haryana General Sales Tax, 1973, itself requires grant of a "reasonable opportunity" thereby requiring adherence to principles of natural justice, before an adverse order of reassessment is passed against an assessee.

6. As a consequence, we find no reason to interfere with the impugned order and dismiss the appeal.

PUNJAB & HARYANA HIGH COURT

VATREF No. 7 of 2010

PREM NARAIN AND COMPANY

Vs.

STATE OF PUNJAB

RAJIVE BHALLA AND B.S. WALIA, JJ

15th December, 2014

HF ▶ Appellant

PENALTY – CHECK POST – EVASION – INGENUINE DOCUMENTS – CANCELLATION OF AGENCY OF APPELLANT BY PRINCIPAL COMPANY - CONSEQUENTLY GOODS RETURNED BY AGENT APPELLANT – VOLUNTARY REPORTING AT ICC - GOODS DETAINED ON GROUNDS THAT BILLS PRODUCED NOT ISSUED FROM REGULAR BILL BOOK – STOCK SUSPECTED TO BE MEANT FOR TRADE – PENALTY U/S 14(B)(7) OF PGST ACT IMPOSED – ASSESSMENT ORDER DECLARING THE BILLS IN QUESTION DULY VERIFIED AND ACCEPTED TAKEN INTO ACCOUNT BY TRIBUNAL – CREDIT NOTE ISSUED TO AGENT BY PRINCIPAL ON RECEIVING GOODS BROUGHT ON RECORD – HELD BY HIGH COURT THAT ONCE ASSESSING AUTHORITY HAD FINALISED ASSESSMENT AND ACCEPTED THOSE BILLS AS VERIFIED AND RECORDED A FINDING THAT GOODS RETURNED AS PER BILLS IN QUESTION WERE ONLY ON ACCOUNT OF TERMINATION OF AGENCY, NO LIABILITY TO PAY TAX AROSE – PENALTY DELETED AND REFUND ALONGWITH INTEREST GRANTED – *SEC. 14(B)(7) OF PGST ACT.*

After the cancellation of agency in the year 2000, the goods were returned by the appellant to its principal company M/s Escorts Ltd, Faridabad. The goods in transit were voluntarily reported at the ICC and documents were produced. Suspecting the goods to be meant for trade on the basis of the bills produced not being issued from the regular bill book, penalty u/s 14(b)(7) was imposed. For the year 2001-02 an assessment order was passed whereby the authority clearly laid down that the bills in question were duly verified with books of accounts and that the goods returned were due to cancellation of agency between the appellant and M/s Escorts Ltd and as such no tax is payable on these goods. Therefore, the Hon'ble High Court deleted the penalty and has set aside the impugned order on the basis of the order passed by the Assessing Authority. It is held that once the assessing authority has finalized the assessment proceedings by accepting that the assessee had returned the goods to M/s Escorts Ltd through the bills in question on cancellation of agency and the bills were duly verified with the books of accounts, there is no liability to pay tax on such goods. Hence, the penalty was deleted and refund of the amount deposited by the appellant was allowed alongwith interest from the date of deposit.

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

Mr. Jagmohan Bansal, Advocate for the respondent.

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B.S. WALIA, J.

1. Vide order dated 24.9.2010, VAT Tribunal, Punjab, Chandigarh, has referred the following question of law to this Court for its opinion :-

> "Whether in the facts and circumstances of the case where the contention of the appellant/assessee that the goods had been returned by the dealer i.e. the present applicant/appellant to M/s Escorts Ltd. Faridabad, on cancellation of the agency and the bills had been duly verified with books of accounts by the assessing authority at the time of assessment, then penalty under Section 14-B(7)(ii) of PGST Act on the ground that the goods were not accompanied by proper and genuine documents shall be sustainable."

2. Brief facts of the case are that truck No. PLS-9349 carrying goods while leaving the State of Punjab was intercepted and checked by the ETO at ICC Shambhu on 06.05.2001. The truck driver reported at the ICC while leaving the State of Punjab. On production of documents relating to the goods i.e. tractor parts the detaining officer observed that the documents were not proper and genuine. A representation was made on behalf of the dealer before the detaining officer and bill book from which bill Nos. 1655, 1656 to 1681 had been issued was produced. However the same was found to be not from the current bill books. The same was also found to be not mentioned in the account books. The matter was reported to the authorized officer, who after going through the facts of the case and hearing counsel for the appellant imposed a penalty of Rs.1,65,000/- u/s 14-B(7)(ii) of the Punjab General Sales Tax Act, 1948 (in short "the Act") vide order dated 27.11.2001. An appeal filed against order dated 27.11.2001 was dismissed by the Joint Director (Enforcement), Patiala, vide order dated 06.08.2002. A further appeal before the Value Added Tax Tribunal, Punjab, Chandigarh (for short 'Tribunal'), was dismissed vide order dated 07.04.2003. Thereafter an application u/s 22 (1) of the Act was filed for referring the matter for the opinion of the High Court on 9 questions of law. The Tribunal vide its order dated 21.08.2008 referred only the below mentioned composite question of law for the opinion of the High Court :

> *"Whether in the facts and circumstances of the case where the contention of the appellant/assessee that the goods had been returned by the dealer i.e. the present applicant/appellant to M/s Escorts Ltd. Faridabad, on cancellation of the agency and the bills had been duly verified with books of accounts by the assessing authority at the time of assessment, then penalty under Section 14-B(7)(ii) of PGST Act on the ground that the goods were not accompanied by proper and genuine documents shall be sustainable."*

3. The High Court, vide its order dated 30.04.2010 in VATREF No. 2 of 2008 held that the reference made needed further examination by the Tribunal, therefore, remitted the case to the Tribunal for a fresh statement of case and questions to be framed on the basis of facts given in the first order of the Tribunal. It is in the aforementioned circumstances that the brief facts of the case, as have been referred to above, were prepared.

4. The order of reference further mentions that as per argument of the counsel for the

appellant, the appellant was agent of M/s Escorts Ltd. Faridabad. The agency was cancelled vide letter dated 18.07.2000 and goods being carried were not for sale, but were being returned to M/s Escorts Ltd. Faridabad. A declaration at the ICC had been duly generated and even a written statement was filed before the AETC, explaining the factual as well as legal position. It is in the aforementioned circumstances that the question referred to the High Court for its opinion was formulated and as has been referred to at the outset.

5. We have heard learned counsel for the parties and perused the paper book, as also the orders attached therein and are of the view that the reference has to be answered in favour of the assessee for the reasons mentioned hereunder.

6. A perusal of the paper book (order of the VAT Tribunal, Punjab dated 21.08.2008) reveals that the appellant was an agent of M/s Escorts Ltd. Faridabad and that its agency was cancelled vide letter dated 18.07.2000. The goods being carried were not for sale and were being carried for being returned to M/s Escorts Ltd. Faridabad. Information regarding this fact was duly generated at the ICC and even a written statement was filed before the AETC explaining the factual and legal position. Assessment for the year 2001-02 had been completed by the assessing authority and all books and documents had been produced and the assessing authority, after duly verifying the documents relating to return of goods of the value of Rs.5,58, 557/- against bill Nos. 1655 and 1656 to 1681 had accepted the position as taken by the appellant and framed assessment vide order dated 05.05.2008. A copy of the assessment order dated 05.05.2008 has been produced before us. A relevant extract of the same is reproduced below :-

> *" The books produced by the firm have examined at length and during the course of examination of books of accounts it was noticed that the dealer has made goods returned to Escorts Ltd., Faridabad on cancellation of agency/dealership through bill Nos. 1655, 1656 to 1681 are in continuation and the same are for Rs.558557/-. These bills were duly cross verified with books of accounts. The goods returned as mentioned above is only on account of termination of dealership as such no tax is payable on these goods."*

7. It would be relevant to mention here that against the order of the Tribunal dated 07.04.2003, CWP No.6435 of 2005 had been filed in the High Court, which was dismissed as withdrawn vide order dated 13.12.2006, granting permission to the petitioner to avail remedy of reference, where after reference was filed.

8. A penalty of Rs.1,65,000/- had been imposed under Section 14-B(7) (ii) of the Act, in view of the conclusion of AETC, ICC, (Export), Mehmoodpur that the goods were meant for trade as they were not covered by proper and genuine documents and an attempt to evade tax is proved. A perusal of the order of Tribunal dated 21.08.2008 reveals that during the course of arguments, the BANu/appellant had produced record i.e. credit note issued by M/s. Escorts Ltd., Faridabad, for goods so received, on cancellation of agency, as also assessment proceedings as finalized and bill books and contention of the appellant having been accepted by the assessing authority that the goods of the value of Rs.5,58,557/- against bill Nos. 1655 and 1656 to 1681, had been returned on cancellation of the agency.

9. On the other hand, the sole argument on behalf of the department was that the AETC, ICC, (Export), Mehmoodpur, had come to the conclusion that bills were not from the regular bill books and therefore goods were meant for trade and reflected an attempt to evade tax being not covered by proper and genuine documents. Likewise, perusal of order dated 06.08.2002 passed by the Joint Director (Enforcement), Patiala Division, Patiala, in appeal filed by the assessee, was on the basis that there was no mention of stock transfer in the bills accompanying the goods and the bills in question not having been issued from regular bill book and the appellant had failed to establish the bona fide of the documents, therefore, it was held to be an attempt had been made to evade tax. The AETC, ICC, (Export), Mehmoodpur, had imposed a penalty of

Rs.1,65,000/- vide order dated 27.11.2001 by observing that bill No. 1661 to 1700 had been issued and that said bill book had been produced but the said bill book did not find mention in the current account books and further that bills prior to the date of transaction in issue in the instant case did not find place in any account books. The AETC, ICC, (Export), Mehmoodpur by referring the provisions of Section 6 (A) of the Central Sales Tax Act held that the burden was cast on the dealer to prove that the goods were transferred by him otherwise than by way of sale, but that the dealer had not produced any document to substantiate that it was a case of stock transfer of goods and that no account books, stock register for verification of accompanying bill was produced and that only document produced was bill book which conclusively proved that bills were not issued from the regular bill books. In the light of the above, the AETC, ICC, (Export), Mehmoodpur, held that the goods were meant for trade and were not covered by proper and genuine documents therefore there was an attempt to evade tax for which penalty of Rs.1,65,000/- under Section 14-B.7(ii) of the Act was imposed.

10. The question referred to this Court has to be answered in favour of the assessee for the reason that once the agency stood cancelled and M/s Escorts Ltd., Faridabad had given a credit note for the goods (facts that have gone unchallenged by the revenue), besides assessment having been framed, bill books and the stand of the appellant having been accepted by the assessing authority that the goods of the value of Rs.5,58,557/- against bill Nos. 1655 and 1656 to 1681, had been returned by the appellant to M/s Escorts Ltd., Faridabad, on cancellation of the agency, there was no question of there being any attempt to evade tax. A perusal of Section 14(B)7 (ii) of the Act reveals that the sine qua non for imposing penalty is a conclusion on the basis of an enquiry by the concerned officer that there has been an attempt to avoid or evade tax under the Act. The bill Nos. 1655, 1656 to 1681 were produced before the AETC, ICC, (Export), Mehmoodpur, alongwith bill books. However, the same was disbelieved on the ground that the bill book did not find place in the current account books. Once the assessing authority has finalized the assessment proceedings vide order dated 05.05.2008 by accepting the stand of the assessee that the appellant had returned the goods to M/s Escorts Ltd., Faridabad, through bill Nos. 1655, 1656 to 1681 dated 05.05.2001 to M/s Escorts Ltd., Faridabad on cancellation of its agency/dealership and the bills were duly cross verified with the books of accounts and finding was recorded that goods returned as per bill given were only on account of termination of dealership, there was no liability to pay tax on such goods. Therefore, there is no further scope to doubt the stand of the appellant or to impose penalty particularly when the documents produced by the assessee have not been proved to be incorrect.

11. Accordingly it is held that the penalty imposed on the appellant u/s 14- B(7)(ii) of PGST Act on the ground that the goods were not accompanied by proper and genuine documents despite the stand of the appellant/assessee that the goods had been returned by it to M/s Escorts Ltd. Faridabad, on cancellation of the agency and despite the bills having been duly verified with the books of accounts by the assessing authority at the time of assessment vide order dated 05.05.2008 is held to be legally unsustainable. The question of law is answered accordingly.

12. Resultantly, orders dated 27.11.2001 passed by AETC, ICC, (Export), Mehmoodpur, order dated 06.08.2002 passed by the Joint Director (Enforcement), Patiala Division, Patiala, in the first appeal, as also order dated 07.04.2003 passed by the Tribunal in appeal u/s 20(2) of the Act, are unsustainable.

13. As a consequence thereof, the Assistant Excise & Taxation Commissioner, Information Collection Centre (Export), Mehmoodpur would take steps to refund the sum of Rs.1,65,000/- imposed by way of penalty to the appellant along with interest @ 12% p.a. w.e.f. the date of deposit of penalty amount by the appellant till date of refund, within a period of 3 months from the date of receipt of certified copy of this order.

SUPREME COURT OF INDIA

Civil Appeal No 10265 of 2014

BALAJI STEEL RE-ROLLING MILLS

Vs

COMMISSIONER OF CENTRAL EXCISE & CUSTOMS

ANIL R. DAVE, KURIAN JOSEPH AND R.K. AGRAWAL, JJ.

14th November, 2014

HF ▶ Appellant

APPEAL – TRIBUNAL- DISMISSAL IN DEFAULT – ANNUAL PRODUCTION CAPACITY AND DUTY LIABILITY FIXED BY COMMISSIONER – ORDER APPEALED AGAINST – NON APPEARANCE BY APPELLANT AND COUNSEL ON DATE OF HEARING – APPEAL DISMISSED BY TRIBUNAL FOR WANT OF PROSECUTION – APPEAL DISMISSED BY HIGH COURT FOR LACK OF QUESTION OF LAW INVOLVED – APPEAL BEFORE SUPREME COURT – HELD THAT TRIBUNAL HAS NO POWER TO DISMISS APPEAL FOR WANT OF PROSECUTION U/S 35C OF CENTRAL EXCISE ACT EVEN IF APPELLANT OR COUNSEL DO NOT APPEAR – TRIBUNAL OUGHT TO HAVE PASSED ORDER ON MERITS – APPEAL ALLOWED – COST TO BE PAID BY THE RESPONDENT *SEC.35C CENTRAL EXCISE ACT 1944, RULE 20 OF CENTRAL EXCISE RULES; SIMILAR SECTIONS – SECTION 62 & 63 OF PVAT ACT AND SEC. 33 OF HVAT ACT.*

The order passed by Commissioner of Central Excise & Customs fixing the annual capacity of production and duty liability was appealed against before the Tribunal. Due to failure to appear before the Tribunal on the date of hearing by the Counsel and the Appellant, the case was dismissed in default. An appeal was filed before the High Court which was also dismissed on the grounds that no substantial question of law arose for consideration. An appeal by special leave is filed before the Supreme Court whereby it was submitted that the appeal could not have been dismissed for want of prosecution as Section 35C of the Central Excise Act, 1944 enjoins upon the Tribunal to pass orders confirming, modifying or annulling the decision etc. but not dismissing it for want of prosecution even if the appellant failed to appear. Allowing the appeal and imposing a cost of Rs. 25,000/- payable by the respondent, it is held that Tribunal could not have dismissed the appeal and ought to have decided it on merits. Matter is remanded.

For Petitioner(s) Mr. Shashibhushan P. Adgaonkar, Adv.

For Respondent(s) Mr. K. Radhakrishnan, Sr. Adv.

Ms. Sunita Rani Singh, Adv.

For Mr. B. Krishna Prasad, AOR

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R.K. AGRAWAL, J.

1. Leave granted.

2. The sole question of law which arises for consideration in the present appeal is as to whether the Customs, Excise and Service Tax Appellate Tribunal (in short 'the Tribunal') has the power to dismiss the appeal for want of prosecution or not.

3. The appellant is a partnership firm engaged in the manufacture and sale of Hot Re-rolled products. The Commissioner of Central Excise and Customs, Aurangabad, vide order dated 20.07.1999, re-fixed the annual capacity of production and duty liability of the appellant. Being aggrieved, the appellant moved the Tribunal. The Tribunal, vide order dated 18.01.2002, remanded the matter back to the Commissioner of Central Excise and Customs with a direction to determine the capacity of production in accordance with law after hearing the appellant. The Commissioner of Central Excise and Customs, Aurangabad, once again affirmed the order dated 20.07.1999. The appellant filed an appeal before the Tribunal against the order dated 14.05.2004 passed by the Commissioner of the Central Excise & Customs, Aurangabad which was placed for hearing on 22.08.2012. On the very said date, the appellant as also his counsel were not present. The Tribunal, therefore, dismissed the appeal for want of prosecution. The restoration application was also dismissed. The appellant preferred an appeal before the High Court of Bombay, Bench at Aurangabad being Central Excise Appeal No. 14 of 2013. The High Court, by order dated 18.01.2014, dismissed the appeal on the ground that no substantial question of law arises for consideration.

4. Against the said order, the appellant has preferred this appeal by way of special leave.

5. Heard Mr. Shashibhushan P. Adgaonkar, learned counsel for the appellant and Shri K. Radhakrishnan, learned senior counsel for the respondent.

6. Learned counsel for the appellant submitted that even if the appellant was not present before the Tribunal when the appeal was taken up for hearing, it could not have been dismissed for want of prosecution as Section 35C of the Central Excise Act, 1944 (in short 'the Act') enjoins upon the Tribunal to pass orders thereon as it thinks fit, that is, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the authority which passed such decision or order with such directions as it may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary. Thus, there is no power vested in the Tribunal to dismiss the appeal for want of prosecution even if the appellant therein has not appeared when the appeal was taken up for hearing.

7. He further submitted that Rule 20 of the Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982 (in short 'the Rules') cannot be resorted to as the Section itself does not give power to the Tribunal to dismiss the appeal for want of prosecution.

8. Learned senior counsel for the respondent, however, submitted that under Rule 20 of the Rules, the Tribunal has been given the power to dismiss the appeal for want of prosecution if the appellant does not appear, and therefore, the order passed by the Tribunal as also by the High Court calls for no interference.

9. Section 35C(1) of the Act which deals with the powers of the Tribunal reads as under:-

> *"35C. Orders of Appellate Tribunal.-(1) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the authority which passed such decision or order with such directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary."*

10. Rule 20 of the Rules which gives a power to the Tribunal to dismiss the appeal for default in case the appellant does not appear when the appeal is called on for hearing reads as under:-

> *"RULE 20. Action on appeal for appellant's default. - Where on the day fixed for the hearing of the appeal or on any other day to which such hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Tribunal may, in its discretion, either dismiss the appeal for default or hear and decide it on merits:*
>
> *Provided that where an appeal has been dismissed for default and the appellant appears afterwards and satisfies the Tribunal that there was sufficient cause for his non-appearance when the appeal was called on for hearing, the Tribunal shall make an order setting aside the dismissal and restore the appeal."*

11. From a perusal of the aforesaid provisions, we find that the Act enjoins upon the Tribunal to pass order on the appeal confirming, modifying or annulling the decision or order appealed against or may remand the matter. It does not give any power to the Tribunal to dismiss the appeal for default or for want of prosecution in case the appellant is not present when the appeal is taken up for hearing.

12. A similar question came up for consideration before this Court in *The Commissioner of Income-Tax, Madras vs. S. Chenniappa Mudaliar, Madurai* 1969 (1) SCC 591 wherein this Court considered the provisions of Section 33 of the Income-tax Act, 1922 and Rule 24 of the Appellate Tribunal Rules, 1946 which gave power to the Tribunal to dismiss the appeal for want of prosecution. For ready reference, Section 33(4) of the Income Tax Act, 1922 and Rule 24 of the Appellate Tribunal Rules, 1946 are reproduced below:-

Section 33(4) of the Income Tax Act, 1922

> *"33(4). The Appellate Tribunal may, after giving both parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, and shall communicate any such orders to the assessee and to the Commissioner."*

Rule 24 of the Appellate Tribunal Rules, 1946

> *"24. Where on the day fixed for hearing or any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Tribunal may dismiss the appeal for default or may hear it ex parte."*

Considering the aforesaid provisions, this Court held as under:-

> *"7. The scheme of the provisions of the Act relating to the Appellate Tribunal apparently is that it has to dispose of an appeal by making such orders as it thinks fit on the merits. It follows from the language of Section 33(4) and in particular the use of the word "thereon" that the Tribunal has to go into the correctness or otherwise of the points decided by the departmental authorities in the light of the submissions made by the appellant. This can only be done by giving a decision on the merits on questions of fact and law and not by merely disposing of the appeal on the ground that the party concerned has failed to appear. As observed in Hukumchand Mills Ltd. v. CIT, the word "thereon" in Section 33(4) restricts the jurisdiction of the Tribunal to the subject-matter of the appeal and the words "pass such orders as the Tribunal thinks fit" include all the powers (except possibly the power of enhancement) which are conferred upon the Appellate Assistant Commissioner by Section 31 of the Act. The provisions contained in Section 66 about making a reference on questions of law to the High Court will be rendered nugatory if any such power is attributed to the Appellate Tribunal by which it can dismiss an appeal, which has otherwise been properly filed, for default without making any order thereon in accordance with Section 33(4). The position becomes quite*

simple when it is remembered that the assessee or the CIT, if aggrieved by the orders of the Appellate Tribunal, can have resort only to the provisions of Section 66. So far as the questions of fact are concerned the decision of the Tribunal is final and reference can be sought to the High Court only on questions of law. The High Court exercises purely advisory jurisdiction and has no appellate or revisional powers. The advisory jurisdiction can be exercised on a proper reference being made and that cannot be done unless the Tribunal itself has passed proper order under Section 33(4). It follows from all this that the Appellate Tribunal is bound to give a proper decision on questions of fact as well as law which can only be done if the appeal is disposed of on the merits and not dismissed owing to the absence of the appellant. It was laid down as far back as the year 1953 by S.R. Das, J. (as he then was) in CIT, v. Mtt. Ar. S. Ar. Arunachalam Chettiar that the jurisdiction of the Tribunal and of the High Court is conditional on there being an order by the Appellate Tribunal which may be said to be one under Section 33(4) and a question of law arising out of such an order. The Special Bench, in the present case, while examining this aspect quite appositely referred to the observations of Venkatarama Aiyar, J. in CIT v. Scindia Steam Navigation Co. Ltd. indicating the necessity of the disposal of the appeal on the merits by the Appellate Tribunal. This is how the learned judge had put the matter in the form of interrogation:

> *"How can it be said that the Tribunal should seek for advice on a question which it was not called upon to consider and in respect of which it had no opportunity of deciding whether the decision of the Court should be sought."*

Thus looking at the substantive provisions of the Act there is no escape from the conclusion that under Section 33(4) the Appellate Tribunal has to dispose of the appeal on the merits and cannot short-circuit the same by dismissing it for default of appearance."

13. Applying the principles laid down in the aforesaid case to the facts of the present case, as the two provisions are similar, we are of the considered opinion that the Tribunal could not have dismissed the appeal filed by the appellant for want of prosecution and it ought to have decided the appeal on merits even if the appellant or its counsel was not present when the appeal was taken up for hearing. The High Court also erred in law in upholding the order of the Tribunal.

14. We, therefore, set aside the order dated 18.01.2014 passed by the High Court of Judicature of Bombay, Bench at Aurangabad and also the order dated 22.08.2012 passed by the Tribunal and direct the Tribunal to decide the appeal on merits.

15. Accordingly, the appeal is allowed with a cost of Rs. 25,000/- to be payable by the Respondent.

PUNJAB & HARYANA HIGH COURT

VATREF NO 2 of 2010

H.M.T. LTD

Vs.

STATE OF HARYANA

RAJIVE BHALLA AND B.S. WALIA, JJ.

27th November, 2014

HF ▶ Revenue

INTEREST – LEVY OF – SALE TAX – PAYMENT OF TAX AT LOWER RATE – SCOPE OF SEC. 25 OF HGST ACT 1973 – WHETHER INTEREST LEVIABLE ON DIFFERENCE DUE DESPITE BONAFIDE ERROR? – INTERSTATE SALE OF GOODS BY PUBLIC SECTOR UNDERTAKING – TAX PAID @ 2 % AS PER NOTIFICATION DT. 1991 – TAX INCREASED TO 4% AS PER NOTIFICATION DT. 2001 – ASSESSEE CONTINUING PAYING TAX @ 2% EVEN BEYOND 2001 – INTEREST LEVIED U/S 25(5) HGST ACT 1973 FOR FAILURE TO PAY THE REQUISITE TAX – REFERENCE FILED PLEADING THAT TAX AT LOWER RATE I.E. 2% PAID UNDER BONAFIDE ERROR – HELD SEC. 25(5) OF THE ACT LEADS TO AUTOMATIC LEVYING OF INTEREST AS A CONSEQUENCE OF DEFAULT – BEING PUBLIC SECTOR UNDERTAKING OR BONAFIDE ERROR NO GROUNDS FOR RELIEF - GROSS NEGLIGENCE OBSERVED - LEVY OF INTEREST UPHELD - *SEC. 9(2)CST ACT 1956 R/W; SEC. 25(5) OF HGST ACT, 1973 / SEC. 14(6) OF HVAT ACT, 2008*

HMT Limited, a public sector undertaking was required to pay tax on sale of Tractors @4% as per notification dt 2001 but admittedly deposited tax @ 2% as per notification dt. 1991 for the assessment year 2001-02 to 2005-06 which lead to raising of demand of tax as well as levy of interest u/s 9(2) of CST Act, 1956 r/w Sec. 25(5) of HGST Act, 1973. An appeal was filed before Tribunal which was dismissed. A reference has been filed questioning the levy of interest pleading that since the appellant is a public sector undertaking and committed a bonafide error in depositing the requisite rate of tax without mensrea, levy of interest should be set aside. Answering the question against the assessee by holding that whether an assessee is a public sector undertaking or not defaults in payment of tax without a bonafide explanation levy of interest is indispensable. There is no exception u/s 25(5) of the Act regarding not levying of tax in case of assessee being a public sector undertaking or committing a bonafide error. Therefore, levy of interest is upheld.

Present: Mr. Sachin Bhardwaj, Advocate for the appellant.

Ms. Mamta Singal, A.A.G., Haryana.

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RAIIVE BHALLA, J.

1. By way of this order. we shall dispose of Vat Reference Nos. 2. 3. 4. 5 and 6 of 2010 titled as M/s H.M.T. Ltd., Pinjore Vs. State of Haryana together as they require an answer to the same question of law referred by the Haryana Sales Tax Tribunal (hereinafter referred to as 'the Tribunal'). The question placed for reference reads as follows:-

> *"Whether on the facts and in the circumstance of the case H.M.T. Ltd.. a public sector undertaking, is liable to pay interest under Section 9(2) of the Central Sales Tax Act, 1956 read with Section 25(5) of the Haryana General Sales Tax Act, 1973/Section 14(6) of the Haryana Value Added Tax Act, 2003 for its failure to pay tax on inter-State sale of tractors at 4 % against declarations in form C after publication of notification No. S.O. 122/C.A. 74/1956/S.8/ 2001 in the official Gazette on 21.8.2001 by which notification No. S.O. 15/C.A.74/56/S.8/91 dated 31.1.1991 specifying lower rate of tax at 2% was rescinded, because it kept on charging tax from the purchasing dealers at 2% and paid the same along with its returns"?*

2. Counsel for the appellant submits that short fall in Tax @ 2% has been deposited. The assessee which is a public sector undertaking was of the bona fide belief that it was required to pay tax at 2%. The returns for the period 2000-01, 2005-06 were duly accepted without any objection or demand. The bona fide error by the assessee in depositing tax @ of 2% without mens-rea should not invite interest which even otherwise partakes the nature of a penalty. Counsel for the appellant submits that as the assessee was of the bona fide opinion that it was obliged to pay tax @ of 2%, the question of law may be answered in favour of the assessee. In support of his arguments, counsel for the petitioner relies upon a judgment in J.K. Synthetics Ltd. Vs. Commercial Taxes Officer, (1994) 4 SCC 276.

3. Per contra, counsel for the revenue submits that Notification dated 1.2.1991 stood rescinded on 21.8.2001. The assessee was required to pay tax @ 4% for the years 2001-02 to 200506 but deposited tax @ of 2%. The fact that the Assessing Officer may have ignored this violation, did not absolve the assessee of its obligation to pay tax @ 4%. As Section 25(5) of the Act prescribes an automatic payment of interest on delayed payment of tax, the question has to be answered in favour of the revenue. As regards, the judgment in M/s J.K. Synthetics (supra), it is submitted that the opinion recorded by the Hon'ble Supreme Court was based upon the peculiar facts of the case and even otherwise relates to penalty.

4. We have heard counsel for the parties, perused the question of law as well as the entire paper book. The short question that requires an answer is the scope and ambit of Section 25(5) of the 1973 Act and whether a public sector undertaking which does not deposit tax at the requisite rate can escape levy of interest by alleging a bona fide error?

5. Admittedly despite its obligation to deposit tax @ of 4%, the assessee deposited tax @ 2% for assessment years 2001-02 to 2005-06. Consequently, the Excise and Taxation Officer-cum- Assessing Authority, Panchkula, vide order dated 28.09.2005 demanded additional tax for these years @ 2% with interest, by invoking Section 9(2) of the Central Sales Tax Act, 1956 read with Section 25(5) of the 1973 Act etc. An appeal filed by the assessee was dismissed. The Tribunal vide order dated 28.02.2009, answered the question of levy of interest, the only question raised before the Tribunal, against the assessee. The assessee thereafter sought a reference on the question which has been placed before us.

6. As is apparent from the facts, the assessee was required to pay tax @ 4% on sale of tractors outside the State of Haryana but admittedly deposited tax @ 2% for assessment years 2001-02 to 200506. The admitted default of the assessee led to the raising of a demand for the tax as well as levy of interest under Section 9(2) of the Central Sales Tax Act, 1956 read with Section 25(5) of the Haryana General Sales Tax Act. Section 9(2) of the Central Sales Tax Act,

1956 empowers a State Govt. to collect tax, penalty and interest on behalf of the Central Government. Section 25(5) of the Haryana General Sales Tax Act provides that in case of default in payment of tax, the assessee shall be liable to pay interest. Section 9(2) of the Central Sales Tax Act, 1956 and Section 25(5) of the Haryana General Sales Tax Act, respectively read as under :-

> *"9(2) Subject to the other provisions of this Act and the rules made thereunder, the authorities for the time being empowered to assess, re-assess, collect and enforce payment of any tax under general sales tax law of the appropriate State shall, on behalf of the Government of India, assess re-assess, collect and enforce payment of tax, including any interest or penalty, payable by a dealer under this Act as if the tax or interest or penalty payable by such a dealer under this Act is a tax or interest or penalty payable under the general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, refunds, rebates, penalties, charging or payment of interest, compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly."*
>
> XX XX XX XX XX XX XX
>
> *"25(5) If any dealer fails to pay tax, as required by sub-section (2A) or by sub-section (3), he shall be liable to pay in addition to the tax payable, simple interest on the amount of tax remaining unpaid at one per cent per month from the date commencing with the date following the last date for the payment of tax, for a period of one month and at one and half percenum per month thereafter during the period he continues to make default in the payment:*
>
> > *Provided that where the amount of tax not paid as required under sub-section (2A) or sub-section (3) does not exceed five hundred rupees, the interest payable thereon shall not exceed the amount of tax not so paid:*
> >
> > *Provided further that for the purposes of calculation of interest, a period of fifteen days or more shall be deemed to be one month and the amount of fifty rupees or more about less than one hundred rupees shall be deemed to be one hundred rupees and a period of less than fifteen days and an amount of less than fifty rupees shall be ignored."*

7. A perusal of Section 25(5) of the Act reveals that where an assessee defaults in payment of the requisite tax, payment of interest is a necessary consequence of such a default. Section 25(5) of the Act does not admit to any exception much less on a plea that the assessee is a public sector undertaking or that it committed a bona fide error. Even otherwise the assessee does not deny the default. We cannot but reject the plea based upon a bona fide error as there is no ambiguity in the notification. The failure to deposit tax was the result of gross negligence that cannot be condoned.

8. Consequently, we answer the question of law against the assessee by holding that where an assessee, whether a public sector undertaking or otherwise, defaults in payment of tax without a bona fide explanation or there is no dispute pending as to the levy of tax, a necessary consequence of such default shall in levy of interest under Section 25(5) of the Act. The question of law having been answered, the references are disposed of accordingly.

PUNJAB & HARYANA HIGH COURT

VATAP NO. 131 OF 2012

MODERN DAIRIES LTD.
Vs.
STATE OF HARYANA AND ANOTHER

AJAY KUMAR MITTAL AND JASPAL SINGH, JJ

10th July, 2014

HF ▶ Assessee

TURNOVER – SALES RETURN – DEDUCTIONS – RETURN FILED FOR YEAR 2005-06 CLAIMING DEDUCTIONS ON ACCOUNT OF SALES RETURNS – REJECTION OF SALES RETURNS ON THE GROUND OF IT BELONGING TO PRECEDING YEAR – WHETHER SALES RETURN ALLOWED TO BE DEDUCTED ONLY IN YEAR TO WHICH IT RELATES AND NOT IN PERIOD DURING WHICH IT HAS BEEN RETURNED – HELD, AS PER RULE 22(4), CLAIM OF RETURN OF GOODS TO BE MADE IN THE RETURN FOR THE QUARTER IN WHICH GOODS WERE RETURNED AND SHALL BE ADMISSIBLE IN THAT QUARTER ONLY – MATTER REMANDED TO ASSESSING AUTHORITY TO RE-DECIDE IN VIEW OF RULE 22(4) OF THE HVAT RULES 2003 – *RULE 22(4) HVAT RULES 2003.*

The appellant, engaged in the business of sale and purchase of milk and milk products, filed its return for the year 2005-06. As per the assessment framed the sales returns were rejected as the same belonged to the year proceeding to the year in question. The order raising a demand by the Assessment Authority was upheld by the Tribunal disallowing the claim of the returned goods. Aggrieved by the order, an appeal is filed before the Hon'ble High Court whereby it is held it is held that the claim of return of goods is to be made in the return for the quarter in which goods are returned and is admissible in that quarter only. The assessee is not entitled to claim the benefit of return of goods in any other quarter except the one in which goods have been returned. The matter is remanded to Assessing officer to re-decide in view of Rule 22(4) of HVAT Rules, 2003.

Present: Mr. Sandeep Goyal, Advocate for the appellant

Mr. Tanisha Peshawaria, DAG, Haryana

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AJAY KUMAR MITTAL, J.

1. This appeal has been preferred by the assessee-appellant under Section 9(2) of the Central Sales Tax Act, 1956 (in short, "the CST Act") read with Section 36(1) of the Haryana Value Added

Tax Act, 2003 (in short, "the HVAT Act") against the order dated 16.3.2010, Annexure A.5 passed by the Haryana Tax Tribunal at Chandigarh (in short, "the Tribunal) in STA No.393 of 2009-10. On 15.1.2014, the appeal was admitted to consider the following substantial questions of law:-

> *i) Whether in the facts and circumstances of the case, the Hon'ble Tribunal was justified in holding that the sales return are allowed to be deducted only in the year to which it relates and not in the period during which it has been returned back ignoring Rule 22(4) read with Section 9(2) of the CST Act, 1956?*
>
> *ii)Whether the Tribunal was justified in upholding tax at the maximum rate ignoring the fact that for the entire turnover, the 'C' forms have already been furnished?"*

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant assessee is a dealer duly registered under the HVAT Act. It is engaged in the business of sale and purchase of milk and milk products. The company is also engaged in the sale of milk to M/s Mother Dairy Foods Processing Limited, Delhi who supplies the raw milk to the appellant and after pasteurizing and other processing, the same is supplied to it. The appellant filed its return for the year 2005-06 at gross turnover of Rs. 87,41,26,563/-. It had paid sales tax amounting to Rs. 66,07,318/- and Central sales tax amounting to Rs. 2,06,86,913/-. Return was taken up for scrutiny. While framing the assessment, the Deputy Excise and Taxation Commissioner cum Assessing authority, Karnal rejected sales return amounting to Rs. 31,18,996/- as the same belonged to the year preceding to the year in question. The Assessing authority framed assessment vide order dated 30.1.2009, Annexure A.1 raising a demand of Rs. 3,01,197/- under HVAT Act and Rs. 14,75,154/- including interest amounting to Rs. 5,85,868/- under the CST Act. Subsequently, the assessing authority rectified the order on submission of 'C' forms wherein the demand was reduced to Rs. 11,60,344/- (including interest amounting to Rs. 5,85,868/-). Feeling aggrieved, the assessee filed appeal before the Joint Excise and Taxation Commissioner (Appeals) [JETC (A)]. Vide order dated 1.7.2009, Annexure A.3, the JETC (A) rejected the appeal and upheld the demand. Still not satisfied, the assessee filed appeal before the Tribunal. Vide order dated 16.3.2010, Annexure A.5, the Tribunal partly accepted the appeal to the extent that a show cause notice be given to the assessee after which the issue should be decided and on the issue of conversion charges, disallowance of ITC on poly packs used in job work, levy of interest and the rate of tax applicable on the sale of vehicles, the case was remanded back to the assessing authority. However, the order of JETC(A) disallowing the claim of the returned goods was upheld. Thereafter, the assessee appeared before the assessing authority in remand proceedings. The assessing authority dropped the additions on the ground on which the Tribunal had remanded and calculated an excess of Rs. 1,92,928/-. Aggrieved by the disallowance of claim of the returned goods, the assessee filed reference and review applications under sections 35 and 36 read with section 9(2) of the CST Act before the Tribunal. The review application was dismissed by the Tribunal vide order dated 5.7.2011 by observing the same as not maintainable. Hence the present appeal by the assessee.

3. Learned counsel for the appellant submitted that under Rule 22 (4) of the Haryana Value Added Tax Rules, 2003 (in short, "the Rules"), no claim of return of goods sold to any person shall be admissible if the same is not made in the return for the quarter in which the goods have been returned. It was urged that the assessing authority as well as the JETC(A) and the Tribunal had erred in declining the claim of the assessee in the current year.

4. On the other hand, learned counsel for the respondent supported the orders passed by the Tribunal.

5. It would be expedient to reproduce Rule 22(4) of the Rules, which reads thus:-

> "22. Return of goods.
>
> (1) to (3) .....

(4) No claim of return of goods sold to any person shall be admissible if the claim is not made in the return for the quarter in which the goods have been returned."

6. A plain reading of Rule 22(4) of the Rules shows that a dealer is entitled to make claim of return of goods sold to any person in the return for the quarter in which the goods had been returned and the same shall be admissible in that quarter only. To put it differently, the assessee is not entitled to claim the benefit of return of goods sold to any person in any other quarter except the quarter in which the goods have been returned. In our opinion, no other meaning can be assigned to the said rule.

7. In view of the above, since the authorities have failed to consider the issue with regard to Rule 22(4) of the rules relating to question No.(i), it would be appropriate that the matter is remanded to the Assessing Officer to examine the same and re-decide it in accordance with law. It was submitted by the learned counsel for the parties that in view of the answer to question No.(i), question No.(ii) is rendered academic.

8. Disposed of accordingly.

SGA
LAW OFFICES

PUNJAB & HARYANA HIGH COURT

VATAP NO. 27 OF 2013

SUPER METAL, FARIDABAD
Vs.
STATE OF HARYANA AND OTHER

AJAY KUMAR MITTAL AND JASPAL SINGH, JJ

12th May, 2014

HF ▶ Appellant

CONDONATION OF DELAY – APPEAL – SICKNESS OF APPELLANT – DISALLOWANCE OF ITC – ORDER UPHELD BY FIRST APPELLATE AUTHORITY – DELAY OF 159 DAYS IN FILING APPEAL BEFORE TRIBUNAL – APPLICATION FOR CONDONATION OF DELAY REJECTED – HELD BY HIGH COURT THAT MENTAL SICKNESS OF REPRESENTATIVE OF APPELLANT SUFFICIENT CAUSE FOR DELAYED FILING – DELAY CONDONDED IT BEING UNINTENTIONAL AND BEYOND CONTROL OF APPELLANT – MATTER REMITTED TO TRIBUNAL TO ADJUDICATE ON MERITS – *SEC. 5 OF LIMITATION ACT, 1963.*

The appellant, engaged in the trading of Iron and Steel, filed its returns. Assessment was framed for the year 2006-07 disallowing the input tax on account of purchases made as the selling dealer did not discharge their tax obligation. The order was upheld by the First Appellate Authority. An appeal was filed before Tribunal along with an application for condonation of delay of 159 days which was rejected. However, on appeal before High Court it was pleaded that the representative of the appellant had received the copy of the order. But due to his suffering from mental depression he was out of the office most of the time and thus could not file the appeal. After some time the copy was handed over to the counsel by the appellant himself causing a delay of 159 days. The explanation tendered is found plausible leading to conclusion that there was sufficient cause for delay in filing the appeal. Therefore, the delay is condoned and matter remitted to Tribunal to adjudicate on merits.

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

Ms. Tanisha Peshawaria, DAG, Haryana.

AJAY KUMAR MITTAL, J.

1. This appeal has been filed by the assessee under Section 36 of the Haryana Value Added Tax Act, 2003 (in short "the Act") against the orders dated 29.3.2010 (Annexure A-1) passed by the Assessing Officer, dated 4.10.2010 (Annexure A-2) passed by the Joint Excise and Taxation Commissioner (Appeals), dated 22.2.2012 (Annexure A-4) passed by the Haryana Tax Tribunal,

Chandigarh (hereinafter referred to as "the Tribunal") in STA No. 61 of 2011-12 and dated 12.12.2012 (Annexure A-7) passed by the Tribunal in STM No. 1 of 2012-13, for the assessment year 2006-07, claiming the following substantial questions of law:-

i) Whether the delay in filing appeal before the first appellate authority late by 5 months is so fatal to be dismissed as barred by limitation and particularly when apparently Mr. Amit Garg, who received the copy of the order was suffering from mental depression and was undergoing treatment and could not deliver the copy of the order for further appeal?

ii) Whether the Tribunal should not have taken cognizance of decision of Hon'ble Punjab & Haryana High Court in case of Gheru Lal Bal Chand cited in CWP No. 6573 of 2007 dated 23.9.2011 keeping in view the merits of the case that the additional demand is only on account of input tax disallowing on the basis the seller did not discharge tax obligation?

2. Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The appellant-M/s Super Metals, Faridabad was engaged in the trading of Iron and Steel etc. It had been filing its returns and discharging tax obligations. The assessment for the year 2006-07 was framed by the assessing authority vide order dated 29.3.2010 (Annexure A-1) making additional demand of ' 1,02,605/-. However, the benefit of input tax amounting to ' 2,00,086/- on account of purchases made from M/s Ayush Metals and M/s Swastik Trading Company was disallowed as the selling dealer did not discharge their tax obligations. Feeling aggrieved, the appellant filed an appeal before respondent No.4-Joint Excise and Taxation Commissioner (Appeals) who vide order dated 4.10.2010 (Annexure A-2) confirmed the order passed by the assessing authority. Still dissatisfied, the appellant filed an appeal dated 21.3.2011 (Annexure A-3) before the Tribunal. As the appeal was barred by limitation, an application under Section 5 of the Limitation Act was also filed for condonation of 159 days' delay. The Tribunal vide order dated 22.2.2012 (Annexure A-4) rejected the application for condonation of delay and dismissed the appeal. Thereafter, the assessee filed an application (Annexure A-5) for restoration of the appeal. The assessee filed written submissions (Annexure A-6). The Tribunal vide order dated 12.12.2012 (Annexure A- 7) dismissed the application for restoration of the appeal. Hence, the present appeal.

3. We have heard learned counsel for the parties.

4. The primary question that arises for consideration in this appeal is whether the delay of 159 days in filing the appeal before the Tribunal was liable to be condoned in the facts and circumstances of the present case.

5. Examining the legal position relating to condonation of delay under Section 5 of the Limitation Act, 1963 (in short, the "1963 Act") it may be observed that the Hon'ble Supreme Court in Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation and another, (2010) 5 SCC 459 laying down the broad principles for adjudicating the issue of condonation of delay, in paras 14 & 15 observed as under:-

"14. We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time.

15. The expression "sufficient cause" employed in Section 5 of the Indian Limitation Act, 1963

and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate-Collector (L.A.) v. Katiji N. Balakrishnan v. M. Krishnamurthy and Vedabai v. Shantaram Baburao Patil."

6. It was further noticed by the Hon'ble Apex Court in **R.B. Ramlingam v. R.B. Bhavaneshwari 2009(1) RCR (Civil) 892** as under:-

"... It is not necessary at this stage to discuss each and every judgment cited before us for the simple reason that Section 5 of the Limitation Act, 1963 does not lay down any standard or objective test. The test of "sufficient cause" is purely an individualistic test. It is not an objective test. Therefore, no two cases can be treated alike. The statute of limitation has left the concept of "sufficient cause" delightfully undefined, thereby leaving to the Court a well-intentioned discretion to decide the individual cases whether circumstances exist establishing sufficient cause. There are no categories of sufficient cause. The categories of sufficient cause are never exhausted. Each case spells out a unique experience to be dealt with by the Court as such."

It was also recorded that:-

"For the aforestated reasons, we hold that in each and every case the Court has to examine whether delay in filing the special leave petition stands properly explained. This is the basic test which needs to be applied. The true guide is whether the petitioner has acted with reasonable diligence in the prosecution of his appeal/petition...."

7. From the above, it emerges that the law of limitation has been enacted which is based on public policy so as to prescribe time limit for availing legal remedy for redressal of the injury caused. The purpose behind enacting law of limitation is not to destroy the rights of the parties but to see that the uncertainty should not prevail for unlimited period. Under Section 5 of the 1963 Act, the courts are empowered to condone the delay where a party approaching the court belatedly shows sufficient cause for not availing the remedy within the prescribed period. The meaning to be assigned to the expression "sufficient cause" occurring in Section 5 of the 1963 Act should be such so as to do substantial justice between the parties. The existence of sufficient cause depends upon facts of each case and no hard and fast rule can be applied in deciding such cases.

8. The Hon'ble Apex Court in Oriental Aroma Chemical Industries Ltd. and R.B. Ramlingam's cases (supra) noticed that the courts should adopt liberal approach where delay is of short period whereas the proof required should be strict where the delay is inordinate. Further, it was also observed that judgments dealing with the condonation of delay may not lay down any standard or objective test but is purely an individualistic test. The court is required to examine while adjudicating the matter relating to condonation of delay on exercising judicial discretion on individual facts involved therein. There does not exist any exhaustive list constituting sufficient cause. The applicant/petitioner is required to establish that inspite of acting with due care and caution, the delay had occurred due to circumstances beyond his control and was inevitable.

9. The question regarding whether there is sufficient cause or not, depends upon each case and is to be decided taking totality of events which had taken place in a particular case. Learned counsel for the appellant submitted that the order dated 4.10.2010 passed by the Joint Excise and Taxation Commissioner (Appeals) was received by their counsel on 15.10.2010 and handed over to their representative Mr. Amit Garg on 1.12.2010 who was suffering from depression and was undergoing treatment and most of the time was out of office. Therefore, they could not file the appeal. Thereafter,

the said order was handed over to the counsel for the appellant on 20.5.2011 and the appeal was filed late by 159 days. In such circumstances, delay in filing the appeal before the Tribunal was unintentional and due to the circumstances beyond the control of the appellant.

10. The explanation furnished by the appellant appears to be plausible and, therefore, leads to the conclusion that there was sufficient cause for delay in filing the appeal. Once that was so, the delay in filing the appeal before the Tribunal deserves to be condoned and appeal heard on merits by the Tribunal.

11. This Court in M/s. Aptech Engineers, Gurgaon v. State of Haryana and others, 2014 (2) PLR 102 while examining the legal position had condoned the delay and remitted the matter to the Tribunal to adjudicate the dispute on merits in accordance with law.

12. In view of the above, it is held that the Tribunal had erred in refusing to condone the delay in filing the appeal. The substantial questions of law are answered accordingly. As a sequel, the appeal is allowed and the orders dated 22.02.2012 (Annexure A-4) and dated 12.12.2012 (Annexure A-7) passed by the Tribunal is set aside. The matter is remitted to the Tribunal to adjudicate the dispute on merits in accordance with law.

PUNJAB & HARYANA HIGH COURT

VATAP NO 57 of 2014

BOMBAY PLASTIC MACHINERY
Vs.
STATE OF PUNJAB AND ANOTHER

RAJIVE BHALLA AND AMIT RAWAL, JJ.

13th November, 2014

HF ▶ Partly dealer, partly revenue.

APPEAL - REMAND - TRIBUNAL – PENALTY IMPOSED – ON APPEAL MATTER REMANDED BY 1ST APPELLATE AUTHORITY TO ADJUDICATE REGARDING GENUINENESS OF INVOICE AND C-FORMS – APPEAL FILE BY DEALER BEFORE TRIBUNAL CHALLENGING REMAND ORDER – MATTER ADJUDICATED ON MERITS HOLDING THAT PENALTY HAS BEEN RIGHTLY IMPOSED – ON APPEAL HELD BY HIGH COURT THAT TRIBUNAL LOST SIGHT OF THE FACT THAT THE APPELLANT HAD ONLY CHALLENGED ORDER OF REMAND AND NOT LEGALITY OF ORDER OF REMAND - OBSERVATION MADE BY TRIBUNAL NOT TO BIND AETC WHILE DECIDING APPELLANT'S CASE ON MERITS – APPEAL DISMISSED.

In this case, penalty had been imposed by the AETC (Export) against which an appeal was made to the DETC. The First Appellate Authority had remanded the matter for adjudication regarding genuineness of invoice and C-Forms. The dealer appealed against the remand order before the Tribunal, which disregarded the documents and recorded an opinion on merits against the appellant instead of considering the legality of remand order. Aggrieved by the order, an appeal is made to Hon'ble High Court. Dismissing the appeal, it is held that the Tribunal lost sight of the fact that the appellant had only challenged order of remand and not legality of order of remand. It is clarified that no observation of Tribunal would be binding on AETC in this case while deciding the appellant's case on merits.

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

Mr. Jagmohan Bansal, Additional Advocate General, Punjab.

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RAJIVE BHALLA, J

1. The appellant challenges order dated 26.4.2013 passed by the Value Added Tax Tribunal, Punjab dismissing his appeal.

2. Counsel for the appellant submits that as the facts on record clearly prove that the receipt is duly supported by an invoice and a C-form, the Deputy Excise & Taxation Commissioner (A) should have allowed the appeal instead of remanding it for adjudication afresh. The learned Tribunal disregard the invoice and C-form and proceeded to record an opinion on merits against the appellant unmindful of the fact that the matter had only been remanded to the AETC(Export).

3. Counsel for the State of Punjab submits that as the matter has only been remanded, the appellant would be free to raise all such pleas as may be available. It is further submitted that a perusal of the impugned order reveals that the appellant violated provisions of the Act and the Rules by submitting a hand written invoice which even otherwise appears to be suspicious. The Tribunal having decided the legality of the penalty on merits, the appellant cannot invoke the invoices and C-forms at this belated stage.

4. We have heard counsel for the parties and perused the impugned order. Admittedly vide order dated 5.11.2012 the DETC (A), Ludhiana Divison Ludhiana remanded the matter to the Assistant Excise and Taxation Commissioner (Export) to decide the case on merits after referring to certain judgments. The appellant for some odd reason filed an appeal. The learned VAT Tribunal, while dismissing the appeal has recorded an opinion on the legality of the penalty. The Tribunal apparently lost sight of the fact that the appellant had only challenged the order of remand and therefore, consideration before the tribunal was confined to legality of the order of remand.

5. Consequently, but without expressing any opinion on the merits of the controversy we dismiss the appeal, but clarify that any observation made by the Tribunal on merits shall not be binding on AETC (Export) while deciding the appellant's case on merits which, shall be decided within three months.

6. Parties are directed to appear before the AETC (Export) Ludhiana on 16.12.2014.

PUNJAB & HARYANA HIGH COURT

VATAP NO. 4 OF 2013

STANDARD STEELS, FARIDABAD
Vs.
STATE OF HARYANA AND OTHERS

AJAY KUMAR MITTAL AND JASPAL SINGH, JJ

25th April, 2014

HF ▶ Appellant

CONDONATION OF DELAY – APPEAL – ASSESSMENT ORDER PASSED RAISING DEMAND – DISMISSAL OF 1ST APPEAL ON THE GROUND OF LIMITATION – DELAY OF 17 DAYS OCCURRING DUE TO MISBEHAVIOUR OF COUNSEL NOT CONSIDERED SUFFICIENT CAUSE – COPY OF ORDER RECEIVED BY SOMEONE NOT AUTHORIZED BY APPELLANT – CONSEQUENT DELAY OF 30 DAYS IN FILING OF APPEAL BEFORE TRIBUNAL – DELAY NOT CONDONED – HELD BY HIGH COURT THAT EXPLANATIONS TENDERED WERE PLAUSIBLE – UNINTENTIONAL DELAY AS CIRCUMSTANCES STOOD BEYOND CONTROL – DELAY IN BOTH CASES CONDONED – MATTER REMITTED TO 1ST APPELLATE AUTHORITY TO ADJUDICATE ON MERITS – *SECTION 5 OF LIMITATION ACT, 1963.*

Assessment for the year 2006-07 was framed raising an additional demand. The delay of 17 days in filing of appeal was caused due to misbehaviour of counsel by not appearing in the matter on the date of hearing. An application under Section 5 was also filed alongwith the appeal before the 1st appellate authority. Being hit by limitation, the appeal was dismissed and application rejected. The copy of the order passed was received by someone not authorized by the appellant and in such circumstances, it led to delay of 30 days in filing of appeal before Tribunal. However, the Tribunal did not condone the delay and rejected the appeal of the appellant. Aggrieved by the order of the Tribunal, an appeal was filed before the Hon'ble High Court. Finding the explanations plausible, leading to conclusion that there was sufficient cause for delay in filing the appeal, the delay was condoned in both cases and matter remitted to 1st appellate authority to be heard on merits.

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

Ms. Tanisha Peshawaria, DAG Haryana

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AJAY KUMAR MITTAL, J.

1. This appeal has been filed by the assessee under Section 36 of the Haryana Value Added Tax Act, 2003 (in short 'the Act") against the orders dated 23.3.2010 (Annexure A01), dated 4.7.2011 (Annexure A-2) passed by the Joint Excise and Taxation Commissioner (Appeals) and dated 3.8.2012 (Annexure A-4) passed by the Haryana Tax Tribunal, Chandigarh (hereinafter referred to as "The Tribunal") in STA No.216 of 2011-12d for the assessment year 2006-07, claiming the following substantial questions of law :-

i) Whether the delay in filing appeal before the first appellate authority late by 17 days is so fatal to be dismissed as barred by limitation and particularly when apparently the counsel misbehaved by not appearing in the matter of the date of hearing ?

ii) Whether there is delay in filing appeal before the Haryana Tax Tribunal when admittedly the appeal was filed against certified copy of order applied and that appeal was filed within time from the receipt of the certified copy of the order ?

iii) Whether the Tribunal should not have given opportunity of being heard before concluding at the back of the assessee appellant that on certified copy some signature are there and whether those belong to the appellant or not ?

iv) Whether the Haryana Tax Tribunal should not have enquired from the record regarding the signature relied upon without making any enquiry?

v) Whether the Tribunal should not have given the appellant an opportunity of filing application when it concluded beyond the Grounds of appeal filed?

vi) Whether the Tribunal should have taken cognizance of decision of Hon'ble Punjab & Haryana High Court in case of Gheru Lal Bal Chand cited in CWP 6573 of 2007 dated 23.9.2011 keeping in view the merits of the case that the additional demand is only on account of input tax disallowing on the basis the seller did not discharge tax obligation ?

2. The facts necessary for adjudication of the present appeal as narrated therein are that the appellant-M/s Standard Steels was engaged in the trading of iron and Steel etc. It had been filing its returns and discharging tax obligations. The assessment for the year 2006-07 was framed by the assessing authority vide order dated 23.3.2010. (Annexure A-1) making additional demand of Rs.2,51,927/-. Feeling aggrieved the appellant filed an appeal before respondent No.4-Joint Excise and Taxation Commissioner (Appeals). As the appeal was barred by limitation, an application under Section 5 of the Limitation Act was also filed for condonation of 17 days' delay. Respondent No.4 vide order dated 4.7.2011 (Annexure A-2) rejected the application for condonation of delay and dismissed the appeal being hit by limitation. Still dissatisfied with the order dated 4.7.2011 (Annexure A-2), the appellant filed an appeal (Annexure A-3) before the Tribunal who vide order dated 3.8.2012 (Annexure A-4) dismissed the appeal being barred by limitation. Hence, the present appeal.

3. We have heard learned counsel for the parties.

4. The primary question that arises for consideration in this appeal is whether the delay of 17 days in filing the appeal before the Joint Excise and Taxation Commissioner (Appeals) and the delay of about one month in filing the appeal before the Tribunal was liable to be condoned in the facts and circumstances of the present case.

5. Examining the legal position relating to condonation of delay under Section 5 of the Limitation Act, 1963 (in short, the "1963 Act") it may be observed that the Hon'ble Supreme Court in **Oriental Aroma Chemical Industries Ltd v. Gujarat Industrial Development Corporation and another, (2010) 5 SCC 459** laying down the broad principles for adjudicating the issue of condonation of delay, in paras 14 & 15 observed as under :-

> *"14. We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time.*
>
> *15. The expression "sufficient cause" employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate-Collector (L.A.) v. Katiji N.Balakrishnan v. M.Krishnamurthy and Vedabai v. Shantaram Baburao Patil."*

6. It was further noticed by the Hon'ble Apex Court in **R.B. Ramlingam V.R..Bhavaneshwari 2009(1) RCR (Civil) 892** as under :-

> *"…… It is not necessary at this stage to discuss each and every judgment cited before us for the simple reason that Section 5 of the Limitation Act, 1963 does not lay down any standard or objective test. The test of "sufficient cause" is purely an individualistic test. It is not an objective test. Therefore, no two cases can be treated alike. The statute of limitation has left the concept of "sufficient cause" delightfully undefined, thereby leaving to the Court a well-intentioned discretion to decide the individual case whether circumstances exist establishing sufficient cause. The categories of sufficient cause are never exhausted. Each case spells out a unique experience to be dealt with by the Court as such."*

It was also recorded that :-

> *"For the aforesaid reasons, we hold that in each and every case the Court has to examine whether delay in filing the special leave petition stands properly explained. This is the basic test which needs to be applied. The true guide is whether the petitioner has acted with reasonable diligence in the prosecution of his appeal/petition….."*

7. From the above, it emerges that the law of limitation has been enacted which is based on public policy so as to prescribe time limit for availing legal remedy for redressal of the injury caused. The purpose behind enacting law of limitation is not to destroy the rights of the parties but to see that the uncertainty should not prevail for unlimited period. Under Section 5 of the 1963 Act, the courts are empowered to condone the delay where a party approaching the courts belatedly

shows sufficient cause for not availing the remedy within the prescribed period. The meaning to be assigned to the expression "sufficient cause" occurring in Section 5 of the 1963 Act should be such so as to do substantial justice between the parties. The existence of sufficient cause depends upon facts of each case and no hard and fast rule can be applied in deciding such cases.

8. The Hon'ble Apex Court in **Oriental Aroma Chemical Industries Ltd. And R.B. Ramlingam's cases (supra)** noticed that the courts should adopt liberal approach where delay is of short period whereas the proof required should be strict where the delay is inordinate. Further, it was also observed that judgments dealing with the condonation of delay may not lay down any standard or objective test but is purely an individualistic test. The court is required to examine while adjudicating the matter relating to condonation of delay on exercising judicial discretion on individual facts involved thereon. There does not exist any exhaustive list constituting sufficient cause. The applicant/petitioner is required to establish that inspite of acting with due care and caution, the delay had occurred due to circumstances beyond his control and was inevitable.

9. The question regarding whether there is sufficient cause or not, depends upon each case and is to be decided taking totality of events which had taken place in a particular case. Learned counsel for the appellant submitted that the assessment order dated 23.3.2010 was received by the representative of the appellant on 4.6.2010 and the counsel engaged by him misbehaved with the assessee and filed the appeal late by 17 days after the expiry of limitation and thereafter did not appear before the appellate authority at the time of hearing of the appeal on 4.7.2011. The appellant applied for certified copy of the order on 10.10.2011. The appellant applied for certified copy of the order on 10.10.2011 on coming to know about the dismissal of the appeal as time barred which was received on 12.10.2011. The appellant filed the appeal before the Tribunal on 18.11.2011. According to the learned counsel for the appellant, the copy of the order of the first appellate authority was received by someone not authorized by the appellant and in such circumstances, delay, if any, in filing the appeal before the Tribunal could not be attributed to the appellant. It was urged that the delay, if any, has occurred in the aforesaid circumstances in filing the appeal before the Tribunal and also the first appellate authority. Learned counsel further argued that the delay was unintentional and due to the circumstances beyond the control of the appellant.

10. The explanation furnished by the appellant appears to be plausible and, therefore, leads to the conclusion that there was sufficient cause for delay in filing the appeal. Once that was so, the delay in filing the appeal before the first appellate authority and the Tribunal deserves condoned and appeal heard on merits by the first appellate authority.

11. This Court in **M/s. Aptech Engineers, Gurgaon v. State of Haryana and others, 2014 (2) PLR 102** while examining the legal position had condoned the delay of 70 days and remitted the matter to the Tribunal to adjudicate the dispute on merits in accordance with law.

12. In view of the above, it is held that the Joint Excise and Taxation Commissioner (Appeals) as well as the Tribunal had erred in refused to condone the delay in filing the appeals. The substantial questions of law are answered accordingly. As a sequel, the appeal is allowed and the orders dated 4.7.2011 (Annexure A-2) passed by the Joint Excise and Taxation Commissioner (Appeals) and dated 3.8.2012 (Annexure A-4) passed by the Tribunal are set aside. The matter is remitted to the Joint Excise and Taxation Commissioner (Appeals) to adjudicate the dispute on merits in accordance with law.

PUNJAB & HARYANA HIGH COURT

CWP-21410-2014

TARLOCHAN SINGH SETHI
Vs.
STATE OF PUNJAB AND OTHERS

ASHUTOSH MOHUNTA AND ANUPINDER SINGH GREWAL, JJ

16th October, 2014

HF ▶ None

PUBLIC INTEREST LITIGATION – MAINTAINABILITY OF – *LOCUS STANDI* – PIL FILED FOR ISSUANCE OF DIRECTIONS TO RESPONDENTS FOR VAT REFUNDS ETC. – NO CLAIM MADE BY VAT PAYERS THEMSELVES FOR REFUND – NO *LOCUS STANDI* TO FILE WRIT PETITION – HELD PIL NOT MAINTAINABLE AS CRITERION NOT FULFILLED AS PER MAINTAINABILITY OF PUBLIC INTEREST LITIGATION RULES, 2010.

A PIL was filed by the petitioner, who is an advocate, for issuance of directions to respondents for VAT Refund and to comply with the undertaking given by the then Chief Secretary to Government of Punjab to comply with the instructions in the case of M/s J.K. Tyres and Industries Ltd. It was observed that the petitioner had no locus standi to file this writ petition as none of the VAT payers had come forward with the petition to claim the refund of the VAT paid by them. Also the traders Association did not come forward. Therefore, it is held that this Public Interest Litigation is not maintainable as it does not meet the criterion enshrined in the Maintainability of Public Interest Litigation Rules, 2010

Present: Mr. Rajesh Gupta, Advocate, for the petitioner.

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ASHUTOSH MOHUNTA, A.C.J.

1. The petitioner, who is an advocate, has filed this petition in the public interest wherein he has prayed that directions be issued to the respondents to comply with the instructions dated 08.12.2008 issued by the office of Excise & Taxation Commissioner, Punjab with regard to issuance of VAT refunds and also to comply with the undertaking given by the then Chief Secretary to Government of Punjab to comply with these instructions in the case of **M/s J.K. Tyres & Industries Ltd. Vs State of Punjab** (CWP-9009-2008).

2. The petitioner has no locus standi to file this writ petition as none of the persons who

paid the VAT have come forward with a petition to claim the refund of the VAT paid by them. Apart from that, the Traders Association has not come forward.

3. In view of the above, this public interest litigation is not maintainable as it does not meet the criterion enshrined in the Maintainability of Public Interest Litigation Rules, 2010.

4. Dismissed.

PUNJAB & HARYANA HIGH COURT

CWP-12399 of 2014

KUMAR GLASS TRADERS
Vs.
STATE OF PUNJAB AND OTHERS

AJAY KUMAR MITTAL AND FATEH DEEP SINGH, JJ

9th September, 2014

HF ▶ Revenue

RECOVERY OF TAX – WRIT PETITION – INSPECTION OF BUSINESS PREMISES – NO BUSINESS OPERATION FOUND BEING CONDUCTED AT THE DECLARED PREMISES – NO INTIMATION TO DEPARTMENT IN THIS REGARD – NO BOOKS OF ACCOUNTS, SALES AND PURCHASE INVOICES PRODUCED DURING INSPECTION – CONSEQUENTLY, TIN LOCKED – PURPORTED SALES FOUND BOGUS – STOCK LYING IN PREMISES SOLD BY APPELLANT DESPITE DISALLOWED FROM ALIENATING – NO TAX DEPOSITED BY PETITIONER – NOTICE ISSUED PROPOSING TO IMPOSE PENALTY AND FOR AUCTION OF GOODS OF FIRM – WRIT FILED TO SET ASIDE SUCH NOTICES – FAILURE TO SUBSTANTIATE THE PLEA REGARDING GENUINENESS OF TRANSACTION BEFORE HIGH COURT, HIGH COURT REFRAINED FROM INTERFERING IN THE MATTER IN WRIT JURISDICTION UNDER ARTICLES 226 AND 227 – PETITION DISMISSED.

The business premises of the petitioner were inspected. It was found that no business operation was being conducted at the declared place. No intimation was given in this regard. No books of accounts, sales & purchase invoices were produced before the inspecting team. The TIN no. was thereby locked by the department. After detailed investigation it was found that the alleged purchasing firm had filed Nil return for the period and thus could not have purchased goods worth crores from the petitioner. Stock amounting to Rs. 1.79 crore was found which was alienated by the petitioner despite being prohibited to do so by the department. The entire activities were found bogus. Therefore, notice regarding imposition of penalty for evading tax and regarding auction of goods of the firm were served to the petitioner. A writ is filed under article 226/227 for setting aside the notices with a prayer to get the TIN no. unlocked. Due to failure to substantiate the plea regarding genuineness of transaction before High Court, the High Court has refrained from interfering in the matter in writ jurisdiction and has thus dismissed the petition.

Present: Mr. J.S.Bedi, Advocate for the petitioner.

Ms. Radhika Suri, Addl.A.G.Punjab.

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AJAY KUMAR MITTAL, J.

1. Prayer in this petition filed under Articles 226/227 of the Constitution of India is for setting aside the Show Cause Notice dated 23.6.2014, Annexure P.9 issued to the petitioner firm by respondent No.3 proposing to impose penalty of Rs. 1,63,47,404/- for evading tax of Rs. 81,73,702/- and notice dated 23.6.2014, Annexure P.11 regarding permission for auction of goods of the petitioner firm and constitution of auction committee. Further prayer has been made for a direction to conduct enquiry into the role attributed by respondent No.3 who by misusing his powers sold the goods of the petitioner after confiscating the same in illegal and arbitrary manner. Prayer has also been made for a direction to the respondents to unlock the TIN number of the petitioner firm as the same was locked again without any notice and adequate reason.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner firm is a wholesale distributor of all kinds of glasses and is situated in District Jalandhar. On 8.1.2014, respondent No.3 inspected the business premises of the petitioner firm and without any reason locked its TIN number. Initially the same was unlocked but again it was locked. During inspection, the goods of the petitioner were confiscated by the officers who were in civil uniform. It was nowhere stated that the goods were released to the petitioner and there was no order for releasing the same to it. According to the petitioner, respondent No.3 in order to harass it and without issuing any notice under section 29 of the Punjab Value Added Tax Act 2005, passed the assessment orders and created huge amount vide assessment orders dated 17.2.2014, Annexures P.3 and P.4. Aggrieved thereby, the petitioner filed appeals before the Deputy Excise and taxation Commissioner, Jalandhar Division Jalandhar, Annexures P.5 and P.6. The petitioner was shocked when it received notice from the office of the respondents demanding huge amount of Rs. 89,84,181/- and for initiation of criminal proceedings under sections 420/120-B IPC. It was alleged in the notice dated nil that the petitioner had sold the goods though the same were in the custody of the department since the date of the inspection and there was no reason or order for releasing the goods to the petitioner. According to the petitioner, it was only respondent No.3 who in connivance with other officers sold the confiscated goods. The petitioner also filed reply to the notice issued by the respondents. Hence the instant writ petition by the petitioner.

3. A short reply by way of affidavit has been filed by Shri Amit Sareen ETO, AETC office, BMC Chowk, Jalandhar - respondent No.3, wherein it has been inter alia stated that when the inspecting team visited the principal place of business of the petitioner i.e. near Pathankot Bye Pass, Jalandhar, it came to notice that the dealer was not conducting any business operation at that address for which the petitioner did not give any intimation to the department. Respondent No.3 apprehending huge loss of revenue in view of the suspicious nature of the activities of the petitioner, locked the TIN number of the petitioner. The new whereabouts of the petitioner were managed and inspection was conducted there. The dealer could not produce any books of account, sale and purchase invoices to the inspecting team at the time of inspection. Stock amounting to Rs. 1.79 crores of glassware was found and no books of account alongwith retail invoices/VAT invoices showing the sale or purchase were produced by the petitioner. The petitioner was allowed to carry on its business operations upto 21st January 2014 but again the TIN number was locked on 22.1.2014 for non compliance of orders issued on 9.1.2014 as per

order sheet records for not submitting trading account for the period 2013-14, statutory forms, sale invoices, goods receipts of vehicles used for transporting goods to Jaipur. Hence due to non submission of all these documents, all the transactions of the petitioner firm were suspected to be bogus. The petitioner was confronted with the fact that the firms to whom it had shown sale of glassware of Rs.7.18 crores i.e. M/s Jagdamba Sales Corporation and M/s Asian Traders of Jaipur, had filed nil returns. The entire activities of the petitioner were bogus and not even single C form was produced and the transaction of Rs. 7 crores was in cash. It was also found that the petitioner had already sold more than half of the stock lying in its premises despite the fact that it was restrained from alienating the stock and its TIN number stood locked. The petitioner neither filed any return nor deposited any tax for the sale of the stock. On these premises, it has been prayed that the writ petition may be dismissed

3. Replication has been filed by the petitioner to the reply filed by respondent No.3 controverting the averments made therein. Rejoinder to the replication has also been filed by respondent No.3 reiterating the averments made therein.

4. After hearing learned counsel for the parties, we do not find any merit in the petition.

5. A perusal of the record shows that at the time of inspection at the business premises of the petitioner, it was found that no business operation was being conducted at the declared place. The petitioner did not give any intimation in this regard to the department. The petitioner could not produce any books of account, sales and purchase invoices to the inspecting team at the time of inspection. The TIN number of the petitioner was locked. Detailed investigation was conducted by the Assistant Excise and Taxation Commissioner, Jaipur, inter alia, stating that the alleged purchasing firms had filed nil returns for the relevant period and thus could not have purchased goods worth Rs. 7.18 crores from the petitioner. Stock amounting to Rs. 1.79 crores of glassware was found and no books of account were produced by the petitioner. The petitioner produced purchase invoices but could not produce sale invoices. The entire activities of the petitioner were found to be bogus and not even a single C form was produced. Learned counsel for the petitioner has not been able to substantiate that there was any genuine transactions with M/s Jagdamba Sales Corporation and M/s Asian Traders of Jaipur. In the light of these factual aspects, we refrain from interfering in the matter in writ jurisdiction under Articles 226/227 of the Constitution of India. Consequently, finding no merit in the petition, the same stands dismissed.

PUNJAB & HARYANA HIGH COURT

CWP-14594 of 2014

JAI BHARAT GUM AND CHEMICALS LTD
Vs.
STATE OF HARYANA AND OTHERS

K. KANNAN, J

2nd February, 2015

HF ▶ Petitioner

EXPORT SUBSIDY – EXPORT UNIT – APPLICATION FOR TRANSPORT SUBSIDY BY PETITIONER UNITS - SUBSIDY GIVEN TO BOTH UNITS FOR THE YEAR 2005-06 – SUBSIDY WITHDRAWN FOR ONE UNIT IN YEAR 2006-07 ON INTERPRETATION THAT BOTH UNITS BEING UNDER SAME MANAGEMENT SUBSIDY TO BE GRANTED FOR ONE UNIT – ACTUAL DECISION REGARDING EXTENDING SUBSIDY TO ONE UNIT ONLY TAKEN IN 2009 - WRIT FILED CHALLENGING THE WITHDRAWAL WHITTLING THE SCHEME AS ORIGINALLY PROVIDED – HELD RESTRICTION TO APPLY FROM THE TIME DECISION TAKEN FOR SUCH RESTRICTION I.E. AFTER 2009 – SUBSIDY NOT TO BE WITHDRAWN WHEN ALREADY ACCRUED BEFORE THE DATE WHEN ALTERED INTERPRETATION WAS MADE – ACTION FOR WITHDRAWAL OF SUBSIDY PRIOR TO YEAR 2009 QUASHED – DIRECTED TO RELEASE SUBSIDY WITHIN 8 WEEKS- WRIT PETITION ALLOWED.

The petitioner (export unit) is registered with the Ministry of Commerce and industry, Government of India as large and medium unit. It has another unit registered as SSI with the District Industries Centre. It had applied for transport subsidy notified in a scheme. For year 2005 the petitioner was given subsidy at the rates mentioned for each one of the respective unit. For 2006-07 the subsidy for one unit was withdrawn on interpretation of the scheme that if both units operate under the same management, subsidy will be extended only to one of them. A writ is filed challenging the withdrawal as being against the expressed terms of the scheme. It is held that if a scheme is floated to encourage exports and in the manner of its application there cannot be a whimsical limitation during his operation. The restriction ought to operate from the time when they decide to make such restrictive application on subsidy. Therefore if the decision was made in year 2009 restricting is operation only to one unit under the same management, it should operative only when such decision was taken in the year 2009. It cannot be withdrawn for any date when the subsidy had already accrued before the date when an altered interpretation was made. Therefore, the respondents are directed to extend the subsidy mentioned in the scheme and release the same within a period of 8 weeks. The writ is allowed.

Present: Mr.Sandeep Goyal, Advocate for petitioner.

Mr. Keshav Gupta, Asstt. A. G. Haryana

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K.KANNAN, J

CM-1340-2015

CM is allowed, as prayed for.

Written statement on behalf of respondent's no.1 to 3 is taken on record, subject to all just exceptions.

CWP-14594-2014

1. The petitioner (export unit) is registered with the Ministry of Commerce and Industry, Government of India as large and medium unit. It has another unit registered as SSI with the District Industries Centre. The petitioner had applied for transport subsidy notified through a scheme dated 21.01.2006. The scheme provides *inter alia* as under:-

> *"In order to enhance competitiveness of exporting units, freight assistance to the extent of 1% of Free on Board (FOB) value of exports subject to maximum of Rs.10.00 lacs per unit per annum will be provided for export of goods manufactured in the exporting units of State."*

The export in unit itself is defined in clause 2.3 as under:-

> "*2.3 Exporting Unit" means a unit registered as SSI with District Industries Center or with Ministry of Industry and Commerce, Govt. of India as Large & Medium Unit."*

2. Admittedly, for the year 2005, the petitioner claimed subsidy at the rates mentioned for each one of the respective units. For 2006-07 the subsidy for one unit was sought to be withdrawn on an interpretation of the scheme that if both units operate under the same management, subsidy will be extended only to one of them. The petitioner brought a challenge in CWP-465-2010, that was disposed of on 21.01.2011 taking note of the submissions made by the petitioner that the practice followed by the State to extend the facility only to one unit if more than one unit is under the same management cannot be applied for the accrual of subsidy for the period earlier to the date of the order. The Court left it to be decided by the State in its discretion without requiring the Court to decide the issue. Against this decision, the petitioner has preferred LPA No. 330 of 2012, by which time a fresh decision had been taken reiterating its earlier decision and referring to the fact that the subsidy would be available only to one of the units under the same management.

3. The writ petition challenges the decision that it is against the expressed terms of the scheme and on instructions subsequently made restricting it to only one unit cannot be done to whittle the scheme as originally provided.

4. The counsel appearing for the State supports the decision on the ground that subsidy itself is not a vested right for somebody to claim and it is literally a matter of State policy. If the policy dictated that the benefit will be restricted to one unit under the same management, the same cannot be extended merely referring to some past practice.

5. I would agree with the contention that subsidy itself cannot create a vested right in that no person can direct a State to extend a subsidy to a particular unit but if a scheme is floated to encourage exports and in the manner of its application there cannot be a whimsical limitation during its operation. If the benefit of subsidy itself is sought to be restricted, that again cannot be a matter of challenge but that restriction ought to operate from the time when they decide to make such restrictive application on subsidy. If the decision was, therefore, made in the year 2009 restricting its operation only to one unit under the same management, I would find that it should operate only when such decision was taken in the year 2009.

6. Counsel for the State points out that the untenability of retrospective effect of the decision has not even been pleaded. I would not fetter the Court's jurisdiction to interpret a scheme to be subjected to a mere issue on pleadings. The parties know what they contend for. If the petitioner's contention was that the benefit of scheme could not have been withdrawn, subsequently that pleading must, in my view, support what is tenable, namely, that it cannot be withdrawn for any date when the subsidy had already accrued before the date when an altered interpretation was made.

7. I quash the action of the respondents, withdrawing the subsidy for the year prior to 2009 to the petitioner and direct the subsidy percentage mentioned in the scheme to be extended to the petitioner and release the same within a period of eight weeks.

8. The petition is allowed on the above terms.

PUNJAB & HARYANA HIGH COURT

CWP NO. 1922 TO 1924 OF 2012
VATAP No. 74 of 2011 and
CWP NO. 28498 of 2013
CWP No. 17117 of 2014
CWP No. 241 of 2014
CWP No. 18604 of 2014
CWP No. 23290 of2012

FORTIS HEALTH CARE LIMITED AND ANOTHER
Vs.
STATE OF PUNJAB AND OTHERS

RAJIVE BHALLA AND AMIT RAWAL, JJ.

23rd January, 2015

HF ▶ Assessee

ARTICLE 366(29A) - SALE – HOSPITALS – TAXABILITY – MEDICINES/DRUGS/STENTS – ADMINISTRATION OF CONSUMABLES DURING MEDICAL TREATMENT – TAX LEVIED ON MEDICINES/DRUGS/STENTS ETC. ADMINISTERED DURING MEDICAL SERVICE. – REFUND CLAIMED ALLEGING THAT SUCH CONSUMABLES OR INCIDENTALS ARE NOT SALE BUT INTEGRAL PART OF MEDICAL PROCEDURE – HELD ARTICLE 366(29A) OF CONSTITUTION WHICH ENVISAGES SUCH CONTRACTS FOR SERVICE CALLED COMPOSITE CONTRACTS THAT INHER AN ELEMENT OF SALE WITHOUT FULFILLING ELEMENTS OF SALE DOES NOT INCLUDE HOSPITAL SERVICES UNDER IT - STATE CANNOT BY LEGAL FICTION INFER A SALE WHICH DOES NOT FALL UNDER ARTICLE 366 (29A) OR UNDER THE DEFINITION OF SALE AS GIVEN IN THE STATE VAT ACTS – ALSO, CONTRACTS NOT FALLING UNDER ARTICLE 366(29A) CANNOT BE SEPARATED AS AGREEMENT OF SALE AND AGREEMENT TO RENDER SERVICE TO LEVY TAX – DOMINANT NATURE TEST STILL APPLICABLE FOR TRANSACTIONS WHICH DO NOT SPECIFICALLY INCLUDED IN ARTICLE 366(29A)– THEREFORE, SUPPLY OF MEDICINES/DRUGS/STENTS ARE INTEGRAL TO A MEDICAL SERVICE OR PROCEDURE AND CANNOT BE SEVERED TO INFER A SALE UNDER PUNJAB VAT ACT OR HARYANA VAT ACT - WRIT PETITION ALLOWED.

The Petitioner had filed an application before the Excise & Taxation Commissioner, Punjab to seek advance determination of the question whether medicines, drugs and stents etc. administered to patients during a medical procedure are 'sale' under the Punjab VAT Act 2005. The Commissioner held it as sale and hence liable for payment of VAT. Based upon the judgment of Jharkhand High Court in the case of Tata Main Hospital vs State of Jharkhand and others the petitioner sent a letter dated 27.5.2008 to the Excise and Taxation Commissioner intimating that he has stopped charging VAT on the medicines, consumables and stents etc. administered during the course of treatment of in-house patients. The refund application of the assessee u/s 39 was rejected by the Assistant Excise & Taxation Commissioner Mohali holding

that the provisions of Bihar VAT Act are different from the Punjab VAT Act. The appeals filed by petitioner up to Tribunal were dismissed. On a writ petition filed before the High Court.

Held that a medical procedure is a composite contract involving the elements of Service and Sale with medical advice and medical procedure. The definition of sale includes the transfer of property of goods in cash etc and also includes composite contract as set out in Article 366 (29A) of the Constitution of India. The States of Punjab and Haryana can, therefore, levy Vat only on transactions as fall within the definition of sale. Where, however, the contract does not possess the element of a sale as set out in the Act nor its composite contract the State cannot by a legal fiction infer a sale and seek to tax the so called element to sale. The dominant nature of test continues to apply to all transactions that are not covered by Article 366(29A) of the Constitution of India as the ingredients of sale remain unchanged. A medical procedure is a pure service with no part having the attributes of Article 366(29A) of the Constitution of India or the definition of sale under the Punjab and Haryana VAT Acts, and, therefore cannot be held to involve a sale. The fiction of deemed sale applies only to such situations as would fall within the definition of Article 366(29A) which permits severance of the service element from sale element and empowers the State to tax the element of sale. The Constitution of India does not cover the services provided by hospitals. Accordingly, it is held that medical procedures / services offered by the petitioners are a service and supply of drugs, medicines, implants, stents, valves and other implants are integral to a medical procedure and cannot be severed to infer a sale as defined under the Punjab and Haryana VAT Acts and are not liable to tax under the PVAT Act and HVAT Act. Consequently, the writ petitions are allowed.

Present: Mr. N.Venkatraman, Senior Advocate with
Mr. Amit Aggarwal, Advocate and
Mr. Aashish Gupta, Advocate for the petitioner

Mr. Piyush Kant Jain, Addl.A.G.,Punjab

Mr. M.P. Devnath, Advocate and
Mr. Sandeep Goyal, Advocate, for the appellant/petition

Ms. Tanisha Peshawaria, DAG, Haryana

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RAJIVE BHALLA, J.

1. By way of this order, we shall decide Civil Writ Petition Nos.1922, 1923,1924 of 2012, 241 and 18604 of 2014 and VAT Appeal No.74 of 2011, filed by M/s Fortis Health Care Limited and another, Civil Writ Petition Nos.23290 of 2012, 28498 of 2013, filed Writ Petition No.17117 of 2014, filed by International Hospital Limited, as they involve answer of the same question of law, namely, exigibility of medicines, drugs, stents, valves, implants and other consumables and incidentals provided to patients during a medical procedure/treatment to value added tax. The petitioners have taken different routes for arriving before this Court and though they essentially canvass the same point and pray for the same relief, it would be necessary to briefly narrate the facts of each case.

2. Civil Writ Petition No.1922 of 2012 has been filed by M/s Fortis Health Care Limited

and another, challenging order dated 10.08.2005(Annexure P-5) holding that drugs, stents, implants etc. are exigible to tax, orders dated 09.02.2010(Annexure P-12), 01.08.2011 (Annexure P-14), passed by the Excise and Taxation Commissioner, Punjab, the Deputy Excise & Taxation Commissioner (A), Patiala Division, Patiala and the Punjab Value Added Tax Tribunal, Punjab, respectively, rejecting their application, in Form-29 for refund of Rs.72,70,406/-, deposited as VAT for accounting year 2005-06.

3. M/s Fortis Health Care Limited and another have also filed CWP Nos.1923 and 1924, challenging orders of even date rejecting their claims for refund of VAT pertaining to accounting years 2006-07, 2007-08 and 2010-11.

4. CWP No.241 of 2014 and 18604 of 2014 has been filed by M/s Fortis Health Care Limited challenging assessment orders, dated 08.10.2013 and 22.08.2014, respectively, passed by the Excise and Taxation Officer-cum-notified Authority, SAS Nagar, Mohali.

5. M/s Escort Hospital Research Centre Limited, has filed VAT Appeal No.74 of 2011, challenging dismissal of their appeal by the Haryana VAT Tribunal, on 24.08.2011 and has filed Civil Writ Petition No.23290 of 2012, challenging order dated 29.09.2012, passed by the Deputy Excise & Taxation Commissioner-cum-Revisional Authority, Faridabad, clarificatory order dated 30.04.2006 and demand notice dated 20.09.2012. Civil Writ Petition No.28498 of 2013 has been filed to challenge demand notice dated 05.11.2013.

6. Civil Writ Petition No.17117 of 2014 has been filed by M/s International Hospital Limited, which has merged with Escort Hospital and Research Centre, challenging Assessment Order dated 28.03.2014, passed by the Excise & Taxation Officer-cum-Assessing Authroity, Faridabad (West) and demand notice dated 20.03.2014 (Annexure P-1).

7. Facts are being taken from Civil Writ Petition No.1922 of 2012. The petitioner filed an application before the Excise & Taxation Commissioner, Punjab, Patiala Division, Patiala, seeking advance determination of the question whether medicines, drugs, stents etc., administered to patients during a medical procedure are a "sale", under the Punjab VAT Act, 2005. The Excise & Taxation Commissioner, Punjab, Patiala Division, Patiala, vide order dated 10.08.2005, held that medicines, implants, stents, etc. administered to a patient during a medical procedure like open heart surgery, angiography, knee surgery, hip replacement etc., are a "sale" under the Punjab VAT Act, 2005 and, therefore, exigible to VAT. The Central Sales Tax Act, 1956 at Mohali and began complying with its statutory obligations. The petitioner reflected a total sale of Rs.48,36,16,032/-with a tax liability of Rs.1,96,14,867/-for the financial year 2005-06. The issue regarding applicability of VAT to medicines, stents, implants came up for consideration before the High Court of Jharkhand in *Tata Main Hospital v. The State of Jharkhand and others, 2008(2) JCR 174 (Jhr.)*. After considering the definition of sale and nature of medical services the Jharkhand High Court held that the supply of medicines, vaccines, surgical items, implants, X-ray film etc. in the course of medical treatment does not involve a sale that would invite levy and payment of VAT. The State of Jharkhand, filed Special Leave Petition(Civil) No.3652 of 2008, which was dismissed by the Supreme Court on 10.03.2008.

8. The petitioner addressed a letter dated 27.05.2008, to the Excise and Taxation Commissioner, Patiala Division, Patiala, intimating that in view of the judgment in *Tata Main Hospital (supra)* it has stopped charging VAT for the medicines, consumables etc. administered

during the course of treatment to, in house patients. The petitioner, thereafter, filed an application, under Section 39 of the Punjab VAT Act, 2005, on 28.10.2009, for refund of VAT. The Assistant Excise & Taxation Commissioner-cum-Designated Officer, SAS Nagar, Mohali, vide order dated 10.05.2010 rejected the application by holding that as the Bihar Finance Act is different from the Punjab VAT Act, the judgment by the Jharkhand High Court is a judgment in personam and as the petitioner has accepted clarificatory order dated 10.08.2005, it is required to pay VAT.

9. The petitioner filed an appeal before the Deputy Excise and Taxation Officer. Vide order dated 09.12.2010, the appeal was dismissed but by recording a finding that the petitioner has paid VAT from its own resources without recovering the same from patients/ECHS. An appeal filed before the Tribunal was dismissed by holding that jurisdiction to determine the controversy, lies with the High Court.

10. Counsel for the petitioner submits that the petitioner in Civil Writ Petition No.1922 to 1924 of 2012, 241 of 2014 and VAT Appeal No.18604 of 2014 confines claim to medical services provided to an Ex-servicemen Contributory Health Scheme (hereinafter referred to "ECHS"). The medical services provided to ECHS are governed by an agreement dated 19.11.2004, which requires the petitioner to provide medical services, broadly divided into two categories i.e., package and non-package services. A patient who opts for non-package treatment, is provided details of the cost component of medicines, implants, doctor's visit, room rent etc., whereas in the case of package treatment, a consolidated price is charged. The ECHS has, however, refused to pay VAT. The petitioner has, therefore, paid VAT from its own resources. Counsel for the petitioner further submits that drugs, stents, medicines, implants etc. are an integral part of a medical service/procedure. The administering of drugs, stents, medicines, implants does not partake the nature of a "sale" whether defined under the Punjab VAT Act, the Haryana VAT Act or under Article 366(29-A) of the Constitution of India. The States medicines, drugs, stents, etc. administered during a medical procedure. Counsel for the petitioner further contends that Article 366 (29-A) of the Constitution of India brings forth for taxation, transactions where one or the other element of sale, as defined under the Sale of Goods Act, is missing, but cannot be read to confer jurisdiction on the State to infer that administering drugs, medicines, stents and implants that are integral to any medical procedure/service, are a sale. The dominant purpose of a medical procedure is to provide medical services and as drugs etc. are not sold separately but are administered as an integral part of a medical procedure/service, they cannot be severed, so as to infer a sale or to hold that these articles are goods exigible to tax under the definition of "sale" in Section 2(z)(f) of the Punjab VAT Act, 2005 and Section 2 (1)(2e) of the Haryana VAT Act.

11. Counsel for the petitioner further submits that the power of the State to impose tax on "sale of goods" emanates from Entry 54 of List II of Schedule VII of the Constitution of India. The petitioner offers a contract of service to both packaged and non-packaged patients and as an integral, inseverable part of this service administers drugs, medicines, stents and implants. The supply of drugs, medicines, stents and implants cannot be deemed to be sale of goods, taxable under the State enactments. The concept of deemed sale introduced by Article 366(29-A) of the Constitution of India, came up for consideration before the Supreme Court in *Bharat Sanchar Nigam Limited v Union of India, 2006(2) STR 161*. The Supreme Court after noticing the

principle enunciated in *State of Madras v. Gannom Dunkerley and Company(Madres) Ltd. (1958) 9 STC 353*, held that the test for transactions other than those mentioned in Article 366(29-A) of the Constitution of India, continues to be whether parties intended to sell goods. The determinative factor for ascertaining the nature of a contract, therefore, remains the same. The supply of drugs, medicines, stents, implants, etc., cannot by a factual or a legal fiction, be severed from medical services and construed as a sale of goods.

12. Counsel for the petitioner further submits that the impugned orders are null and void as the petitioner provides medical services and as an integral and un-severable part of this service, is necessarily required to administer medicines, drugs, stents etc., as per medical advice. The articles so supplied are not sold across the counter but are directly issued from the petitioner's store. The question of exigibility of medicines, drugs, stents and implants provided during a medical procedure, to VAT has been answered against the revenue by the Jharkhand High Court in *Tata Main Hospital* (supra) and the Allahabad High Court in *M/s International Hospital Pvt. Ltd. v. State of U.P. and two others* and as provisions of the Bihar Finance Act 1981, the Act in Utter Pradesh, the Punjab and the Haryana VAT Acts are para materia, the opinion recorded by the Jharkhand and the Allahabad High Court apply to the States of Punjab and Haryana. The fact that the petitioner may not have challenged clarificatory order passed on 10.08.2005, is irrelevant as the question is one of the inherent lack of Constitutional or statutory power to demand VAT.

13. Counsel for the respondents, on the other hand, submits that judgments of the Jharkhand and Allahabad High Courts are not applicable as the definition of 'sale', as defined under the Punjab and Haryana statutes, are materially different. It is further submitted that order dated 10.08.2005, has become final as no appeal was preferred. It is further submitted that it is correct that during the course of treatment, the petitioner supplies medicines, drugs, stents and other implants, to its patients, but at cost. The petitioner does not supply drugs, medicines, stents, and other implants etc., free of cost but sells them to the patients by taking into consideration the sale value of such medicines, drugs, stents and other implants, whether as part of a package or separately etc. The petitioner is, therefore, doing nothing more than selling these articles and whether they are sold as integral to a medical procedure or otherwise is entirely irrelevant. The question is not whether drugs etc. are integral to a medical procedure but whether the supply of drugs etc. is a sale. A perusal of the sample invoice annexed with the petition reveals that medicines, drugs, stents and other implants, are tabulated and charged separately, thereby proving that the stand taken by the States of Punjab and Haryana is factually and legally correct. Counsel for the States of Punjab and Haryana submit that the supply of drugs, medicines, stents and other implants etc., are squarely covered by the definition of “sale” under the Haryana as well as the Punjab Act and the petitioner is covered by the term “person” as defined under Section 2(t) of the Punjab VAT Act and of the Haryana VAT Act. The supply of medicines, drugs, stents, and other implants etc., fall within the definition of “sale” and, therefore, there is no error in the impugned orders. Counsel for the respondents relies upon a judgment of the Kerala High Court in *Malan Bara Orthodox Syrian Charch v. State Tax Officer (2004) 135 STC 224*.

14. We have heard counsel for the parties, perused the impugned orders as well as the relevant statutory provisions.

15. The petitioners are business entities that run hospitals in the private sector and provide medical care, but at a price. One may disagree with the commercialisation of medical services or the exorbitant prices charged but these facts are irrelevant as there is no denying the fact that the petitioners provide all types of medical services, that include surgical procedures which require administering drugs and may involve installing stents, implants etc. as an essential part of such procedures, like open heart surgery, angiography, knee surgery, hip replacement etc. The States of Punjab and Haryana, have by treating medicines, drugs, stents and implants etc. provided during a medical procedure, as a sale, levied and collected VAT. The petitioners have been paying VAT in view of two separate clarificatory orders dated 10.08.2005 and 30.04.2006, passed in the States of Punjab and Haryana holding that administering drugs, stents, implants etc. are a sale liable to VAT.

16. The question posed before us, simply put is, whether supply of medicines, drugs, stents, and other implants etc., during the course of treatment or a medical procedure is a "sale" in the States of Punjab and Haryana.

17. The petitioners, as admitted, are private hospitals that provide medical services and supply medicines, surgical items, implants and stents as part of medical procedures like open heart surgery, angiography, knee surgery, hip replacement etc. The petitioners offer packages as well as individual rates for these medical procedures which, admittedly, involve medical opinion, tests, surgical procedures and management and depending upon the nature of the surgical procedure administering of drugs, medicines, implants, stents etc. all as an integral part of a medical procedure/service, but at a price.

18. A medical procedure commences with a patient visiting a hospital to elicit a doctor's opinion regarding his medical condition and in case he requires a medical procedure, information regarding the particulars of the procedure and the cost. The patient is, thereafter, informed of the particulars of the medical procedure, the drugs, implants, stents etc. that are required for his treatment/ medical procedure and the cost. The patient accepts the offer and opts for a particular procedure. Once having opted for a particular procedure, the choice of the drugs, implants, stents etc. would depend upon medical advice and only where, medically permissible, the choice of the patient. The question posed before us would, therefore, have to be further refined, namely, whether a medical procedure can be severed into separate elements of service and sale with service being the medical advise and medical procedure and the sale being the supply of medicines, surgical items, implants, to patients whether as part of a package or to an individual patient?

19. The State governments draws their power to impose tax on sale or purchase of goods, other than newspapers, from entry No.54 of List II of Schedule VII of the Constitution of India. The power of the Union to tax, can be traced to entry No.97 of List I or Entry 92-C of List I of Schedule VII of the Constitution of India. A State may impose tax on "sale of goods" but is not empowered to impose tax on services. There may and often are contracts for service called composite contracts that may inher an element of sale without fulfilling all the elements of a sale. As far back as in *Gannon Dunkerley* & co. (supra), the Supreme Court held that composite contracts are not a "sale" as one or the other element of "sale" is missing. Article 366 (29-A) of the Constitution of India, was introduced to overcome this hurdle and allow taxation of the element of sale in composite contracts and provide a frame work for the Union as well as the

States to bring forth to taxation transactions in which one or more of the elements of sale is missing. Article 366(29-A) of the Constitution of India reads as follows:-

Article 366(29-A)

"tax on the sale or purchase of goods" includes-

(a) a tax on the transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;

(b) a tax on the transfer of property in goods (whether as goods or in some other form) invoked in the execution of a works contract;

(c) a tax on the delivery of goods on hire-purchase or

(d) a tax on the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(e) a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

(f) a tax on the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), were such supply or service, is for cash, deferred payment or other valuable consideration, and such transfer, delivery or supply or any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made."

20. Sub clause(a) of Article 366(29-A) of the Constitution of India envisages situations where the element of consent is lacking; sub-clause(b) relates to works contracts, sub-clause (c) deals with hire-purchase agreements, sub-clause(d) deals with situations relating to right to use goods, as opposed to transfer of proprietary rights to the purchaser, sub-clause (e) covers situations which in law may not amount to a sale as the incorporated entity may be both, the owner as recipient of goods. Sub-clause (f) deals with situations pertaining to tax on goods which are part of any service of goods, being food or other articles for human consumption or drinks.

21. Article 366(29-A) of the Constitution of India having provided a framework for the States to tax transactions where one of the other element of sale is missing, the States of Punjab and Haryana have defined "sale" in the following terms:

Punjab VATAct, 2005

"sale" with all its grammatical or cognate expressions means any transfer of property in goods for cash, deferred payment or other valuable consideration and includes--

(i) transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;

(ii) transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(iii) delivery of goods on hire-purchase or any system of payment by instalments;

(iv) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(v) supply of goods by any unincorporated association or body or persons to a member thereof for cash, deferred payment or other valuable consideration;

(vi) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating) where such supply or service is for cash, deferred payment or other valuable consideration; and

(vii) every disposal of goods referred to in Explanation (4) to clause (t) of this section;

and any such transfer, delivery or supply of any goods shall be deemed to be a sale of these goods by the person making the transfer, delivery or supply to a person to whom such transfer, delivery or supply is made, but does not include a mortgage, hypothecation, charge or pledge"

Haryana VAT Act, 2003

"Sale" means any transfer of property in goods for cash or deferred payment or other valuable consideration except a mortgage or hypothecation of or a chrge or pledge on goods; and includes-

(i) the transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;

(ii) the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(iii) the delivery of goods on hire-purchase or any system of payment by instalments;

(iv) the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(v) the supply of goods by any unincorporated association or body or persons to a member thereof for cash, deferred payment or other valuable consideration;

(vi) the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating) where such supply or service is for cash, deferred payment or other valuable consideration; and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made;"

22. A perusal of the definition of "sale" reveals that both statutes define "sale" to include transfer of property in goods for cash etc. and includes composite contracts as set out in Article 366 (29-A) of the Constitution of India. The States of Punjab and Haryana may, therefore, levy

VAT on only such transactions as fall within the definition of "sale" whether as a sale of goods or as a composite contract. Where, however, the contract does not possess the element of a sale as set out in these sections nor is it a composite contract the State cannot by a legal fiction infer a sale and seek to tax the so called element of sale. Article 366(29-A) of the Constitution of India came up for consideration before the Supreme Court in *Bharat Sanchar Nigam Limited and another v. Union of India and others, 2006(3) SCC* 1. After setting out the legislative dimensions of the various clauses of Article 366(29-A) of the Constitution of India, the Supreme Court held as follows:

> *43. Gannon Dunkerley survived the 46th Constitutional Amendment in two respects. First with regard to the definition of 'sale' for the purposes of the Constitution in general and for the purposes of Entry 54 of List II in particular except to the extent that the clauses in Art.366(29A) operate. By introducing separate categories of 'deemed sales', the meaning of the word 'goods' was not altered. Thus the definitions of the composite elements of a sale such as intention of the parties, goods, delivery etc. would continue to be defined according to known legal connotations. This does not mean that the content of the concepts remain static. Courts must move with the times. But the 46th Amendment does not give a licence for example to assume that a transaction is a sale and then to look around for what could be the goods. The word "goods" has not been altered by the 46th Amendment. That ingredient of a sale continues to have the same definition. The second respect in which Gannon Dunkerley has survived is with reference to the dominant nature test to be applied to a composite transaction not covered by Article 366(29A). Transactions which are mutant sales are limited to the clauses of Article 366(29A). All other transactions would have to qualify as sales within the meaning of Sales of Goods Act 1930 for the purpose of levy of sales tax.*
>
> *44. Of all the different kinds of composite transactions the drafters of the 46th Amendment chose three specific situations, a works contract, a hire purchase contract and a catering contract to bring within the fiction of a deemed sale. Of these three, the first and third involve a kind of service and sale at the same time. Apart from these two cases where splitting of the service and supply has been Constitutionally permitted in clauses (b) and (g) of Clause 29A of Art. 366, there is no other service which has been of Art. 366(29A) do not cover hospital services. Therefore, if during the treatment of a patient in a hospital, he or she is given a pill, can the sales tax authorities tax the transaction as a sale? Doctors, lawyers and other professionals render service in the course of which can it be said that there is a sale of goods when a doctor writes out and hands over a prescription or a lawyer drafts a document and delivers it to his/her client? Strictly speaking with the payment of fees, consideration does pass from the patient or client to the doctor or lawyer for the documents in both cases.*
>
> *45. The reason why these services do not involve a sale for the purposes of Entry 54 of List II is, as we see it, for reasons ultimately attributable to the principles enunciated in Gannon Dunkerley's case, namely, if there is an instrument of*

> *contract which may be composite in form in any case other than the exceptions in Article 366(29-A), unless the transaction in truth represents two distinct and separate co ntracts and is discernible as such, then the State would not have the power to separate the agreement to sell from the agreement to render service, and impose tax on the sale. The test therefore for composite contracts other than those mentioned in Article 366 (29A) continues to be -did the parties have in mind or intend separate rights arising out of the sale of goods. If there was no such intention there is no sale even if the contract could be disintegrated. The test for deciding whether a contract falls into one category or the other is to as what is 'the substance of the contract. We will, for the want of a better phrase, call this the dominant nature test."*

23. A perusal of the above extract reveals that the 46th amendment does not introduce a new category of "deemed sales", nor does it alter the meaning of the word "goods" or "sale of goods" but merely allows certain transactions to be brought forth for taxation. This apart Article 366(29-A) of the Constitution of India does not raise a presumption that every transaction is a sale and, thereafter allows the State to search for what could be the element of sale, in a transaction. The dominant nature test continues to apply to all transactions that are not covered by Article 366(29-A) of the Constitution of India as the ingredients of a sale remain unchanged. The Supreme Court specifically observed though as an an illustration, that the sub-clauses of Article 366(29-A) of the Constitution of India do not cover hospital services and also held that unless the transaction in truth represents two distinct and separate contracts, the State would not have the power to separate the agreement of sale from the agreement to render services, and impose tax on the so called element of sale, thereby affirming the dominant nature test with respect to contracts, which do not fall within the sub-clauses of Article 366(29-A) of the Constitution. Thus, a medical procedure that as an integral part requires administering of drugs, stents, implants, etc. may only be brought forth for payment of VAT if it fulfills the ingredients of sale, as defined under the Punjab and Haryana VAT Acts and Article 366(29-A) of the Constitution of India. As a result the test whether a medical procedure involves a "sale of goods" continues to be the same i.e., the intention of parties, the nature of goods, their delivery etc. being determinative factors.

24. The questions posed before us as already delimited are whether providing medicines, implants, stents, and other items to a patient who seeks medical treatment involves a sale as defined by the Punjab and the Haryana VAT Act and whether a medical procedure is severable into elements of service and sale with the medical procedure being service and providing of stents, drugs etc.?

25. Admittedly, hospitals administer drugs, implants, stents to a patients on medical advice. The dominant purpose of medical treatment is medical services and integral to such a service is a medical procedure that involves administering medicines and drugs and may involve, implants, stents etc. as integral to a successfully medical treatment/procedure. Would the supply of medicines, stents, implants etc. at a price, enable the State to infer a fictional sale or a severable contract that can be brought forth to taxation as a sale? The answer in our considered opinion is no. A perusal of the statutory definition of "sale" in both the Punjab and Haryana enactments, reveals that after setting out that a sale is a transfer of ownership in goods for

consideration it proceeds to replicate Article 366 (29-A) of the Constitution of India. A medical procedure is a pure service with no part having the attributes or the elements set out in Article 366 (29-A) of the Constitution of India or the definition of sale under the Punjab and Haryana statutes and, therefore, cannot be held to involve a "sale".

26. A similar controversy came up for consideration before the Jharkhand High Court in *Tata Main Hospital v. The State of Jharkhand and others, 2008(2)JCR174(Jhr)*. After considering the judgment in *Bharat Sanchar Nigam Limited and another (supra*) the Jharkhand High Court held that supply of stents, medicines etc. is not a sale. A relevant extract from the judgment reads as follows:-

> *"45. Of all the different kinds of composite transactions the drafters of the 46th Amendment chose three specific situations, a works contract, a hire purchase contract and a catering contract to bring within the fiction of a deemed sale. Of these three, the first and third involve a kind of service and sale at the same time. Apart from these two cases where splitting of the service and supply has been Constitutionally permitted in clauses (b) and (g) of Clause 29A of Art. 366, there is no other service which has been permitted to be so split. For example the clauses of Art. 366(29A) do not cover hospital services. Therefore, if during the treatment of a patient in a hospital, he or she is given a pill, can the sales tax authorities tax the transaction as a sale? Doctors, lawyers and other professionals render service in the course of which can it be said that there is a sale of goods when a doctor writes out and hands over a prescription or a lawyer drafts a document and delivers it to his/her client? Strictly speaking with the payment of fees, consideration does pass from the patient or client to the doctor or lawyer for the documents in both cases.*
>
> *46. The reason why these services do not involve a sale for the purposes of Entry 54 of List II is, as we see it, for reasons ultimately attributable to the principles enunciated in Gannon Dunkerley's case, namely, if there is an instrument of contract which may be composite in form in any case other than the exceptions in Article 366(29-A), unless the transaction in truth represents two distinct and separate contracts and is discernible as such, then the State would not have the power to separate the agreement to sell from the agreement to render service, and impose tax on the sale. The test therefore for composite contracts other than those mentioned in Article 366 (29A) continues to be -did the parties have in mind or intend separate rights arising out of the sale of goods. If there was no such intention there is no sale even if the contract could be disintegrated. The test for deciding whether a contract falls into one category or the other is to as what is 'the substance of the contract . We will, for the want of a better phrase, call this the dominant nature test.*
>
> 21. *In the above quoted para-46 of this very judgment while interpreting the principle laid down in Gannon Dunkerley's case, it has been held that if there is an instrument of contract which may be composite in form in any case other than the exceptions in Article 366(29-A), unless the transaction in truth represents two distinct and separate contracts and is discernible as such, then the State would not have the power to separate the agreement to sell from the agreement to render service, and impose tax on the sale.*

22. *Thus, in view of the decision of the Supreme Court in the case of "Bharat Sanchar Nigam Limited: (supra) the test of deciding whether the contract falls into one category or the other is aso to what is the "substance of contract". According to the Supreme Court, it has to be seen as to what is the dominant nature test of the contract."*

The final conclusion that came to be recorded is as follows:

26. *The transaction of supply of medicines, vaccines, surgical items, x-ray films and plates etc. to the indoor patients in course of treatment in TMH does not come within the purview of the definition of 'sale' as envisages under Section 2(t) of the Bihar Finance Act for the following reasons:*

(i) Supply of those articles are part and parcel of the treatment and they are essentially required for the treatment of the patients.

(ii) Supply of those articles are incidental to the medical service being rendered by the TMH to the patients.

(iii) Those articles are not being sold to the patients but the cost price of the same being adjusted against the head 'pharmacy' and are not being spearately charged item wise.

(iv) Charge under the head 'pharmacy' is part of the composite charge realized by the TMH towards the treatment of those indoor patients.

27. *On the facts noticed in the foregoing paragraphs, we find that the TMH is not doing business of sale of the aforesaid articles, i.e. Medicines, vaccines, surgical items, x-ray films & plates etc. and, therefore, cannot be said that the Hospital is a 'dealer' within the meaning of "Dealer" under the Bihar Finance Act.*

28. *The transaction aforesaid, cannot be said to be 'sale' under the law as there is no element of sale at all in the said transactio. It is to be held that the transaction of supply of medicines, surgical items, x-ray films and plates etc. for the treatment of the indoor patients does not come under the purview of 'sale' in terms of the Bihar Finance Act because the TMH is not selling those items to the indoor patients but in fact they are being consumed, utilised, administered to those indoor patients, which are essentially required for their treatment. Accordingly, it is to be held that supply of the aforesaid articles by the TMH are not liable to be taxed."*

27. The Special Leave Petition against this judgment was dismissed, on 10.03.2008.

28. A similar controversy also came up before a Division Bench of the Allahabad High Court, wherein after considering the judgment by the Hon'ble Supreme Court in *Bharat Sanchar Nigam Limited and another*(supra), the Allahabad High Court relied upon the opinion recorded by the Jharkhand High Court and held that the supply of stents, implants etc. during a medical procedure is not a sale. A relevant extract from the judgment reads as follows:

"*Now, if we apply the aforesaid test, there can be no doubt about the position that in the case of a* patient who enters the hospital for the purpose of a *surgical procedure like an angioplasty, there is no intent between the parties to the agreement namely, the hospital and the individual that there would be a sale of a stent or valve by the hospital to the patient. The substance of the contract is not a contract for sale of the stent or valve that*

is used in the course of the surgical procedure. The contract, in substance, is an agreement in which the patient enters the hospital and is administered treatment in the form of a medical procedure, like an angioplasty. An intrinsic and integral element of that procedure, is the angioplasty. An intrinsic and integral element of that procedure, is the implantation of a stent or valve in the heart of the patient. True, the patient may have a choice of the nature of the stent or valve to be implanted, or in the nature of medicated stent or valve or otherwise, or in regard to the quality of the stent or valve which is implanted but even if that is so, that would not dilute the essential nature of the transaction, which is the performance of a medical procedure."

29. The Allahabad High Court in view of the judgment of the Hon'ble Supreme Court in *Larsen and Toubro Limited & Anr. v. State of Karnatana 2004(1) SCC 708*, went on to hold that the dominant nature test does not survive with respect to transactions covered by Clause 29-A of Article 366 of the Constitution of India, but as hospital services and medical procedures do not fall within any of the sub-clauses of Article 366 (29-A) of the Constitution of India, the deeming definition of sale under Article 366 (29-A) of the Constitution of India shall not apply as a deeming fiction and render provisions of medical services or any part thereof as a sale as defined in the statute. The Allahabad High Court distinguished the judgments of the Kerla High Court in *P.R.S. Hospital v. State of Kerala 2003(1) KLT 633* and *Aswini Hospital Pvt. Ltd. and others v. C.T.O. Thrissur and others 2013 NTN (vol.51) 29*, (relied by the respondents) by holding as follows:-

"*In the present case, the limited issue is as to whether an element of sale is involved when a stent or valve is implanted in the course of a surgical procedure which is performed in a patient as an indoor patient in a hospital. We clarify that this is not a case where the petitioner is contending that the sale of medicines at the pharmacy in the hospital is not assessable to tax. The only issue is as to whether the definition of the expression 'sale' in Section 2(ac) of the Act is attracted where a stent or valve is implanted in a patient in the course of a surgical procedure. Plainly, in our opinion, there is no element of sale. The fact that in the bill which is raised on the patient, the hospital recovers, apart from the cost of the surgery, charges towards drugs and other consumables would not render the transaction of the implantation of a stent or valve a 'sale' within the meaning of Section 2(ac) of the Act. We clarify that we have dealt with only the aforesaid factual situation and our judgment as aforesaid does not deal with any other factual situation which is not before the Court.*"

30. We have considered the relevant statutory provisions of the Punjab and Haryana Statutes, the Bihar Finance Act, the Uttar Pradesh Act, the judgment of the Jharkhand and Allahabad High Courts, judgments of the Kerala High Court (cited by the respondents) are in respectful agreement with the opinion recorded by the Jharkhand High Court and the Allahabad High Court and find no reason to record a contrary opinion or to hold that the supply of medicines, drugs, stents, implants etc. to a patient during a medical procedure inhers any element of sale, much less sets out the ingredients of a 'sale'. The power to impose sales tax/VAT flows from Entry 54 of List II of Schedile VII and Article 366(29-A) of the Constitution, the latter assigning the status of a deemed sale to transactions where one or the other element of sale is

missing, but where the element of sale is altogether missing and the transaction does not fall within any of the clauses of Article 366(29-A) of the Constitution of India, a State shall not be empowered to levy of value added tax on such a transaction. For the purpose of attracting VAT,a transaction or a part thereof, which is essentially a service would have to qualify as a sale within the meaning of Sales of Goods Act, 1930 or the definition of sale. The fiction of a deemed sale applies only to such situations as would fall within the sub-clauses of Article 366(29-A) of the Constitution of India which permit severance of the service element from the sale element and empowers the State to tax the element of sale. A perusal of Article 366(29-A) of the Constitution of India does not enable us to record an opinion that it covers services provided by hospitals. Before such a transaction is put to tax, whether under the Haryana or Punjab VAT Act, it would have to satisfy the dominant nature test by reference to the substance of the contract. A contract for medical treatment necessarily involves medicines, supply of surgical items, stents, implants, valves, without which a medical procedure or medical treatment cannot be completed. The supply of these articles as held by the Allahabad and the Jharkhand High Courts are integral to and essential for the treatment offered to patients and even if one may categorize these as incidental to the actual medical procedure, one cannot but ignore that a medical procedure cannot be completed without supply of medicines, drugs, stents, implants, thereby leading to a singular conclusion that the State is not empowered under any provision of the Constitution much less the definition of goods, sale or dealer, to severe the contract and construe the supply of drugs, medicines, stents, implants etc. as a severable part of the contract and, therefore, exigible to VAT, as a sale. The situation would obviously be different if these articles are supplied from the pharmacy of a hospital.

31. A deeming fiction, must be rational and not farcical. The dominant purpose of a hospital is to provide medical treatment and if during a medical procedure it is required to provide medicines, stents, implants etc., it cannot by a deeming fiction be held to be a "sale". A patient may have a choice as to the quality of implant/stent but even that choice is confined to the suitability of a stent etc. The fact that a hospital may charge money for individual stents etc., whether as part of a package or separately is entirely irrelevant. A contract of medical service cannot be said to be a contract for sale of a stent, or valve or of medicines to be used in a medical/surgical procedure. The essential element of such a contract is the procedure of knee replacement, hip replacement, angioplasty, which as an intrinsic and integral part involves placing an implant whether in the knee, hip or a heart etc. The only choice available to the patient is the nature of the implant, namely, its quality but such a procedure is admittedly, a medical procedure and a service that cannot be completed without an implant/drugs and medicines as an integral part of the procedure. A private hospital does not provide medical services for free. The fact that it charges money, for drugs, medicines etc. cannot raise an inference of intent to sell goods in the shape of medicines, stents, implants etc. We are, therefore, in complete agreement with the opinion recorded by the Jharkhand High Court in *Tata Main Hospital*(supra) and the Allahabad High Court in *M/s International Hospital Pvt. Ltd. v. State of U.P. and two others*.

32. An argument that the definition of "sale" under the Bihar and the Uttar Pradesh Acts, is entirely different, must also fail. A perusal of the definition of sale in the Bihar and the Uttar Pradesh Statutes reveals that this argument has apparently been raised by disregarding the

definition of sale in these statutes which are essentially identical to the definition of sale of the present statute.

33. We therefore, have no hesitation in holding that medical procedures/services offered by the petitioners are a service. The supply of drugs, medicines, implant, stents, valves and other implants are integral to a medical services/procedures and cannot be severed to infer a sale as defined under the Punjab or the Haryana Act and therefore, are not exigible to value added tax.

34. Consequently, we allow the writ petitions and grant relief in the following terms:

Civil Writ Petition No.1922 of 2012

Civil Writ Petition No.1923 of 2012

Civil Writ Petition No.1924 of 2012

Civil Writ Petition No.18604 of 2014

35. In view of findings recorded hereinabove, orders dated 10.08.2005 (Annexure P-5) and 01.08.2011 (Annexure P-14), are set aside and the matter is remitted to the VAT Tribunal, for adjudication afresh and in accordance with law.

Civil Writ Petition No.241 of 2014

36. The writ petition is allowed, order dated 08.10.2013, passed by the Excise and Taxation Officer, Punjab, is set aside and the matter is remitted to the said officer for adjudication afresh and in accordance with law.

VATAppeal No.74 of 2011

37. The appeal is allowed, order dated 24.08.2011 is set aside and the matter is remitted to the Haryana VAT Tribunal, for adjudication afresh and in accordance with law.

Civil Writ Petition No. 23290 of 2012

38. The writ petition is allowed, revisional order dated 20.09.2012, passed by the Deputy Excise and Taxation Commissioner-cum-Revisional Authority, Faridabad, clarificatory order dated 30.04.2006 (Annexure P-2), passed by the Financial Commissioner and the Principal Secretary, Haryana, Excise and Taxation Department and demand notice dated 20.09.2012, are set aside, but the matter is restored to the Assessing Authority/Officer, for taking a fresh decision, in accordance with declaration of law.

Civil Writ Petition No.28498 of 2013

39. The writ petition is allowed, revisional order dated 05.11.2013, passed by the Deputy Excise and Taxation Commissioner-cum-Revisional Authority, Faridabad, revisional order dated 05.11.2013 (Annexure P-), and demand notice dated 05.11.2013, are set aside, but the matter is restored to the Assessing Authority/Officer, for taking a fresh decision, in accordance with the declaration of law.

Civil Writ Petition No.17117 of 2014

40. The writ petition is allowed, the assessment order dated 20.03.2014 and demand notice dated 20.03.2014, are set aside, but the matter is restored to the Assessing Authority/Officer, for taking a fresh decision, in accordance with the declaration of law.

Civil Writ Petition No.22752 of 2014

41. The writ petition is allowed, the revisional order dated 22.09.2014 and demand notice dated 22.09.2014, are set aside, but the matter is restored to the Assessing Authority/Officer, for taking a fresh decision, in accordance with declaration of law.

PUNJAB & HARYANA HIGH COURT

CWP No. 4388 of 2014 & CWP No. 5025 of 2014

GATEWAY RAIL FREIGHT LTD.
Vs.
UNION OF INDIA AND OTHERS

RAJIVE BHALLA AND AMOL RATTAN SINGH, JJ.

13th February, 2015

HF ▶ Petitioner

PENALTY – ATTEMPT TO EVADE TAX – FURNISHING OF INFORMATION AT VIRTUAL ICC – HANDLING OF CARGOES BY PETITIONER COMPANY ON BEHALF OF CUSTOMS DEPARTMENT – PENALTY IMPOSED FOR NON FURNISHING INFORMATION AS REQUIRED U/R 64-C OF PUNJAB VAT RULES 2005 – PETITIONER CONTENDED AS NOT BEING LIABLE TO FURNISH INFORMATION UNDER THE RULE – HOWEVER, PETITIONER AGREED TO FURNISH INFORMATION IN ITS POSSESSION – NO OBJECTION RAISED BY STATE AGAINST THIS – ORDER IMPOSING PENALTY QUASHED – WRIT PETITION ALLOWED.

The petitioner is a cargos service providers. Penalty was imposed on the basis of non furnishing of information at the virtual information collection centre as required under rule 64-C of PVAT Rule. The petitioner argued that it was only a cargo handler and not liable to furnish any information at the virtual ICC and hence the penalty should be set aside. It was pleaded by the petitioner that it would produce the information as required by the state and no objection was raised by the state. The writ was thus allowed setting aside the impugned order.

Editorial Note

In the light of the arguments heard in this case, it is brought to the notice of our readers, that in this case the petitioner company agreed to give information through the e-mail to the state and prayed not to be called upon to generate information as required u/r 64-C of PVAT Rule.

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

Mr. Sukhdev Sharma, advocate for respondent No. 1.

Mr. Jagmohan Bansal, Addl. Advocate General, Punjab

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RAJIVE BHALLA, J.

1. By way of this order, we shall decide CWP Nos.4388 of 2014 and 5025 of 2014, as the order impugned in both the petitions are similar. Facts necessary for adjudication are being taken from CWP No.4388 of 2014.

2. The petitioner who is admittedly a Cargo Service Provider, working with the Container Freight Station, Ludhiana, is before us to challenge order dated 22.01.2014 and demand notice, by praying that the State of Punjab may be restrained from calling upon the petitioner to furnish information under Rule 64-C of Punjab VAT Rules, 2005.

3. Counsel for the petitioner submits that as the petitioner merely provides safe custody to and handles cargo on behalf of the Customs Department, the petitioner is not obliged to furnish information to the State of Punjab but an order imposing penalty has been passed against the petitioner. Counsel for the petitioner further submits that the petitioner has furnished information as required by the State of Punjab and undertakes to continue furnishing information in its possession, as may be required by the State of Punjab.

4. Counsel for the State of Punjab submits that as the petitioner has undertaken to furnish information as required by the State of Punjab, it has no objection, if order dated 22.01.2014 (Annexure P-27) is quashed, provided the petitioner continues to furnish information.

5. We have heard counsel for the parties and in view of statement made by the counsel for the parties, allow the writ petition and set aside the order dated 22.01.2014, subject to the petitioner continuing to furnish information including copies of bill of entries, as required by the State of Punjab.

PUNJAB & HARYANA HIGH COURT

VATAP NO 91 of 2014

VAT NO 103 OF 2014

STATE OF PUNJAB AND ANOTHER.
Vs.
OCEAN METAL PVT. LTD.

RAJIVE BHALLA AND B.S. WALIA, JJ.

23th January, 2015

HF ▶ Assessee

APPEAL – REMAND – TRIBUNAL HOLDING GALVANIZED PIPES AS BLACK PIPES AND REMANDING THE CASE BACK TO THE ASSESSING AUTHORITY FOR ADJUDICATING THE NATURE OF TRANSACTION - REVENUE ON APPEAL BEFORE THE HIGH COURT CONTENDED THAT THE ENTIRE MATTER SHOULD HAVE BEEN LEFT OPEN FOR THE ASSESSING AUTHORITY – MATTER ALREADY REMITTED BACK – NO FORCE IN THE APPELLANT'S CONTENTION – APPEAL NOT ENTERTAINED – HENCE DISMISSED.

The revenue filed an appeal before the Punjab and Haryana High Court challenging the order passed by the Tribunal on the ground that though the Tribunal has remanded the matter but the case of the revenue was not that the black pipes are not galvanized pipes but that the transaction is a mere paper transaction. The revenue contended that while remanding the case the entire matter should have been kept open for adjudication by the Assessing Authority. The Hon'ble High Court held that on a due consideration of the order it reveals that the Tribunal has recorded an opinion as to the nature of pipes but remitted the matter to the Assessing Authority to examine the nature of transaction. Accordingly, the Tribunal having already remitted the matter for examining the nature of transaction, there is no force in the appeal and the same is accordingly dismissed.

Present: Mr. Jagmohan Bansal, Addl. Advocate General, Punjab

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RAJIVE BHALLA, J

C.M.No.14742-CII of 2014

C.M.No.16606-CII of 2014

Allowed as prayed for.

C.M.Nos.14743-44-CII of 2014

C.M.Nos.16607-08-CII of 2014 &

Main Appeals

1. By way of this order, we shall decide VAT Appeal Nos.91 of 2014 and 103 of 2014, as they pertain to the same assessee and the same dispute but relate to different assessment years.

2. Counsel for the appellant submits that, though, the Tribunal has remanded the matter, the case as set up by the revenue was not that the black pipes are not glavanized pipes but that the transaction is a mere paper transaction. The Tribunal has misdirected its consideration as while remanding the case, should have left the entire matter open for adjudication by the Assessing Officer.

3. We have heard counsel for the appellant and perused the impugned orders, passed by the VAT Tribunal.

4. Apart from the fact that the appeal is barred by limitation, a due consideration of the arguments and the impugned orders, reveals that the Tribunal has after recording an opinion as to the nature of the pipes, remitted the matter to the assessing authority to examine the nature of the transactions. A relevant extract from the order reads as follows:-

> *"During the course of arguments in a bid to rebut the contents of the above mentioned letter, the Ld. Counsel for the appellant has produced certain documents, which are required to be examined by the Designated Officer. As such, de novo assessment is required in this case. If during such assessment, it transpires that the goods have not been exported, then the assessee would be entitled to furnish 'C' forms and the assessment shall be framed by taking into consideration such forms. If as per the documents produced today, it turns out that the goods have been exported against 'H' form, then that fact has to be given due consideration.*
>
> *In view of the above circumstances, the impugned orders are set-aside and this matter is remanded back to the Designated Officer, Faridkot for framing fresh assessment in accordance with law as also in the light of the observations recorded hereinbefore, within two months from the date of receipt of the certified copy of this order. The appellant-assessee is directed to produce the documents before the Designated Officer."*

5. The Tribunal already having remitted the matter for examining the nature of the transaction, we find no force in the appellants' contentions and no reason to entertain the appeals, which are accordingly dismissed.

PUNJAB & HARYANA HIGH COURT

VATAP NO 46 OF 2013

GARG SALES CORPORATION, JIND
Vs.
STATE OF HARYANA AND ANOTHER

AJAY KUMAR MITTAL AND JASPAL SINGH, JJ.

31th March, 2014

HF ▶ Revenue

INTEREST – LEVY OF – SUPPRESSED PURCHASES – ASSESSMENT FRAMED – ON REVISION TAX LEVIED ON SUPPRESSED PURCHASES – LEVY OF INTEREST – DISALLOWANCE OF ITC TO SOME EXTENT DUE TO SHORTAGE OF C-4 FORMS – ORDER UPHELD BY TRIBUNAL ALLOWING C-4 FORMS SUBJECT TO VERIFICATION – APPEAL BEFORE HIGH COURT - HELD THAT SUPPRESSION OF PURCHASES WAS NOT BONAFIDE – THEREFORE, INTEREST IS RIGHTLY LEVIED – APPEAL DISMISSED.

REVISION – JURISDICTION – ASSESSMENT – REVISION TAKEN UP – TAX AND INTEREST LEVIED ON ACCOUNT OF SUPPRESSED PURCHASES – ORDER UPHELD BY TRIBUNAL – QUESTION OF JURISDICTION RAISED BEFORE HIGH COURT FOR FIRST TIME – HELD THAT ESSENTIAL REQUIREMENTS FOR INVOKING REVISIONAL POWER WERE FULFILLED – ISSUE REGARDING JURISDICTION NEVER RAISED BEFORE TRIBUNAL – THEREFORE, NO SUBSTANTIAL QUESTION OF LAW AROSE RELATING TO SCOPE OF REVISIONAL JURISDICTION – APPEAL DISMISSED.

The appellant was engaged in the business of manufacturing of agricultural equipments and filed its returns in time. Assessment was framed for the year 2005-06 determining excess ITC to be carried forward. However, on revision, tax was levied on suppressed purchases and an additional demand was created including interest. ITC to some extent was disallowed due to shortage of C-4 forms. The Tribunal upheld the order of revisional authority however allowing C-4 forms subject to verification. An appeal was filed before the Hon'ble High Court against the levy of interest. It is held that suppression of purchases was not bonafide. Therefore, levy of interest was right.

Regarding the question of jurisdiction of revisional authority raised by the appellant, it is held that this question was never raised before the Tribunal and did not emerge from the order of the Tribunal. Consequently, no substantial question of law arose relating to scope of revisional jurisdiction.

Present: Mr. Chetan Jain, Advocate for the appellant.

Ms. Tanisha Peshawaria, DAG, Haryana.

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AJAY KUMAR MITTAL, J.

1. This appeal has been preferred by the assessee under Section 36 of the Haryana Value Added Tax Act, 2003 (in short "the Act") against the order dated 11.1.2013 (Annexure A-7) passed by the Haryana Tax Tribunal, Chandigarh (hereinafter referred to as "the Tribunal"), claiming the following substantial questions of law:-

(i) Whether in the facts and circumstances of the case, the Ld. Tribunal was justified in upholding the jurisdiction of the Revisional Authority u/s 34 of the HVAT Act, 2003 to revise the Assessment Order with regard to imposition tax on turnover of purchase of goods which though part of assessment record at the time of assessment was not made part of the gross turnover or taxable turnover by the Assessing Authority and was not assessed to tax?

(ii) If answer to the above question is in the negative, can such turnover be assessed to tax by the Revising Authority within the limitation laid down in Section 17 of the Haryana VAT Act, 2003?

(iii) Whether, in the facts and circumstances of the case, the Ld. Tribunal was justified in upholding the jurisdiction of Revisional Authority to levy interest on the amount to tax assessed on such turnover particularly when the taxability of such turnover has not been disputed by the Assessing Authority?

(iv) Whether in facts and circumstances of the case, the Ld. Tribunal was justified in upholding jurisdiction of the Revisional Authority to levy interest even for the period prior to raising of the demand in view of the judgment, United Riceland Limited v. State of Haryana, (1997) 104 STC 362 (P&H)?

3. Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The appellant is a dealer and is engaged in the business of manufacturing of agricultural equipments and trading of steel, hardware and sugar. The appellant filed its quarterly returns and annual returns in time. The case of the appellant was taken up for scrutiny and a notice under Section 15(3) of the Act was issued for assessment for the year 2005-06. In pursuance to the notice, the appellant produced all the copies of returns, books of account and the necessary documents. The assessing authority vide order dated 20.8.2008 (Annexure A-1) framed the assessment for the year 2005-06 determining the excess input tax credit at Rs. 71,532/- to be carried forward to the next year, i.e. 2006-07. The Deputy Excise and Taxation Commissioner-cum-Revisional Authority (DETC) exercised revisional power under Section 34 of the Act and vide order dated 5.10.2010 (Annexure A-2) levied tax on suppression of purchases amounting to Rs. 25,21,248/- and also created additional demand of Rs. 3,57,322/- including interest of Rs.1,78,661/-. However, input tax credit was disallowed for Rs.73,455/- due to shortage of C-4 Forms. Feeling aggrieved, the appellant filed an appeal before the Tribunal. The Tribunal vide order dated 19.7.2011 (Annexure A-4) upheld the order of the Revisional Authority and dismissed the appeal. Thereafter, the appellant filed a review application (Annexure A-5) before the Tribunal who vide order dated 11.1.2013 (Annexure A-7) allowed VAT C-4 forms subject to verification. Hence, the present appeal.

4. Learned counsel for the appellant submitted that the issue relating to difference in purchases as shown in the returns and on comparison with the trading account has not been properly adjudicated by the Tribunal. He further submitted that invoking of revisional jurisdiction under Section 34 of the Act was bad. Learned counsel has relied upon the judgment of this Court in **Haryana Agro Industries Corporation Ltd. v. State of Haryana (2002) 3 RTJ 405 (P&H)** in support of his contention. The charging of interest was also assailed as according to the learned counsel, no interest could be charged before raising the demand. Reliance was placed upon the judgments reported in **J.K. Synthetics Ltd. v. Commercial**

Taxes Officer (1994) 94 STC 422 (SC), United Riceland Limited v. State of Haryana (1997) 104 STC 362 (P&H), Punjab Breweries Limited v. State of Punjab (1999) 112 STC 314 and **Bansi Rice Mills v. State of Haryana (2002) 127 STC 218 (P&H).**

5. On the other hand, learned State counsel has supported the order passed by the Tribunal. It was argued that the issue relating to assumption of revisional jurisdiction by DETC was never raised before the Tribunal and, therefore, the same does not arise from the order of the Tribunal. It was urged that there was suppression of purchases and due to contumacious conduct of the assessee, the interest was payable from the date the tax was due.

6. We have heard learned counsel for the parties and perused the record.

7. The addition was sought to be made on account of difference in purchases shown in the trading account. The dealer had failed to explain the difference and, therefore, the difference could only be attributed to suppression of purchases. In the absence of any material produced by the appellant-dealer, the findings recorded by the revisional authority and upheld by the Tribunal could not be faulted. However, the Tribunal had allowed the benefit of Form VAT C-4 subject to verification which were produced at the time of hearing of the appeal before it.

8. Taking up the issue relating to chargeability of interest for the period the tax demand remained payable, it may be observed that the judgments in **J.K. Synthetics Ltd., United Riceland Limited, Punjab Breweries Limited** and **Bansi Rice Mills cases (supra)** were cases where the dealer had been disputing its liability to pay the tax bonafide. The issue of taxability was debatable in these cases. In Full Bench judgment of this Court in **United Riceland Limited's case (supra),** it was noticed on the facts involved therein that the petitioner assessee had not *mala fidely* or intentionally evaded to pay the tax thus incurring the liability to pay the interest within the meaning of sub-section (5) of section 25 of the Act.

9. Admittedly, in the present case, the appellant had suppressed purchases and on that account evaded payment of tax. The action of the appellant in such circumstances is not bonafide and the judgments relied upon by learned counsel for the appellant do not help the appellant. Further, the Hon'ble Apex Court in **Calcutta Jute Manufacturing Co. and another v. Commercial Tax Officer and others (1997) 106 STC 433** distinguishing the judgment of the Constitution Bench in **J.K. Synthetics Ltd's case (supra)** had held that interest was payable from the date prescribed for furnishing the correct return.

10. Examining the issue relating to validity of assumption of revisional jurisdiction and the judgment in **Haryana Agro Industries Corporation Limited's case (supra)**, it may be observed that the Division Bench therein had noticed the distinction between the reassessment proceedings and exercise of jurisdiction by the revisional authority. In the facts and circumstances of that case, it was concluded that the essential requirements for invoking revisional power were not fulfilled. Thus, no benefit can be derived by the appellant from the said pronouncement. Further, this issue was never raised and argued before the Tribunal and, therefore, it does not emerge from the order of the Tribunal. Consequently, no substantial question of law arises relating to scope of revisional jurisdiction in the present appeal.

11. In view of the above, no question of law muchless a substantial question of law arises in this appeal. Finding no merit in this appeal, the same is hereby dismissed.

PUNJAB & HARYANA HIGH COURT

VATAP NO. 5 OF 2010

STATE OF PUNJAB AND ANOTHER
Vs.
T.R. INDUSTRIES

AJAY KUMAR MITTAL AND JASPAL SINGH, JJ.

30th October, 2013

HF ▶ Respondent-dealer

PENALTY – ATTEMPT TO EVADE TAX – GOODS IN TRANSIT INTERCEPTED – G.R. SHOWING DESTINATION AS MANDI GOBINDGARH FROM MOGA – INVOICE SHOWING DESTINATION AS DELHI – GOODS DETAINED AND PENALTY IMPOSED SUSPECTING TAX EVASION – EVIDENCE PRODUCED BY DEALER SHOWING EARLIER SALES TOO ROUTED THROUGH MANDI GOBINDGARH TO SAVE FREIGHT CHARGES TAKEN INTO CONSIDERATION – DOCUMENTS FOUND COMPLETE IN ALL RESPECTS BY TRIBUNAL - ICC RECORDS SHOWING EARLIER TRANSACTIONS BEING DULY REPORTED AT BARRIER WHILE LEAVING THE STATE – PENALTY DELETED - APPEAL BY REVENUE TO HIGH COURT – ON BASIS OF FINDINGS RECORDED BY TRIBUNAL, HIGH COURT HELD NO PERVERSITY FOUND AGAINST DEALER – NO GROUND FOR INTERFERENCE – APPEAL DISMISSED.

The dealer had sent a consignment of goods from Moga to Delhi. The GR was produced before the Designated Officer. As the GR showed destination as Moga, whereas invoice showed destination as Delhi, goods were detained and penalty was imposed u/s 51(7)(b). On appeal before Tribunal, it was argued that the goods were routed through Mandi Gobindgarh to save freight charges. Documents showing previous sales made in the same way were produced. Copies of ICC declarations were also produced to show that the goods were duly reported at the barrier while leaving the State. Documents in question were found complete in all respects. Therefore, penalty was deleted. On appeal before High Court by Revenue, the court observed that no perversity could be found against the dealer as per the findings recorded by the Tribunal. Finding no ground for interference, the court has dismissed the appeal.

Present: Mr. N.K. Verma, Senior DAG, Punjab, for the appellants.

Mr. K.L. Goyal, Senior Advocate with

Mr. Sandeep Goyal, Advocate for the respondent

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AJAY KUMAR MITTAL, J.

1. This appeal has been filed by the State under Section 68(2) of the Punjab Value Added Tax Act, 2005 (in short "the Act") against the order dated 22.5.2009 (Annexure A3) passed by the Value Added Tax Tribunal, Punjab, Chandigarh (hereinafter referred to as "the Tribunal"). The appeal was admitted vide order dated 17.5.2010 for consideration of questions No. II and III which are as under:

> *"II. Whether the Tribunal has rightly interpreted the provisions of Section 51(7)(b) of the VAT Act, 2005 which provides for imposition of penalty when an attempt to evade the tax is proved and the AETC has imposed penalty by holding that it was the case of reuse of the invoice?*
>
> *III. Whether the penalty was rightly imposed under Section 51(7)(b) of the Act on the consigner who has reused the invoice?"*

2. The facts necessary for adjudication of the present appeal as narrated therein are that the assessee sent a consignment of Steel Pipes and Tubes from Moga to Mandi Gobindgarh through truck No. PB10P9945 with invoice No. 238 dated 09.01.2007 for sale to M/s National Steel Tubes, Naraina, Delhi along with GR No. 3003 dated 09.01.2007 of M/s Swarn Goods Carrier, Moga. The vehicle loaded with the goods was checked by the Designated Officer, Fatehgarh Sahib on 11.1.2007 at 6.00 AM at Mandi Gobindgarh. After verification, it was found that the tax was being evaded. Accordingly, the documents and the goods were detained under Section 51(6)(a) of the Act and notice was issued to the owner of the goods. On 25.1.2007, the Detaining Officer sent the case to the Assistant Excise and Taxation Commissioner, Fatehgarh Sahib for taking action under Section 51(7)(b) of the Act who vide order dated 25.1.2007 (Annexure A1) imposed a penalty of ` 1,08,052/holding that an attempt to evade the tax was made. Feeling aggrieved, the assessee filed an appeal under Section 62 of the Act before the Deputy Excise and Taxation Commissioner (Appeals), Ludhiana Division, Ludhiana. The said appeal was dismissed vide order dated 30.4.2008 (Annexure A2). Against the order dated 30.4.2008 (Annexure A2), the assessee approached the Tribunal by way of an appeal. The Tribunal vide order dated 22.5.2009 (Annexure A3) allowed the appeal holding that neither the documents were ingenuine nor an attempt was made to evade tax. Hence, the present VAT appeal.

3. Learned State counsel submitted that there was an attempt to evade tax on the part of the respondent assessee and, therefore, the penalty imposed under Section 51(7)(b) of the Act amounting to Rs. 1,08,052/vide order dated 25.1.2007 by Assistant Excise and Taxation Commissioner, Fatehgarh Sahib and upheld by the Deputy Excise and Taxation Commissioner (Appeal) vide order dated 30.4.2008 was justified. The Tribunal while reversing the said orders had decided the appeal against the material on record. Learned State counsel contended that the assessee had sent consignment of steel pipes and tubes from Moga to Mandi Gobindgarh through Truck No. PB10P9945 with Invoice No. 238 dated 9.1.2007 showing sale to M/s National Steel Tubes, Naraina, Delhi along with GR No. 3003 dated 9.1.2007 of M/s Swarn Goods Carrier, Moga in which the names of the consignor and the consignee were as in the invoice but destination instead of Delhi was shown from Moga to Mandi Gobindgarh. It was argued that the invoice clearly specified destination from Moga to Mandi Gobindgarh whereas the goods were said to be sent for a dealer at Delhi. According to the learned counsel, the goods having been intercepted at Mandi Gobindgarh, the said defence was taken by the assessee whereas the goods were meant for sale in Mandi Gobindgarh and thereby an effort was there to evade payment of VAT which was payable in the State of Punjab.

4. On the other hand, learned counsel for the respondent assessee submitted that the Tribunal on appreciation of material had recorded a finding and this Court in appeal under

Section 68 of the Act would not disturb the finding of fact unless it was shown to be erroneous or perverse. It was argued that the goods were booked from Moga for Delhi via Mandi Gobindgarh as the freight by adopting the aforesaid process was less about Rs.7,000/. It was to remain competitive in the market that this system was adopted. It was contended that on earlier occasion as well in 2006 similar *modus operandi* adopted was accepted.

5. After hearing learned counsel for the parties and perusing the record, we do not find any merit in the appeal. The Tribunal after appreciating the material had come to the following conclusion:

> *"On behalf of the appellant, copies of documents of earlier sales of the parties in Jaipur on 22.06.2006 were shown. In that case also the GR was of Mandi Gobindgarh and then there was another GR from Mandi Gobindgarh to Jaipur and it was mentioned there even. There the goods had been loaded after uploading from another truck, the freight charges was Rs.2500/from Moga to Mandi Gobindgarh, Rs.8000/from Mandi Gobindgarh to Jaipur. There was another bill also dated 02.09.2006 for sale to a party of Jaipur where again there was GR from Moga to Mandi Gobindgarh. Copies of ICC declarations had also been filed to show that the goods earlier set on 02.09.2006 had actually been declared at the ICC while leaving the State of Punjab in the other truck, in which these transactions were being shown as intrastate sale and even C forms were obtained. It was contended on behalf of the appellant that if the goods were to be sold under hand in Mandi Gobindgarh, then these could be sold on 09.01.2007 itself and there was no need to wait another truck for unloading from the earlier truck and then loading in the other truck, from Mandi Gobindgarh to Delhi. The fact remain that bill number, value of goods and name of consignor and consignee with TIN number had been mentioned in the GR. Similarly the GR number and date of the GR was mentioned in the invoice which the driver had produced immediately on interception. Word 'Home Delivery' written in the GR does not assume much importance as the GR was only from Moga to Mandi Gobindgarh and consignee was to Delhi. The goods were 11 ton 970 kgs., and even if the dealer saves Rs.2000/or 3000/in freight while sending the goods, the difference may be Rs.200/and Rs.300/per ton and may be significant for quoting rates etc. for sale of goods.*
>
> *In the facts and circumstances of the case, it cannot be said that either the documents were not genuine or there was an attempt to evade tax, on the part of the appellant."*

6. From the above, it emerges that the bill number, value of goods, names of consignee and consignor were mentioned on the GR. The destination of goods was from Moga to Delhi via Mandi Gobindgarh in order to reduce the freight charges to remain competitive in the market. In such circumstances, the Tribunal recorded that there was no attempt to evade tax and the documents could not be said to be ingenuine. The aforesaid finding of fact in which no perversity could be pointed out, no ground for interference by this Court is called for. Accordingly, the substantial questions of law are answered against the appellants State and in favour of the assessee. Finding no merit in the appeal, the same is hereby dismissed.

PUNJAB & HARYANA HIGH COURT

VATAP No. 16 of 2012

LG ELECTRONICS INDIA PVT. LIMITED
Vs.
STATE OF PUNJAB AND ANOTHER

AJAY KUMAR MITTAL AND JASPAL SINGH, JJ.

3th December, 2013

HF ▶ Appellant-Dealer

PENALTY – ATTEMPT TO EVADE TAX – CHECK POST – CLERICAL MISTAKE IN DOCUMENTS – GOODS (TV SETS) MEANT FOR BRANCH TRANSFER FROM NOIDA TO LUDHIANA IN TRANSIT – DOCUMENTS VOLUNTARILY PRODUCED AT ICC – ONE OUT OF TWO INVOICES BEARING DESTINATION CODE INDICATING DESTINATION AS LUCKNOW INSTEAD OF LUDHIANA – GOODS DETAINED – PENALTY IMPOSED U/S 51 – ERROR CONTENDED TO HAVE OCCURRED DUE TO CLERICAL COMPUTER MISTAKE – CLERICAL MISTAKE DUE TO LUD BEING TYPED AS LUC – ALLOWING THE APPEAL, INADVERTENT MISTAKE HELD TO HAVE OCCURRED ON PART OF APPELLANT – VOLUNTARY FURNISHING OF COMPLETE DOCUMENTS ALONGWITH PACKING LIST AT THE ICC TAKEN INTO ACCOUNT - NO TAX LIABILITY AT THE STAGE OF ENTRY GOODS INTO PUNJAB – TRIBUNAL TAKING TWO DIFFERENT VIEWS IN SIMILAR CIRCUMSTANCES WITHOUT ANY JUSTIFICATION – PENALTY DELETED.

The appellant had sent goods for branch transfer from its head office at Greater Noida to Ludhiana. The consignment consisted of 184 TV Sets. The documents were voluntarily produced at the ICC consisting of two invoices and a consolidated GR. Out of the two invoices, one meant for 23 TV Sets had the destination Code as Lucknow. The goods were detained and penalty u/s 51 was imposed on the ground that there was no invoice for 23 colour TV Sets. The appeals before the Ld. DETC and the Tribunal were dismissed. The explanation tendered by the appellant was that it was a clerical mistake. Instead of LUD (Code for Ludhiana), LUC was typed due to computer mistake. The Hon'ble High court found the explanation bonafide as complete set of documents, GR and packing list had been voluntarily produced at the ICC. Moreover, at the stage of entry into the State of Punjab, no tax liability had arisen as the goods were coming to the branch in Ludhiana from Noida. The Tribunal had taken different view from the one taken in an earlier decision in similar circumstances without giving any justification. Therefore, the penalty was deleted.

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

Mr. N.K.Verma, Sr.DAG, Punjab

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AJAY KUMAR MITTAL,J.

1. This appeal has been preferred by the assessee under Section 68 of the Punjab Value Added Tax Act, 2005 (in short, "the Act") against the order dated 28.11.2011, Annexure A.7, passed by the Value Added Tax Tribunal, Punjab, Chandigarh (in short, "the Tribunal") in Appeal No.59 of 2011. It was admitted on 5.9.2012 to consider following substantial questions of law:

> *"i) Whether on the facts and in the circumstances of the case, the learned Tribunal was justified in upholding the penalty under Section 51(7) (b) merely on account of clerical mistake in the documents which were produced voluntarily at ICC, without establishing any attempt to evade the tax?*
>
> *(ii) Whether on the facts and in the circumstances of the case, the learned Tribunal was justified in not following its own judgment on the similar issue despite the fact that it was delivered by the same Member?"*

2. A few facts relevant for the decision of the controversy involved, as narrated in the appeal, may be noticed. The assessee is a private limited company manufacturing Electronic goods, colour TV, air conditioners and refrigerators in India and has country wide network with branches including the one at Ludhiana. It also sends the goods on stock transfer basis to various branches from its head office at Noida. It sent 184 sets of colour TV to its Ludhiana branch on stock transfer basis. The driver of the vehicle produced the documents at ICC Shambu (Import). The officer on duty detained the goods on the ground that no invoice for 23 number of TV sets meant for Ludhaina was accompanying the goods. In response to the detention notice, the representative of the assessee appeared before the officer and submitted that the goods were meant for Ludhiana but the address of consignee firm was wrongly mentioned as the Code in the computer was selected as "LUC" instead of "LUD" but there was no intention to evade tax. The Assistant Excise and Taxation Commissioner (AETC) after considering the matter vide order dated 2.12.2009, Annexure A.4 imposed penalty of ` 1,04,390/under Section 51(7) (c) and ` 26098/under Section 51(12) of the Act on the ground that there was attempt to evade the payment of tax as no invoice for 23 sets of TV was being carried by the driver of the vehicle. Aggrieved by the order, the assessee filed an appeal before the Deputy Excise and Taxation Commissioner (DETC). Vide order dated 2.11.2010, Annexure A.5, the appeal was dismissed. Still not satisfied, the assessee filed appeal before the Tribunal. Vide order dated 28.11.2011, Annexure A.7, the appeal also met the same fate. Hence the present appeal by the assessee.

3. Learned counsel for the appellant submitted that two invoices No. 10137174 and 10137172 dated 13.11.2009 (Pages 11/A and 12/A of the paper book) had been sent by the appellant alongwith the goods. Through the second invoice i.e. 10137172, 23 colour TV sets had been sent from its office at Greater Noida to Ludhiana but due to mistake in the computer, the destination was mentioned as Lucknow whereas the GR which was sent alongwith the invoice showed the destination as Ludhiana.

4. On the aforesaid premises, it was argued that in case there was attempt to evade tax, the appellant would not have furnished invoice 10137172 for Rs. 2,08,780/ relating to 23 colour TVs being sent from Greater Noida to Ludhiana. It was also urged that the same member of the Tribunal in his earlier decision in *M/s Karwa Consolidated Marketing Limited v. State of Punjab,* Appeal No.142 of 2011 decided on 12.9.2011, Annexure P.8, following *State of Punjab v. Whirlpool India Limited, Zirakpur, District Mohali, (*2009) 34 PHT 125 (PVT) under similar circumstances, had held the dealer not to be liable for penalty.

5. On the other hand, learned counsel for the respondents besides supporting the order passed by the Assessing authority as affirmed by the first appellate authority and the Tribunal submitted that the penalty was rightly levied as there was attempt on the part of the dealer to evade tax in as much as in Invoice No.10137172, the destination was shown as Lucknow whereas the goods had been sent to Ludhiana.

6. Amended substantial questions of law were filed by the appellant which are as under:

> *"i) Whether on the facts and in the circumstances of the case, the learned Tribunal was justified in upholding the penalty under section 51(7) (b) on account of deficiency in the documents with regard to correct name and address of consignee, despite the fact that documents were produced voluntarily at the ICC, which rules out any evasion of tax?*
>
> *ii) Whether on the facts and in the circumstances of the case, the learned Tribunal was justified in not following its own judgment on the similar issue despite the fact that it was delivered by the same member?"*

7. After hearing learned counsel for the parties, we find force in the submissions made by learned counsel for the appellant. The explanation furnished by the appellant appears to be bonafide and under the circumstances, it cannot be said that there was any attempt to evade tax. The goods in question were transported from Greater Noida to Ludhiana whereas in the documents, it was mentioned as Lucknow. The appellant had submitted that the Code mentioned in the computer for Lucknow was 'LUC' whereas for Ludhiana it was 'LUD'. It was by mistake that 'LUC' was pressed and printed instead of 'LUD' and therefore inadvertent mistake had occurred. The appellant had produced the following documents before the ETO on duty:

> "1.Invoice No.10137174 dated 13.11.2009 for `1255154 issued by M/s L.G.Electronics India Pvt. Limited Greater Noida in favour of M/sL.G.Electronics India Pvt. Limited, Ludhiana.
>
> 2. Invoice No.10137172 dated 13.11.2009 for `208780 issued by M/sL.G.Electronics India Pvt. Limited greater Noida in favour of M/s L.G. Electronics India Pvt. Limited. Central Warehousing Corporation, Sitapur Road, Lucknow.
>
> 3. G.R. No. 146715 dated 14.11.2009 of M/s Coastal Roadways Limited, Kolkata from Greater Noida to Ludhiana.
>
> 4. Packing list.''

If there was intention on the part of the appellant to evade tax, it would not have voluntarily furnished Invoice No.10137172 for Rs.2,08,780/in respect of 23 Colour TVs which were dispatched from Greater Noida to Ludhiana. It was not disputed that the driver of the vehicle had presented both the invoices i.e. No.10137174 and 10137172 in respect of the goods amounting to Rs. 12,55,154/ and Rs. 2,08,780/respectively. One consolidated GR No.146715 from Greater Noida to Ludhiana alongwith the packing list was also presented. In such circumstances, it could not be said that there was an attempt to evade tax. Moreover, there was no tax liability at the stage of entry of goods in the State of Punjab as they were coming from Greater Noida to the branch at Ludhaina. The Tribunal had taken different view from the one as had been taken in *M/sKarwa Consolidated Marketing Limited*'s case (supra) under similar circumstances without giving any reasons. No justification has been pointed out for adopting different approach.

8. In view of the above, the substantial questions of law are answered in favour of the assessee and against the revenue. The appeal stands allowed.

PUNJAB & HARYANA HIGH COURT

VATAP NO 1 OF 2009

INTERNATIONAL TRACTORS LTD.
Vs.
STATE OF PUNJAB AND OTHERS

AJAY KUMAR MITTAL AND JASPAL SINGH, JJ.

9th April, 2014

HF ▶ Revenue

SURCHARGE – EXEMPTED UNIT – SECTION 30-AA PGST ACT – ASSESSMENT FRAMED FOR YEAR 2003-04 – LEVY OF SURCHARGE CALCULATED AS TAX PAYABLE AND REDUCED FROM EXEMPTION LIMIT – ORDER UPHELD BY TRIBUNAL HOLDING SURCHARGE TO BE CALCULATED ON TAXABLE TURNOVER FOR EXEMPTED UNITS – APPEAL BEFORE HIGH COURT AGAINST INCLUSION OF SURCHARGE IN ABSENCE OF SECTION 30-AA – HELD THAT UPTO 2002, SURCHARGE WAS SEPARATELY PAYABLE DESPITE EXEMPTION AS PER SECTION 30-AA PGST ACT – IN ABSENCE OF ANY SPECIFIC PROVISION, ASSESSEE NOT ENTITLED FOR EXCLUSION OF SURCHARGE FROM CALCULATION OF TAX PAYABLE TO BE REDUCED FROM EXEMPTION LIMIT – THEREFORE, TAX AND SURCHARGE PAYABLE ON TAXABLE TURNOVER WOULD FORM A PART OF EXEMPTION ENTITLEMENT – APPEAL DISMISSED. *SECTION 5(1-C), SECTION 5(2), SECTION 30-AA PGST ACT 1948.*

SURCHARGE – SALE OF THREE WHEELERS – NO SURCHARGE LEVIABLE ON SALE OF THREE WHEELERS AS PER SECOND PROVISO TO SECTION 5(1-C) – NO LIST SUBMITTED SHOWING SALE OF THREE WHEELERS – CONTENTION CANNOT BE ACCEPTED AT THIS STAGE – LEVY OF SURCHARGE ON THIS TURNOVER ALSO UPHELD.

PENALTY – IMPOSING OF – FAILURE TO COMPLY WITH PROVISIONS OF THE ACT – APPEAL AGAINST IMPOSITION OF PENALTY AS NO SEPARATE NOTICE BEING ISSUED – HELD LIST OF SALES MADE SUBMITTED BY DEALER – NO EXPLANATION TENDERED ON BEING ASKED WHY PENALTY ACTION NOT BE TAKEN – THEREFORE, PENALTY UPHELD – *SECTION 23 PGST ACT, 1948.*

The petitioner was an exempted unit. The assessment was framed for the year 2003-04. The assessing authority deducted the amount of tax including surcharge from exemption limit. Penalty under Section 23 was also imposed. The Ld. DETC upheld the orders. On appeal before Tribunal, it was held that even though it is an exempted unit, tax is to be calculated on taxable turnover and then has to be exempted within exemption limit. Surcharge is also

leviable on tax payable which will also be added to the amount of tax for reduction from exemption limit. Aggrieved by the order of Tribunal, an appeal was filed before the High Court. Dismissing the appeal, it was held that from period 7.11.2001 to 7.12.2002, surcharge was separately payable in spite of exemption u/s 30-AA before its omission. In the absence of any specific provision in the Act or rules framed thereunder or 1991 Rules which confer any right on assessee whereby surcharge on taxable turnover would not be reduced from its exemption limit in case of exempted unit, the assessee is not entitled to claim such benefit. Therefore, tax and surcharge payable every year on the taxable turnover would form part of its exemption entitlement and thus reduced from the exemption limit.

The contention of assessee that no surcharge is payable with regard to sale of three wheelers amounting to Rs. 6,90,181/- as per second proviso to section 5(1-C) cannot be accepted as no list was submitted showing the sale as to be of three wheelers.

Also penalty u/s 23 is upheld as the petitioner was asked to explain why it not be imposed but the former had nothing to say. It cannot be said that only because separate notice was not served, imposition of penalty is bad. Therefore, appeal is dismissed.

Present: Mr. G.R.Sethi, Advocate and

Mr. Varun Chadha, Advocate for the appellant.

Ms. Radhika Suri, Addl.A.G.Punjab.

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AJAY KUMAR MITTAL, J.

1.This appeal has been preferred by the appellant-assessee under Section 68 of the Punjab Value Added Tax Act, 2005 (in short, "the Punjab VAT Act") against the order dated 11.7.2008, Annexure A.7 passed by the Punjab Value Added Tax Tribunal, Chandigarh (for brevity, "the Tribunal"), proposing to raise the following substantial questions of law for determination of this Court:-

> *"i) Having regard to the facts and circumstances of the case and on true and correct interpretation, is surcharge exigible under Section 5(1-C) of the Punjab General Sales Tax Act, 1948 upon an industrial ur1it holding exemption from payment of tax in accordance with the provisions of Punjab General Sales Tax (Deferment and Exemption) Rules 1991 when Section 30-AA under which surcharge was imposed was omitted w.e.f 7.12.2002 and there was no specific provision left for the imposition of surcharge upon the Exemption Holders?*
>
> *ii) On the facts and circumstances of the case, whether sales made by an exempted unit were deductible from gross turnover to determine taxable turnover liable to surcharge?*
>
> *iii) In the facts and circumstances of the case, whether sales of three Wheelers amounting to Rs. 6,90,181/- could be subjected to surcharge despite prohibition contained in second proviso, when no surcharge was levied on such sales made during 2004-05, for sheer non mention of the name of the commodity on which*

higher rate of tax i.e. 12% was assessed?

iv) In the facts and circumstances of the case, whether penalty imposed under section 23 of Punjab General Sales Tax Act, 1948 could be sustained on bald narration that an opportunity of hearing was granted when neither show cause notice was served upon the assessee nor opportunity of hearing was given as per order sheet containing the proceedings of the case?"

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant is a public limited company registered under the Companies Act, 1956. During 2003-04, the appellant was engaged in the manufacture of tractors for sale. Besides tractors, the company also produced and sold three wheelers valuing Rs. 6,90,181/- in the subsequent year. The company was registered under the Punjab General Sales Tax Act, 1948 (in short, "the PGST Act'') and also under the Central Sales Tax Act, 1956 (in short, "the CST Act''). It was also holding exemption certificate under the Punjab General Sales Tax (Deferment and Exemption) Rules, 1991 (in short, "the 1991 Rules''). The appellant deposited Rs. 8 lacs as surcharge from its own funds. It being exemption holder neither collected any tax nor surcharge from its customers. The assessing authority framed assessment and determined tax payable at Rs. 8,06,433/- and found Rs. 7,17,344/- as refundable. He further imposed penalty of Rs.5000/- under Section 23 of the PGST Act and after reducing the same from refundable amount of Rs. 7,17,344/-, allowed refund of Rs. 7,12,344/-. The Assessing authority While determining taxable turnover in the assessment order dated 16.3.2007, Annexure A.5 deducted Rs. 70,68,16,401/- as exempted sales of tractors made Within the State of Punjab and no tax Was assessed on this turnover but while computing the quantum of monetary exemption availed by the appellant during the year, he illegally included surcharge of Rs. 28,27,266/- and reduced the available monetary exemption by Rs. 3,10,99,922/-. Aggrieved by the order, the assessee filed appeal before the Deputy Excise and Taxation Commissioner (Appeals) [DETC (appeals)]. Vide order dated 6.9.2007, Annexure A.6, the DETC (Appeals) held that tax under Section 5 and surcharge under section 5(1C) of the PGST Act is to be assessed irrespective of the exempted units and the amount so calculated shall be reduced from the exemption amount granted to the units. The appellate authority also upheld the penalty of Rs. 5000/- imposed under Section 23 of the PGST Act. Still not satisfied, the appellant filed second appeal before the Tribunal. Vide order dated 11.7.2008, Annexure A.7, the Tribunal dismissed the appeal holding that even When the appellant is an exempted unit as per entitlement certificate, still every year tax has to be calculated on the taxable turnover and then it has to be exempted Within the exemption entitlement. The surcharge is leviable on tax payable and this shall also be added to the amount of tax for Which exemption entitlement is there since Section 30-AA of the PGST Act added on 7.11.2001 had been omitted w.e.f 7.12.2002. The Tribunal sustained imposition of surcharge in respect of sales of three Wheelers amounting to Rs. 6,90,181/- and iron scrap valuing Rs. 91,251/- and penalty of Rs.5000/- imposed under section 23 of the PGST Act. Hence the present appeal by the assessee. *(emphasis supplied)*

3. We have heard learned counsel for the parties and perused the record.

4. Learned counsel for the appellant submitted that the goods produced by the appellant being exempt from payment of sales tax for a period of 10 years, no surcharge could be levied

which would reduce the exemption entitlement of the assessee. According to the learned counsel, in view of Rule 4A of the 1991 Rules, surcharge is on taxable turnover and not on the gross turnover. Reference was made to Section 5(2) of the PGST Act which defines "taxable turnover". Reference was also made to Rule 29 of the Punjab General Sales Tax Rules, 1949 (in short, "the 1949 Rules"). It was urged that the Assessing officer - the first appellate authority and also the Tribunal had erred in determining surcharge for purposes of calculating tax payable and reducing it from the exemption limit which was allowed to the assessee. It was also submitted that no surcharge was leviable on sales of three-wheelers amounting to Rs. 6,90,181/- in view of second proviso to section 5(1-C) of the PGST Act. The imposition of penalty under Section 23 of the PGST Act was also challenged. Support was drawn from following judgments:-

i) ***M/s Hoshiarpur Large and Medium Industries Association and others v. State of Punjab and others,*** (2002) 19 PHT 613;

ii) ***Jai Durga Cotton Mills v. State of Haryana and others,*** (2010) 29VST 617;

iii) ***Kagaz Print N Pack (India) Pvt. Limited, Bahadurgarh, District Jhajar v. State of Haryana,*** (2006) 28 PHT 266, and

iv) ***State of Haryana and others v. Liberty Enterprises***, (2009) 22 VST 1.

5. On the other hand, learned counsel for the State besides supporting the order passed by the Tribunal submitted that the surcharge Was to be calculated on the net sales made by the assessee and had been rightly reduced from the exemption limit which was allowed to the assessee.

6. After hearing learned counsel for the parties, we do not find any merit in the appeal.

7. Question Nos. (i) and (ii) relate to whether surcharge was to be calculated on the taxable turnover and thereafter the total amount of tax and surcharge reduced from the exemption entitlement of the assessee.

8. It Would be apposite to refer to certain relevant provisions.

(i) Section 5(1-C) of PGST Act provides for levy and collection of surcharge on the taxable turnover of a dealer which is to be calculated at the rate of ten per centum of tax payable by him under the Act. It reads thus:-

Section 5(1-C) of PGST Act

"Notwithstanding anything contained in this Act, there shall be levied and collected on the taxable turnover of a dealer, a surcharge, which shall be calculated at the rate of ten percentum of the tax payable by him under this Act.

Provided that the aggregate of the tax and the surcharge payable under this Act, shall not exceed in respect of goods declared to be of special importance in inter state trade or commerce by section 14 of the Central Sales Tax Act, 1956, the rate fixed by section 15 of that Act.

Provided further that no surcharge shall be levied on any type of motor vehicles including their chassis and bodies, motor cycles, motor cycle combinations, motor scooters, mopeds, two Wheelers, three Wheelers and other roadworthy contraptions

excluding tractors and harvest combines."

(ii) Section 5(2) defines "taxable turnover" to mean:-

*"**5(2)**. In this Act the expression "taxable turnover" means that part of a dealer's gross turnover during any period, Which remain after detecting therefrom -*

(a) his turnover during that period on -

(i) the sale of goods declared tax-free under section 6

(ii) Sales to a registered dealer of good other than sales of goods liable to tax at the first stage under sub-section (I-A) declared by him in a prescribed from as being intended for resale in the State of Punjab or Sale in the course of inter-State trade or commerce or sale in the course of export of goods out of the territory of India, or of goods specified in his certificate of registration for use by him in the manufacture in Punjab of any goods other than goods declared tax-free under section 6, for sale in Punjab , or sale in the course of inter State trade or commerce or sale in the course of export of goods out of the territory of India and on sales to a registered dealer of containers or other materials -for the packing of such goods :

Provided that in case of such sales other than those made on commission basis by a commission agent to the registered dealer, a declaration duly filled up and signed by the registered dealer to whom the goods are sold and containing prescribed particulars on a prescribed form obtained from the prescribed authority is furnished by the dealer who sells the goods:

Provided further that in case of a dealer whose gross turnover does not exceed five lac rupees in a year or a sum as may be notified by the State Government from time to time in this behalf, and Whose amount of tax is assesseed under sub-section (1) of section II of this Act, the declaration referred to in the preceding proviso shall not be required.

(iii) XXXXXXXXX

(iv) sales to any undertaking supply in 'electrical energy to the public under a licence of sanction granted or deemed to have been granted under the Indian Electricity Act, 1910, of goods for use by it in the generation or distribution of such energy

(v) sales or purchases of goods falling under section 29,

(vi) the purchase of goods Which are sold not later than six months after the close of the year to a registered dealer, or in the course of inter-State trade or commerce, or in the course of export out of the territory of India:

Provided that in the case of such a sale to a registered dealer, a declaration, in the prescribed form and duly filled and signed by the registered dealer to Whom the goods are sold, if furnished by the dealer claiming deduction.,

(vii) such other sales or purchases as may be prescribed,

(b) The amount of sales tax included in the gross turnover."

(iii) Under **Section 30-A of the PGST Act**, the State Government is empowered to exempt any class of industries from the payment of tax in the interest of industrial development of the State subject to conditions and period as may be prescribed. It is couched in the following terms:-

> ***"Power to exempt certain class of industries*** *– The State Government may, if satisfied that it is necessary or expedient so to do in the interest of industrial development of the State, exempt such class of industries from the payment of tax, for such period and subject to such conditions, as may be prescribed.*
>
> *Provided that in the case of industries which came into production for the first time on or after the first day of April 1989, or wherein modernization, expansion or diversification has been carried out in accordance with the industrial policy, 1989, the Government may exempt such industries from the payment of tax With effect from the Ist day of April 1989, subject to such conditions as may be prescribed:*
>
> *Provided further that in the case of industries which came into production for the first time after the 24" day of June, 1991, or wherein expression, modernization or diversification has been carried out in accordance with the electronics Policy, 1991, the Government may exempt such industries from the payment of tax with effect from the 24m day of June, 1991, subject to such conditions, as may be prescribed.*
>
> *Explanation : For the purpose of this section:*
>
> *i) the industrial policy, 1989 shall mean the Industrial Policy of 1989, notified by the Government of Punjab in the Department of Industries as amended from time to time,*
>
> *ii) the electronics Policy, 1991 shall mean the electronics Policy of 1991 notified by the Government of Punjab in the Department of Industries as amended from time to time."*

(iv) **Section 30AA of PGST Act** was inserted on 7.11.2001 and was omitted with effect from 7.12.2002. It begins with a non-obstante clause. The plain words of the provision indicate the legislative intent to pay the levy of surcharge under Section 5(1C) even where the industries had been granted exemption under Section 30A of the PGST Act. In other words, in the case where exemption had been granted to class of industries under Section 30A of the PGST Act, they were liable to pay the surcharge levied under Section 5(1C) thereof. Before omission, it reads thus:

> ***"Liability to pay surcharge*** *- Notwithstanding any exemption granted to pay class of industries under section 30-A of this Act, such industries shall pay the surcharge levied under sub section (1-C) of section 5 of the Act, in the manner, as may be prescribed."*

The validity of this provision was upheld by the Division Bench of this Court in M/s Hoshiarpur Large and Medium Industries Associations case (supra).

(v) Rule 4A of 1991 Rules relevant for present appeal is as under:-

> *(1)"Not withstanding anything contained in any other provision of these rules, and subject to the provisions of sub rule (2) -*

i) Group of industries which are set up in 'A' category area on or after the first day of October 1992 and the goods produced by them shall be exempt from the payment of sales tax for a period of ten years commencing from the date of production for the first time in the State of Punjab, subject to the condition that the total sales tax exemption shall not exceed 300 percent of their fixed capital investment.

Provided that all fly ash based units, that is units, which use at least twenty five percent fly ash as raw material by weight or by volume, shall be eligible for incentives which are available to the units located in 'A' category area, irrespective of their location, throughout the State of Punjab.

Xx xx xx xx xx xx xx xx xx"

According to aforesaid rule, Industries falling in 'A' category area on or after lst October 1992 producing goods shall be exempt for a period of 10 years from the date of commencing production in the State of Punjab which shall not exceed 300 percent of the fixed capital investment.

vi) Under Rule 29 of the 1949 Rules, registered dealer is entitled to deduct various amounts from the gross turnover enumerated thereunder while calculating his taxable turnover. It nowhere refers to levy or exemption of payment of surcharge on taxable turnover.

8. A combined reading of the aforesaid clearly spells out that for purposes of determining the "taxable turnover", deductions as admissible under Section 5(2) of the PGST Act and Rule 29 of the 1949 Rules are to be allowed. Section 5(1C) of the PGST Act deals with levy of surcharge whereas Section 30-A of the Act provides for framing of rules for deferment and exemption. It may be noticed that during the period from 7.11.2001 to 7.12.2002, surcharge was separately payable inspite of exemption entitlement in view of Section 30AA in the PGST Act before its omission. In the absence of any specific provision in the PGST Act or the rules framed thereunder or under 1991 rules which confers any right on the assessee whereby surcharge on the taxable turnover would not be reduced from its exemption limit in case of exempted unit, the assessee is not entitled to claim such benefit. Accordingly, it is held that the tax and surcharge payable every year on the taxable turnover would form part of its exemption entitlement. *(emphasis supplied)*

9. The Tribunal while repelling the contention of the counsel for the appellant had noticed as under:-

"Counsel for the appellant had argued that as per section 5(2) (a) clause (vii) of the Act, the taxable turnover means that part of dealer's gross turnover during any period which remains after deducting therefrom, such other sales or purchases as may be prescribed. It was argued that as per section 2(f) of the Act prescribed means prescribed by rules made under this Act. It was further argued that rules i.e. Punjab General Sales Tax (Deferment and Exemption) Rules, 1991 had been made and when there was tax exemption, no surcharge would be payable as taxable turnover has to be calculated after deducting there from the turnover on which exemption is there.

Section 5(1-C) provides for surcharge to be levied and collected on the taxable turnover of dealer @ 10% of tax payable by him under the Act. Even when the

appellant is exempted unit as per entitlement certificate, still every year tax has to be calculated on the taxable turnover and then it has to be exempted within the exemption entitlement. The surcharge is leviable on tax payable and this shall also be added to the amount of tax for which exemption entitled is there since section 30AA added on 7.11.2001 has been omitted w.e.f 7.12.2002. If that section had been there then surcharge was separately payable even inspite of exemption but in view of the fact that section 30AA had been omitted already in December 2002 and the present assessment year is 2003-04, the surcharge leviable on the tax has to be added towards the exemption entitlement. No fault can be found with the order of the authorities below in calculating the surcharge and then adjusting it against the exemption limit."

Thus Questions (i) and (ii) stand answered against the assessee.

10. Adverting to question No.(iii), the findings recorded by the Tribunal may be noticed as under:-

"It was further argued that there had been sale of three wheelers of the amount of Rs.6,90,181/- and as per second proviso to section 5(1C), no surcharge is leviable in case of three wheelers. However, from the file of the department, no list was found having been submitted by the appellant to be that of the sale of three wheelers. As such, the contention of counsel for the appellant in this respect cannot be accepted."

The Tribunal had noticed that the assessee had failed to file any list to show that there was sale of three-wheelers and therefore by virtue of second proviso to section 5(l-C) of the PGST Act, no such surcharge was leviable. A perusal of the assessment order and the order passed by the DETC (Appeals) also shows that there was no material to show that the finding recorded by the Tribunal was perverse or erroneous.

11. Taking up the last question regarding levy of penalty, Section 23 of the PGST Act confers power on the appropriate authority to impose penalty for contravention or failure to comply with the provisions thereof or the rules made thereunder. It is to the following effect:-

Section 23 - Penalty

(1) Whosoever contravenes, or fails to comply with, any of the provisions of this Act or the rules made thereunder or any order or direction made or given thereunder, shall if no other penalty is provided under this Act for such contravention or failure, be liable to imposition of a penalty, not exceeding two thousand rupees and where such contravention or failure is a continuing one to a daily penalty not exceeding fifty rupees during the period of the continuance of the contravention or failure.

(2) An officer not below the rank of Excise and Taxation Officer appointed under sub-section (l) of section 3 may, after affording to the person a reasonable opportunity of being heard, impose the penalty mentioned in sub section (1).

The Tribunal had noticed that the assessee was asked to explain why action for penalty against it be not taken to which it did not respond. Once that was so, it could not be said that the levy of penalty under section 23 of the PGST Act was unwarranted. The observations of the Tribunal read thus:-

"Counsel for the appellant had further argued that no penalty could be imposed as it

was a penal action and notice was not issued. However, from the order of the assessing authority, it would come out that dealer had furnished in complete lists of sales made to the registered dealers. He was asked to explain as to why penal action under section 23 of the Act be not taken. He had nothing to say. Thereafter penalty of Rs.5000/- was imposed under section 23 of the Act after hearing the dealer. In view of the facts mentioned in the order, it cannot be said that only because separate notice was not issued, imposition of penalty was bad and should be deleted."

12. Examining the judgments relied upon by the learned counsel for the appellant, suffice it to be notice that they were not directly relating to the issue as raised in the present appeal. Further, in view of the factual matrix involved therein, the aforesaid judgments do not come to the rescue of the appellant.

13. In view of the above, the substantial questions of law are answered against the assessee and in favour of the revenue. Consequently, finding no merit in the appeal, the same is hereby dismissed.

PUNJAB & HARYANA HIGH COURT

CWP No. 3961 of 2015

KOHINOOR FOODS LTD.
Vs.
STATE OF HARYANA AND OTHERS

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

4th March, 2015

HF ▶ Petitioner

RECOVERY OF TAX – SECURITY – APPEAL FILED BEFORE TRIBUNAL CANNOT PROCEED IN ABSENCE OF PROPER CONSTITUTION -WHETHER RECOVERY PROCEEDINGS COULD BE INITIATED – PETITIONER ALLEGED TO HAVE FURNISHED SECURITY U/S 33(5) OF THE HVAT ACT – INITIATION OF RECOVERY PROCEEDINGS DESPITE FURNISHING OF SECURITY – HELD, RESPONDENTS TO DECIDE WHETHER ADEQUATE SECURITY FURNISHED BY PETITIONER – RECOVERY PROCEEDINGS TO BE STAYED TILL SUCH DECISION IS TAKEN AND FOR ONE WEEK THEREAFTER – PETITIONER REFRAINED FROM DISPOSING OF ITS IMMOVABLE PROPERTY TILL THEN – *SECTION 33(5) OF THE HVAT ACT*

The petitioner had filed this writ petition since the Tribunal had not been constituted then to decide the matter in dispute. In this case the respondents argued that in the event of the petitioner furnishing the security as per section 33(5) of the Act, recovery proceedings would not be initiated. On the other hand, the petitioner stated that it had offered the security but the same was not considered by the respondents. Hence, the writ petition is disposed off by directing the concerned officer of the respondents to decide whether the security offered by the petitioner is adequate or not. Till such decision is taken and for one week thereafter the recovery proceeding is stayed and the petitioner is refrained from disposing off its immovable properties till then.

Present: Mr. Sandeep Goyal, Advocate for the petitioner

Ms. Mamta Singla Talwar, AAG, Haryana

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S.J.VAZIFDAR A.C.J.

1. The only reason that this petition has been filed is because the Tribunal under the Haryana Value Added Tax Act, 2003 has not been constituted. The constitution of the Tribunal also depends upon certain other proceedings which have been filed unconnected to the present writ petition. In the circumstances, the appeal that had been filed by the petitioner cannot proceed at this stage.

2. Learned counsel for the respondents states that in the event of the petitioner's furnishing the security as contemplated by Section 33(5) of the said Act, recovery proceedings would not be initiated.

3. The petitioner states that it had offered the security but the same has not even been considered by the respondents.

4. It is, in the first instance, necessary for the respondents to consider whether the security offered by the petitioner is satisfactory or not.

5. The writ petition is, therefore, disposed of by directing the concerned officer of the respondents to decide whether the security offered by the petitioner is adequate or not. Till such decision is taken and for a period of one week thereafter, the recovery shall not be made pursuant to the order dated 22.12.2014. Till then, in any event, the petitioner shall not dispose of its immovable properties or encumber the same in any manner whatsoever.

PUNJAB & HARYANA HIGH COURT

VATAP No. 74 of 2014

VATAP No. 75 of 2014

VATAP No. 90 of 2014

VATAP No. 94 of 2014

DELTON CABLES LTD
Vs.
STATE OF HARYANA AND OTHERS

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

10th March, 2015

HF ▶ Petitioner

ASSESSMENT – C-FORMS – EXTENSION OF TIME FOR PRODUCTION OF FURTHER C-FORMS SOUGHT – APPEAL BEFORE FIRST APPELLATE AUTHORITY POST ASSESSMENT SEEKING PERMISSION FOR PRODUCTION OF C-FORMS IN POSSESSION – PERMISSION GRANTED REMANDING THE CASE THEREBY – APPEAL BEFORE TRIBUNAL SEEKING TIME AS FURTHER C-FORMS WERE TO BE AVAILABLE IN FUTURE - APPEAL REJECTED AS NO SUCH PRAYER MADE BEFORE THE FIRST APPELLATE AUTHORITY – APPEAL BEFORE HIGH COURT – PLEA OF THE APPELLANT THAT C-FORMS WERE AVAILABLE AND THAT NO FURTHER TIME WOULD BE SOUGHT BY IT ACCEPTED – ASSESSING OFFICER TO PASS FRESH ORDER TAKING INTO CONSIDERATION THE ADDITIONAL C-FORMS PRODUCED UPTO THE DATE FIXED BY THE COURT – HENCE, ONE MORE OPPORTUNITY GRANTED TO THE ASSESSEE – APPEAL ALLOWED

After the assessment order was passed in Feb. 2012, an appeal was filed before the First Appellate Authority contending that the appellant be permitted to produce further C-forms obtained by it. The appeal was allowed and matter was remanded to the assessing officer. Against this order, an appeal was filed before the Tribunal that the petitioner be permitted to produce the further C-forms that may be available in future. The Tribunal dismissed the application on the ground that such prayer was not made before the First Appellate Authority. On appeal before High Court, it was pleaded that the appellant would not seek any further time for production of C-forms and fresh assessment order may be passed after considering the further C-forms which were now available with the appellant. Allowing the appeal, one more opportunity to furnish the additional C-forms was granted and the assessing officer directed to pass an order considering the C-forms that would be furnished upto 17.03.2015.

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

Ms. Mamta Singhal Talwar, Assistant Advocate General,

Haryana, for the respondents.

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S.J.VAZIFDAR A.C.J.

1. The main issue in these appeals being same, we dispose of the appeals by this common order and judgment.

2. We for our convenience refer the facts in appeal No. 74 of 2014R

3. The assessment order was passed on 09.02.2012. The appellant filed an appeal against the same contending inter-alia that it ought to be permitted to produce further 'C' Forms obtained by it. By an order dated 14.12.2012 passed by the First Appellant Authority, the appellant was permitted to produce before the Assessing Officer 'C' Forms available with the appellant. The matter was accordingly remanded to the Assessing Officer to pass a fresh assessment order after taking into consideration the further 'C' Forms.

4. The appellant challenged this order before the Tribunal contending that it ought to be permitted to produce the further 'C' Forms that may be available to it in future. The Tribunal dismissed the application inter-alia on the ground that a prayer for the same had not been made before the First Appellant Authority. It is against this order dated 14.11.2013 that the present appeal has been filed by the appellant. 5. It is not contended that further 'C' Forms cannot be relied upon. There indeed must be some limit to the time by which an assessee ought to produce the 'C' Forms before the Assessing Officer. Learned counsel appearing on behalf of the appellant states that he will not seek any further time for production of 'C' Forms and that the fresh assessment orders may be passed after taking into consideration the further 'C' Forms which are now available with the appellant and that may be filed by the appellant within one week from today. The ends of justice would be met by giving the appellant one more opportunity to furnish the additional 'C' Forms.

5. It is not contended that further 'C' Forms cannot be relied upon. There indeed must be some limit to the time by which an assessee ought to produce the 'C' Forms before the Assessing Officer. Learned counsel appearing on behalf of the appellant states that he will not seek any further time for production of 'C' Forms and that the fresh assessment orders may be passed after taking into consideration the further 'C' Forms which are now available with the appellant and that may be filed by the appellant within one week from today. The ends of justice would be met by giving the appellant one more opportunity to furnish the additional 'C' Forms.

6. Accordingly, we set-aside the impugned order and judgment of the Tribunal and permit the appellant to produce further 'C' Forms latest by 17.03.2015. The Assessing Officer shall pass a fresh assessment order after taking into consideration the 'C' Forms that may be furnished upto and including 17.03.2015. The undertaking not to seek further time to produce 'C' Forms is accepted.

All the appeals are disposed of in the same terms.

PUNJAB & HARYANA HIGH COURT

CWP No. 3764 of 2015

HAMDARD (WAKF) LABORATORIES
Vs
STATE OF HARYANA AND OTHERS

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

2nd March, 2015

HF ▶ Petitioner

RECOVERY OF TAX – BANK GUARANTEE – ASSESSMENT ORDER DT. 23.01.2014 PASSED TREATING PETITIONER'S PRODUCT TAXABLE @12.5% UNDER RESIDUAL ENTRY – BANK GUARANTEE SOUGHT TO BE ENCASHED - ASSESSMENT ORDER PASSED ALLEGED TO HAVE BEEN BASED ON 'OPINION' DT. 01.03.2013 RENDERED U/S 56(3) OF THE ACT – OPERATION OF THAT OPINION STAYED IN A SEPARATE WRITE PETITION – RESPONDENTS RESTRAINED FROM INVOKING THE BANK GUARANTEE AT THIS STAGE IN VIEW OF THE STAY OF OPERATION OF OPINION – PETITIONER DIRECTED TO KEEP BANK GUARANTEE ALIVE FAILING WHICH RESPONDENTS TO BE ENTITLED TO INVOKE IT – COURT ENTITLED TO MODIFY THE ORDER PASSED IN THE ABOVE MENTIONED WRIT – *SECTION 56 OF THE HVAT ACT, 2003*

The petitioner's product was assessed under the residuary entry entailing a tax at the rate of 12.5%. The petitioner had filed a writ for directing the respondent to treat it under entry 100D of Schedule C of the Act taxable @ 4%. Bank guarantee was also sought to be encashed against the demand raised. The petitioner alleged that the assessment order passed against it was based on the opinion given dt. 01.03.2013 under section 56(3) of the Act. In a writ petition it was brought to the notice that the operation of that opinion having been stayed by the order of the Division bench dt. 29.10.2014 in CWP No. 14192 of 2014 the recovery on the basis of the assessment order was not justified. It is held, in view of the stay of the operation of the opinion, the respondents are refrained from invoking the bank guarantee at this stage. Also, the petitioner would keep the bank guarantee alive till otherwise ordered by the court. The bank guarantee shall be renewed four weeks prior to the expiry thereof failing which the respondents shall be entitled to invoke the same and receive the proceeds pursuant thereto. The petitioner shall not dispose of any of its immovable properties without the leave of the Court. It is also mentioned that this order is subject to modification to the court and would not prevent the Tribunal from proceeding with the matter.

Present: Mr. Ashok Aggarwal, Senior Advocate,
with Mr. Pankaj Gupta, Advocate, for the petitioner.

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S.J.VAZIFDAR A.C.J.

Issue notice of motion returnable forthwith.

Ms. Mamta Singla Talwar, learned Additional Advocate General, Haryana accepts notice on behalf of all the respondents.

The petitioner has challenged the invocation of a bank guarantee and has also sought a writ to set aside the first appellate order dated 04.07.2014 (Annexure P-5), a demand notice dated 20.02.2015 (Annexure P-6) and a letter dated 24.02.2015 (Annexure P-7) whereby the bank guarantee was sought to be encashed. The petitioner has further sought a writ of mandamus directing the respondents to treat its product as a drink assessable under entry 100 D of Schedule C of the Haryana Value Added Tax Act, 2003 (in short the Act). The respondent No. 1 has by an opinion dated 01.03.2013 (Annexure P-2) rendered under Section 56(3) of the Act held the petitioner's product to be assessable under the residuary article entailing a tax at the rate of 12.5%. Under entry 100 D, the assessment is at 4%.

2. By an order dated 29.10.2014 (Annexure P-4) in CWP-14192-2014, a Division Bench of this Court observed prima-facie that the show cause notices were issued without jurisdiction and stayed the operation of Annexure P3 which, we are informed, is the said opinion dated 01.03.2013. The assessment order dated 23.01.2014 (Annexure P/4-A) in the present case and the order passed by the First Appellate Authority proceed on the basis of the opinion dated 01.03.2013. The operation of that opinion having been stayed by the order of the Division Bench dated 29.10.2014 (Annexure P-4) subsequently the recovery on the basis of the assessment order against the petitioner thus is not justified. Had the assessment order been on the basis other than merely the opinion it may have been a different matter altogether.

3. By the said order dated 29.10.2014, the counsel for the State was directed to have instructions with respect to the constitution of the Haryana VAT Tribunal. The Division Bench observed that in view of the failure to constitute the Tribunal, this Court is flooded with appeals. The learned counsel appearing on behalf of the State of Haryana states that the Tribunal is soon to be constituted. There is, however, some difficulty on the part of the State Government in this regard in view of another writ petition in which the question of the mode and manner of appointment has been raised.

4. Be that as it may, the petitioner cannot be faulted for not having moved the appeal against the opinion of the respondent No. 1. We see no reason at this stage at least to consider the issue on merits. The petitioner is at liberty to file an appeal under Section 33(6) of the Act before the Appellate Tribunal. In view of the operation of the opinion dated 01.03.2013 having been stayed, it would be only fair to restrain the respondents from invoking the bank guarantee at this stage. The issue as to whether the bank guarantee ought to be extended or modified can be considered in CWP-14192-2014 which has challenged the said opinion. Further the interest of the respondents can be safeguarded by directing the petitioner to keep the bank guarantee alive from time to time.

5. In these circumstances, the writ petition is disposed of by the following order:-

The respondents shall not invoke the bank guarantee without the leave of the Court. No further coercive action shall also be taken without the leave of the Court.

This order is, however, subject to the petitioner keeping the bank guarantee alive till otherwise ordered by this Court or by the Appellate Tribunal as the case may be. The bank guarantee shall be renewed four weeks prior to the expiry thereof failing which the respondents shall be entitled to invoke the same and receive the proceeds pursuant thereto. The petitioner shall not dispose of any of its immovable properties without the leave of the Court or the Appellate Tribunal as the case may be.

This order does not prevent the Tribunal when constituted from proceeding with the matter. It will also be open to the Court in CWP-14192-2014 to modify this order as well as the order restraining the respondents from taking coercive action.

SGA
LAW OFFICES

PUNJAB & HARYANA HIGH COURT

CWP No. 23497 of 2014

HARYANA STATE POLLUTION CONTROL BOARD
Vs.
THE COMMISSIONER OF INCOME TAX

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

9th March, 2015

HF ▶ Petitioner

RECOVERY OF TAX – ATTACHMENT OF BANK ACCOUNTS – STATUTORY CORPORATION – DISPUTE REGARDING ENTITLEMENT OF EXEMPTION U/S 10 (23C)(IV) – PROCEEDINGS REGARDING REFUSAL OF EXEMPTION PENDING – PENALTY LEVIED – BANK ACCOUNT ATTACHED FOR RECOVERY – APPROPRIATION BY DEPARTMENT OF CERTAIN AMOUNT – APPLICATION FOR STAY REJECTED BY CIT - HELD BY HIGH COURT THAT PRAYER FOR REFUND OF AMOUNT APPROPRIATED AS INTEREST NOT TO BE ENTERTAINED AT THIS STAGE – HOWEVER, PETITIONER BEING A STATUTORY CORPORATION RECEIVING GRANTS ALSO FROM CENTRE, NO COERCIVE ACTION SHOULD BE TAKEN TILL PENDENCY OF DECISION BY CIT.

The respondents contend that the petitioner had not obtained exemption under Section 10(23C)(iv) and registration under Section 12AA of the Act and are not entitled to the exemption that they are claiming. Penalty was levied under the provisions of Income Tax Act. Proceedings in respect of the refusal of exemption are pending. However, in addition to the attachment of accounts, some amount has been appropriated by the department. Also, banks were called upon to pay the amount lying to the credit of the petitioner with the respondents. The petitioner had filed an application for stay before CIT but it was rejected.

It is held by the High Court that the two drafts prepared by the Bank for payment to the department have been restrained from withdrawal by the interim order passed by the court. The bank is thus directed to cancel the draft and credit the same to the account of the petitioner.

However, prayer for refund of amount already taken is not entertained at this stage and must wait for the decision of the appeal before CIT.

In these circumstances the petitioner being a statutory corporation, no coercive action should be taken against it till the pendency of the appeal before CIT. Also, the petitioner should not seek any adjournment before the CIT.

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

Mr.T.K.Joshi, Advocate, for the respondents-Department.

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S.J.VAZIFDAR A.C.J.

1. The petitioner has challenged the respondents' action, attaching six bank accounts, appropriating the amounts therefrom for its payments of the penalty levied, under the provisions of the Income Tax Act, 1961 (for short, the 'Act').

2. The petitioner is a Government of Haryana undertaking. It receives grants from the Central Government and from the State Government. The same are used for the purpose of discharging its statutory functions and duties.

3. The respondents contend that the petitioner had not obtained exemption under Section 10(23C)(iv) and registration under Section 12AA of the Act and as a result thereof, they are not entitled to the exemption that they are claiming. There are proceedings, therefore, pending in respect of the refusal of exemption under Section 10(23C)(iv) of the Act. In the event of the petitioner succeeding in those proceedings there is a possibility that the entire demand including for the principal will be set aside.

4. By an order dated 21.01.2015, a Division Bench of this Court expressed the hope that the petitioner's appeal before the CIT (Appeals) would be decided by the next date of hearing. The same is still pending.

5. The tax dues have already been paid. In addition thereto, pursuant to the attachment of the accounts, an amount of about Rs.11.27 crores has already been appropriated by the respondents-Department against a demand of Rs. 51 crores towards interest. The petitioner had, thereafter, filed an application for stay on 10.11.2014 before the CIT (Appeals). The same was rejected on the very same date, without affording the petitioner a hearing. On the same day, the Banks were called upon to pay the amount lying to the credit of the petitioner with the respondents.

6. Thus, the petitioner's stay application has not been appropriately considered. The only ground on which it was rejected is that the pendency of the appeal is not a ground for granting the stay. The pendency of the appeal was, however, not the only ground on which the stay was sought. There are several other factors including the constitution of the petitioner and the nature of its functions it is carrying out under the statute.

7. Two drafts amounting to Rs. 4 crores and Rs.18 crores, we have been informed, have been prepared by the Bank for payment to the Department but the respondents have been restrained from withdrawing the same, by the interim order passed by this Court on 17.11.2014. To allow the drafts to remain in operation would not enure to the benefit of either of the parties as the interest would stop running from the date on which they have been prepared. The Bank shall, therefore, cancel the drafts and credit the same to the account of the petitioner.

8**.** We are, however, not inclined to entertain the prayer for refund of the amount of about Rs. 11.27 crores, at this stage. The same must await the decision of the appeal before the CIT(Appeals).

9. In these circumstances and especially considering the fact that the petitioner is a statutory Corporation and receives grants also from the Central Government, it would be proper that no coercive action is taken against the demand of penalty till the decision of the appeal before the CIT (Appeals). The petitioner shall not seek any adjournment on any ground before the CIT (Appeals).

10. The writ petition is, accordingly, disposed of.

SGA
LAW OFFICES

PUNJAB & HARYANA HIGH COURT

CWP No. 7906 of 2014

PEPSICO INDIA HOLDINGS (P) LTD
Vs.
STATE OF PUNJAB AND OTHERS

RAJIVE BHALLA AND B.S. WALIA, JJ

10th February, 2015

HF ▶ Petitioner

DELEGATED LEGISLATION – RETROSPECTIVE AMENDMENT - RATE OF TAX – SCOPE OF POWER OF STATE GOVERNMENT TO AMEND RETROSPECTIVELY – PETITIONER MANUFACTURING AND TRADING BEVERAGES AND SNACKS – NOTIFICATION DATED 25.03.2014 ISSUED BY GOVERNMENT RAISING RATE OF TAX ON THESE ITEMS WITH RETROSPECTIVE EFFECT FROM 01.03.2014 – NO NOTICE FOR AMENDMENT ISSUED BY STATE AS REQUIRED U/S 8 – HELD THAT STATE HAD NO POWER TO AMEND THE RATE OF TAX RETROSPECTIVELY BY WAY OF NOTIFICATION UNLESS PROVIDED BY THE ACT – PERUSAL OF SECTION 8 SHOWS ABSENCE OF ANY LEGISLATION CONFERRING POWER ON CONCERNED AUTHORITY TO ISSUE A NOTIFICATION WITH RETROSPECTIVE EFFECT – IMPUGNED NOTIFICATION SET ASIDE TO THE EXTENT OF RETROSPECTIVITY – WRIT ALLOWED – *SECTION 8 OF PVAT ACT*

The petitioner is engaged in manufacturing and trading of beverages and snacks. Vide notification dt. 25.03.2014, the state government increased the rate of tax to 14.5% on the goods in question with retrospective effect from 01.03.2014. Notice as required u/s 8 of the Act was issued before 15 days of issuing of notification. During the disputed period, the petitioner had already made sales worth crores at the lower rate of tax applicable before amendment. A writ was filed praying for quashing of the retrospective operation of the impugned notification as it is ultra vires of section 8 and violative of delegated legislation as it prescribed rate of tax with retrospective effect. Allowing the writ, it is held that no retrospective amendment can be made in the rate of tax by way of notification unless the power to make such amendments retrospectively has been specifically provided under the Act and the State Government is duly authorised in this behalf. Section 8 of the Act shows legislation has not conferred any such power to notify retrospectively. Since, there is neither any express or implied power conferred by legislation on the concerned authorities to issue notification retrospectively, the impugned notification is set aside to the extent of retrospectivity.

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

Sh. Jagmohan Bansal, Additional Advocate General, Punjab.

Editorial Note

In view of the decision taken in the case of Pepsico India Holdings (P) Ltd, the petition in the case of M/s Shree Ganesh Traders vs. State of Punjab and others (CWP No. 17559 of 2014) was also allowed on dt. 27.2.2015 thereby setting aside the impugned order dt. 08.08.2014 and the matter is restored to the Assessing Authority to decide afresh.

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B.S. WALIA,J.

1. The instant writ petition raises the following substantial questions of law:-

(i) Whether on the facts and in the circumstances of the case, the impugned notification dated 25.3.2014 is ultravires Section 8 of the Act in so far as it operates retrospectively?

(ii) Whether on the facts and in the circumstances of the case, the impugned notifications are violative of exercising of delegated legislation as it prescribes stages for levying tax and levying tax with retrospective effect?

2. At this stage it is relevant to mention here that as per the averments in paragraph No. 6 at page No. 8 of the writ petition, the petitioner has given up the challenge to the prescribing of stages at which tax is leviable.

3. Thus the only question which needs answer in the instant writ petition is with regard to the prayer for quashing of notification Annexure P-4 dated 25.03.2014 in so far as the same operates retrospectively on the ground that the retrospective operation of the notification is beyond the scope of powers of the State Government under Section 8 of the Punjab VAT Act, 2005 (hereinafter to be referred as 'the Act').

4. The petitioner is a company registered under the Companies Act, 1956 with its head office at Gurgaon but for the purpose of sales tax in the State of Punjab, the petitioner is registered with the Assessing authority, Sangrur. The petitioner is engaged in the basiness of manufacturing and trading of beverages and snacks.

5. Petitioners plea is that as per the scheme of the Act, value added tax is leviable on the taxable turnover at the rates specified in the Schedules notified by the State Government from time to time and that under Section 8(3) of the Act, the State Government has the power to alter the rates of tax specified in any of the Schedules and to amend the Schedules by addition or revision of any entry subject to the condition that a proper notice of 15 days as required is given. However, the condition of giving notice can be dispensed with if the State Government is satisfied that immediate action is required by recording reasons for doing so. Section 8 of the Act is re-produced here under:-

"8. Rate of Value Added Tax

(1) Subject to the provisions of this Act, there shall be levied on the taxable turnover of a person other than a registered person, VAT at such rate, as specified in Schedules, but not exceeding fifty five paisa in a rupee:

Provided that the rate of tax applicable on purchase or sale of declared goods, shall not exceed five percent or such rate, as specified in clause (a) of section 15 of the Central Sales Tax Act, 1956.

(2) Notwithstanding anything contained in this section, where any goods are sold in container or are packed in any packing material, the rate of tax applicable to such container or packing material, shall, whether the price of the container or packing material is charged separately or not, be the same as is applicable to the goods, contained or packed therein and the turnover in respect of the container and packing material, shall be included in the turnover of such goods. Where the goods,

sold in container or packed in packing material are tax free, the sale of such container or packing material shall also be tax free.

(2A) Every person executing works contracts shall pay tax on the value of goods at the time of incorporation of such goods in the works executed at the rates applicable to the goods under this Act:

Provided that where accounts are not maintained to determine the correct value of goods at the time of incorporation, such person shall pay tax at the rate of twelve and half per cent on the total consideration received or receivable, subject to such deductions, as may be prescribed.

(3) The State Government after giving fifteen days notice by notification, of its intention so to do, may by like notification, alter the rate of tax specified in any of the Schedules, add to or omit from or otherwise amend the Schedules 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."

6. It is the stand of the petitioner that Schedule-A contains the entries on which no tax is payable in terms of Section 16 of the Act and are treated as exempted goods whereas the goods mentioned in Schedule-B are taxable presently @ 5.5 % and which rate at the time of incorporation of Punjab VAT Act, 2005 was 4%. Schedule-C contains goods which are taxable @1% e.g. bullion, gold, silver, ornaments and precious stone etc. Schedule C-1 containing list of goods taxable @ 4% was added vide notification dated 29.01.2010 w.e.f. 29.01.2010. Schedule-D provides for the levy of tax @20% on liquor, petrol and ATF. In addition to the aforementioned Schedules in which rates were specifically provided, the State legislature had also appended Schedule-E to the Act, in which the list was given on which the rate of tax was leviable at special rates. The State Government kept on adding or omitting certain items from the said Schedule and goods mentioned therein are taxable at different rates. Schedule-F levies tax @13% (at present) on all those goods which are not mentioned in any other Schedules.

7. Counsel for the petitioner contends that the State Government issued Notification Annexure P-1 dated 13.12.2013 operative w.e.f. 01.01.2014, wherein certain amendments were carried out in Schedules A and E by virtue of which certain goods were notified as tax-free at distributor, wholesaler or retailer stage subject to the condition that tax has been paid at the first stage i.e. by manufacturer or first importer of such goods. By virtue of this amendment, goods in question i.e. branded snakes and namkeen were exigible to tax @ 14.5% + surcharge. As has been noted above, that although the State Government may not be authorized to prescribe the stages at which tax was leviable but the petitioner has given up the plea in respect thereto at this stage. Relevant entries as incorporated Scheudle-E against Entry 87(ix) and the rate of tax mentioned against this item was 6.25%. Relevant entries inserted in Schedule A and E respectively, are reproduced below:-

Schedule A
LIST OF TAX FREE GOODS

Entry No.	*Particulars*
87.	*The following commodities shall be tax free at the wholesaler or distributor or retailer stage provided that tax has already been paid at the first point of sale i.e manufacturer or first importer's stage:-* *vi. All types of **branded** and packaged food products i.e. chips, wafers, chocolates, toffees, chewing gums and bubble gums, ice creams, Breakfast Cereals, Muesilli, Corn Flacks, pasta, macroni, biscuits, frozen desserts, frozen ready to eat products, meal makers, instant soups, instant noodles, ready to eat products, custard powder, bakery products, baby foods, coffee powder, ice*

	tea, coffee premix, tea premix, jellies, ketchup and spreads; *ix. Roasted or fried grams and groundnuts,* ***namkeens and branded snacks****;*

Schedule E

LIST OF GOODS TAXABLE AT SPECIAL RATES

Entry No.	*Particulars*	*Rate of Tax*
15	*These following commodities shall be taxable at the first point of sale i.e manufacturer or first importer's stage, at the rates specified against these entries in the Table given below, namely:-* *6. All types of* ***branded*** *and packaged food products i.e. chips, wafers, chocolates, toffees, chewing gums and bubble gums, ice creams, Breakfast Cereals, Muesilli, Corn Flacks, pasta, macroni, biscuits, frozen desserts, frozen ready to eat products, meal makers, instant soups, instant noodles, ready to eat products, custard powder, bakery products, baby foods, coffee powder, ice tea, coffee premix, tea premix, jellies, ketchup and spreads;* *9. Roasted or fried grams and groundnuts,* ***namkeens and branded snacks****;*	*14.5* *6.25*

8. The petitioner's stand is that following the notification, it vide notification dated 13.12.2013 (Annexure P-1) are reproduced below:-

Schedule A

Entry No.	*Particulars*
91.	*All types of* ***branded or packaged food*** *products such as chips, wafers, chocolates, toffees, ice creams, Corn Flacks, pasta, macroni, biscuits, frozen products, meal makers, instant soups, instant noodles, ready to eat products,* ***namkeens****, custard powder,* ***snacks****, bakery products, baby foods etc.* ***Note: These commodities shall be tax free at the wholesaler or distributor or retailer stage provided that tax has already been paid at the first point of sale i.e. manufacturer or first importer's stage.***

Schedule E

Entry	*Particulars*	*Rate of Tax*
20.	*All types of* ***branded or packaged food*** *products such as chips, wafers, chocolates, toffees, ice creams, Corn Flacks, pasta, macroni, biscuits, frozen products, meal makers, instant soups, instant noodles, ready to eat products,* ***namkeens****, custard powder,* ***snacks,*** *bakery products, baby foods etc.*	*14.5 percent*

	Note: These commodities shall be taxable at the first point of sale i.e. manufacturer or first importer's stage.	

9. Thereafter notification Annexure P-2 dated 21.02.2014 was issued by the state Government w.e.f. 01.03.2014 wherein Schedules A, B and E were amended. In this amendment, the earlier notification was amended and some more commodities were made tax free at the distributor, wholesaler or retailer stage subject to the condition that tax has been paid at the first stage.

10. Contention on behalf of the petitioner is that by virtue of amendment Annexure P-2 dated 21.02.2014, goods being sold by it i.e. namkeen and branded snacks were thereupon taxable @6.25%+ surcharge as there was a specific mention of these items in started charging tax @ 6.25%+ surcharge @ 10% being taxable at the first stage on these items which were concerned under the Entry 'namkeens and branded snacks'. The petitioner has annexed copy of invoices as Annexure P-3 to the writ petition showing charging of tax by it at the lower rate. Grievance of the petitioner is that subsequently, the State Government issued notification Annexure P-4 dated 25.03.2014 applicable w.e.f. 01.03.2014 amending the Schedules by virtue of which the item in question i.e. branded snacks and namkeen were made taxable @ 14.5%+ surcharge. In other words, vide notification Annexure P-4 dated 25.03.2014, the goods were made taxable at higher rate retrospectively w.e.f. 01.03.2014, whereas the petitioner during the period in dispute had already made sales worth Rs. 6,74,61,646/-, as per details given in Annexure P-5. After 25.03.2014, the relevant entries read as under:-

Schedule A
LIST OF TAX FREE GOODS

Entry No.	*Particulars*
87.	*The following commodities shall be tax free at the wholesaler or distributor or retailer stage provided that tax has already been paid at the first point of sale i.e manufacturer or first importer's stage:-* *vi. All types of **branded** and packaged food products i.e. chips, wafers, chocolates, toffees, chewing gums and bubble gums, ice creams, Breakfast Cereals, Muesilli, Corn Flacks, pasta, macroni, biscuits, frozen desserts, frozen ready to eat products, meal makers, instant soups, instant noodles, ready to eat products, custard powder, bakery products, baby foods, coffee powder, ice tea, coffee premix, tea premix, jellies, ketchup and spreads;* *ix. Roasted or fried grams and groundnuts, **namkeens and branded snacks**;*

Schedule E

LIST OF GOODS TAXABLE AT SPECIAL RATES

Entry No.	*Particulars*	*Rate of Tax*
15	*These following commodities shall be taxable at the first point of sale i.e manufacturer or first importer's stage, at the rates specified against these entries in the Table given below, namely:-* *(1) **** *(2) **** *(3) ****	

	*(4) **** *(5) **** *6. All types of **branded** and packaged food products i.e. chips, wafers, chocolates, toffees, chewing gums and bubble gums, ice creams, Breakfast Cereals, Muesilli, Corn Flacks, pasta, macroni, biscuits, frozen desserts, frozen ready to eat products, meal makers, instant soups, instant noodles, ready to eat products, custard powder, bakery products, baby foods, coffee powder, ice tea, coffee premix, tea premix, jellies, ketchup and spreads;* *9. Roasted or fried grams and groundnuts, **namkeens and branded snacks**;*	*14.5* *6.25*

11. For convenience sake, the comparative table showing levy of tax and the relevant entries at different times, attached as Annexure P-6 is reproduced hereunder:-

Schedules	**Upto 31.12.2013**		**01.01.2014 to 28.02.2014**		**01.03.2014 to 24.03.2014**		**25.03.2014 onwards**	
	Particulars of entry	**Rate of tax**	**Particulars of entry**	**Rate of tax**	**Particulars of entry**	**Rate of tax**	**Particulars of entry**	**Rate of tax**
A			**Entry 91**	**Tax free**	**Entry 87**	**Tax free**	**Entry 87**	**Tax free**
			Note: These commodities shall be tax free at the wholesaler or distributor or retailer stage provided that tax has already been paid at the first point of sale i.e. manufacturer or first importer's stage. *All types of branded or packaged food products such as chips, wafers, chocolates, toffees, ice creams, Corn Flacks, pasta, macroni, biscuits, frozen products, meal makers, instant soups, instant noodles, ready to eat products, **namkeens**, custard powder, **snacks**, bakery products, baby foods etc.*		***The following commodities shall be tax free at the wholesaler or distributor or retailer stage provided that tax has already been paid at the first point of sale i.e manufacturer or first importer's stage:-*** *vi. All types of **branded** and packaged food products i.e. chips, wafers, chocolates, toffees, chewing gums and bubble gums, ice creams, Breakfast Cereals, Muesilli, Corn Flacks, pasta, macroni, biscuits, frozen desserts, frozen ready to eat products, meal makers, instant soups, instant noodles, ready to eat products, custard powder, bakery products, baby foods, coffee powder, ice tea, coffee premix, tea premix, jellies, ketchup and spreads;* *ix. Roasted or fried grams and groundnuts, **namkeens and branded snacks***		***The following commodities shall be tax free at the wholesaler or distributor or retailer stage provided that tax has already been paid at the first point of sale i.e manufacturer or first importer's stage:-*** *vi. All types of branded and packaged food products i.e. chips, wafers, chocolates, toffees, chewing gums and bubble gums, ice creams, Breakfast Cereals, Muesilli, Corn Flacks, pasta, macroni, biscuits, frozen desserts, frozen ready to eat products, meal makers, instant soups, instant noodles, ready to eat products, custard powder, bakery products, baby foods, coffee powder, ice tea, coffee premix, tea premix, **branded snacks and namkeen,** ketchup and spreads;* *ix. Roasted or fried grams and groundnuts, **namkeens and branded snacks***	
B	Unbranded Bhujia and Namkeen	**5.5+ surcharge**	**Entry 123** *Unbranded Bhujia and Namkeen*	**5.5+ surcharge**	**Entry 123** ***Unbranded Bhujia and Namkeen***	**5.5+ surcharge**	**Entry 123** ***Unbranded Bhujia and Namkeen***	**5.5+ surcharge**
E			**Entry 20**	**14.5 + surcharge**	**Entry 15**	**6.5+ surcharge**	**Entry 15**	**14.5+surcharge**
			Note: These commodities shall be		*These following commodities*		*These following commodities*	

			taxable at the first point of sale i.e. manufacturer or first importer's stage. *All types of* ***branded or packaged food*** *products such as chips, wafers, chocolates, toffees, ice creams, Corn Flacks, pasta, macroni, biscuits, frozen products, meal makers, instant soups, instant noodles, ready to eat products,* ***namkeens****, custard powder,* ***snacks,*** *bakery products, baby foods etc.*		*shall be taxable at the first point of sale i.e manufacturer or first importer's stage, at the rates specified against these entries in the Table given below, namely:-* *6. All types of* ***branded*** *and packaged food products i.e. chips, wafers, chocolates, toffees, chewing gums and bubble gums, ice creams, Breakfast Cereals, Muesilli, Corn Flacks, pasta, macroni, biscuits, frozen desserts, frozen ready to eat products, meal makers, instant soups, instant noodles, ready to eat products, custard powder, bakery products, baby foods, coffee powder, ice tea, coffee premix, tea premix, jellies, ketchup and spreads;* *9. Roasted or fried grams and groundnuts,* ***namkeens and branded snacks****;*		*shall be taxable at the first point of sale i.e manufacturer or first importer's stage, at the rates specified against these entries in the Table given below, namely:-* *6. All types of* ***branded*** *and packaged food products i.e. chips, wafers, chocolates, toffees, chewing gums and bubble gums, ice creams, Breakfast Cereals, Muesilli, Corn Flacks, pasta, macroni, biscuits, frozen desserts, frozen ready to eat products, meal makers, instant soups, instant noodles, ready to eat products, custard powder, bakery products, baby foods, coffee powder, ice tea, coffee premix, tea premix,* ***branded snacks and namkeens****, ketchup and spreads;* *9. Roasted or fried grams and groundnuts,* ***namkeens and branded snacks****;*	
F	Unclassified	13+ surcharge						

12. Petitioners grievance is that Section 8 of the Act does not authorize the State Government to amend the Schedules by issuing a notification with retrospective effect and that the provisions of Section 8 provide that the State Government may alter the rate of tax or add or omit any of the entries in the Schedule by notification after giving 15 days notice unless circumstances exists which requires the amendment with immediate effect by recording reasons in writing for doing so. Submission on behalf of the petitioner is that the State Government neither issued any notice for amendment with immediate effect nor dispensed with the condition of previous notice but surprisingly vide notification Annexure P-4 dated 25.03.2014, the rate of tax was enhanced from 6.25% to 14.5% w.e.f. 01.03.2014 despite there being no provision authorising retrospective amendment of rate of tax chargeable. Besides, tax could not be levied stage wise as according to Section 8 of the Act ibid, the State Government has power to only make amendments in the Schedules with respect to rate of tax and the goods but it is not authorized to prescribe the stage at which such goods are leviable to tax.

13. Learned counsel for the petitioner has placed reliance on the judgment of this Court in CWP No. 7499 of 2006 titled as **M/s Kumar Brothers (Chemists) Pvt. Ltd. vs. The Union Territory of Chandigarh and others,** decided on 11.04.2006, whereby this Court quashed a notification issued with retrospective effect under Section 5 (1) of the Punjab General Sales tax Act, 1948, which is para material to Section 8 of the Punjab VAT Act, 2005, by observing as under:-

> "*It is thus obvious that notification dated 30.11.2005 (P-9) issued by respondent Nos 1 and 2 with retrospective effect from 13.7.2000, could not be issued by giving the earlier notification dated 25.2.2005 retrospective effect and stating that it must be deemed to have come into force on and with effect from 13.7.2000 because there is neither any express power conferred by the legislation on the concerned authorities to issue such a notification by giving it retrospective effect. We are also unable to find either by the process of interpretation or otherwise from necessary intendment any intention of the legislature to confer such a power on the competent authority. Therefore, notification dated 30.11.2005 (P-9) is liable to be set aside…*"

14. Learned counsel by referring to the decision in **M/s Kumar Brothers (Chemists) Pvt. Ltd.'s case (Supra),** has contended that only legislation can clothe the executive with the

power to issue a notification from retrospective effect but the same cannot be done by the executive. He has also placed reliance on the below mentioned judgments referred to in **M/s Kumar Brothers (Chemists) Pvt. Ltd.'s case (Supra):-**

1) **Income tax officer, Alleppey v. M.C. Ponnoose, (1970) 75 ITR 174 (SC);**
2) **Bakul Cashew Co. V. Sales Tax Officer, Quilon, (1986) 62 STC 122 (SC),**
3) **Baldev Raj Hari Kishan v. State of Punjab, (1999) 114 STC 223 (P&H) [Annexure P-II]; and**
4) **Jiwan Agricultural Implements Works Workshop Co-operative Industrial Society Limited vs. State of Punjab, (2000) 119 STC 340 (P&H).''**

15. Learned counsel for the petitioner has summed up his case by arguing that the notification Annexure P-4 dated 25.3.2014 making the amendment applicable retrospectively w.e.f. 1.3.2014 is legally unsustainable as no notification can be issued by the executive or State Government from a retrospective date in the absence of any power in respect thereto conferred by the legislation. Learned counsel for the petitioner by referring to Section 8(3) of the Act has submitted that there is no such power a discernible there from even by way of express words or by necessary intendment conferred on respondent No. 1 to issue a notification from a retrospective date.

16. On the aforementioned basis, learned counsel for the petitioner contends that the impugned notification is liable to be set aside.

17. Written statement on behalf of respondents No. 1 to 3 has been filed by Shri Darbara Singh Assistant Excise and Taxation Commissioner, Mini Secretariat, Sangrur, in which inter alia, it has been pleaded that in certain circumstances, the legislature is competent to make a notification effective retrospectively as provided under Article 245 of the Constitution and that the power under Article 245 is plenary which includes the power to make a law with retrospective effect and even subordinate legislation can be allowed to be made retrospectively. In support of amendment of notifications retrospectively, reliance has been placed on the following judgments:-

1) **Metro Trading Syndicate vs. State of Kerala (1994) 94 STC (Ker);**
2) **D. Caswasji & Co. Vs. The State of Mysore and another (1973) 31 STC 445 (Mys) and**
3) **VRV Foods Limited vs. State of H.P. and others (2011) 46 VST 417 (HP)**

18. We are however of the view that the aforesaid judgments are not applicable in the facts of the case.

19. In paragraph No. 10 of the reply on merits it has been mentioned that the notification Annexure P-4 dated 25.03.2014 was issued by the State Government by dispensing with the condition of 15 days notice as provided under Section 8(3) of the Act while in paragraph No. 12 of the reply it has been mentioned that it was wrong to say that the State government was not authorized to issue a notification with retrospective effect while in paragraph No. 13 it is mentioned that the amendment in question was notified as provided under Section 8(3) of the Act and that as per the said provision, the State Government was fully competent to issue such a notification keeping in view the interest of Government revenue.

20. We have heard learned counsel for the parties and with their able assistance have perused the record and are of the view that the writ petition must succeed as it is well settled law that no retrospective amendment can be made in the rate of tax by way of notifications unless the power to make such amendments retrospectively has been specifically provided under the Act and the State government is duly authorized in this behalf. A perusal of Section 8 of the Act,

which has been reproduced in the earlier part of the judgment reveals that the legislation has not conferred any power on the competent authorities to issue a notification with retrospective effect. In the absence of express or implied provision in the legislation itself, the State Government cannot issue a notification from a retrospective effect. Reference in this context can be made to the decision of the Hon'ble Supreme Cour tin **Bakul Cashew Co.'s case (Supra),** wherein following the view taken in Income Tax Officer Alleppey, their Lordships observed as under:- (*emphasis supplied)*

> "Notification G.O. Ms. No. 127/73/TD dated October 12,1973, issued by the State Government of Kerala granting retrospectively an exemption in respect of tax payable under Section 5 of the Kerala General Sales tax Act, 1963, by cashew manufacturers in the State on the purchase turnover of cashew-nuts imported from outside India through the Cashew Corporation of India for the period September1, 1970, to September 30, 1973, was validly cancelled by the Government by its subsequent Notification bearing G.O. Ms. No. 143/73/TD dated November 9, 1973, because on the date of the notification granting exemption the State Government did not have power under section 10 as it then stood to grant an exemption retrospectively. It was only subsequently in 1980 when Section 10(1) was amended by inclusion of the specific words "either prospectively or retrospectively" that the State Legislature conferred power on the State Government to grant exemption with retrospective effect.
>
> An authority which has the power to make subordinate legislation cannot make it with retrospective effect unless it is so authorised by the legislature which has that power conferred on it."

21. The same view has been reiterated and followed by the Hon'ble Supreme Court in the case of **Mahabir Vegetable Oils (P) Ltd. vs. State of Haryana (2006) 3 SCC 620.**

> **"**41. ..... It is beyond any cavil that a subordinate legislation can be given a retrospective effect and retroactive operation, if any power in this behalf is contained in the main act, Rule making power is a species of delegated legislation. A delegate therefore can make rules only within the four corners thereof.
>
> 42. it is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. [See West v. Gwynne, (1911) 2 Ch. 1]"

22. It is therefore, clear that notification Annexure P-4 dated 24.03.2012 issued by the respondents with retrospective effect from 01.03.2014 could not be issued by giving the same retrospective effect and stating that it must be deemed to have come into force on and w.e.f. 01.03.2014, since there is neither any express power conferred by the legislation on the concerned authorities to issue such a notification by giving it retrospective effect nor we are able to find either by process of interpretation or otherwise from necessary intendment any intention of the legislature to confer such a power on the competent authority. Therefore, notification dated 24.3.2014 (Annexure P-4) is liable to be set aside to the extent of retrospectively. (*emphasis supplied)*

23. In **Baldev Raj Hari Kishan vs. State of Punjab (1999) 114 STC 223 (P&H),** this Court observed as under:-

> "... *These notification can be operative only prospectively, i.e., with effect from the date these were published in the official Gazette. They cannot be operative with effect from the date mentioned therein as the State Government in exercise of its subordinate legislative power can issue notifications prospectively and not retrospectively as no*

power has been conferred on the State Government to legislate retrospectively, by the legislature...''

24. For the reasons mentioned above, the writ petition succeeds and the impugned notification Annexure P-4 dated 24.03.2014 is set aside to the extent of its retrospective applicability.

25. We may however add here that despite it being well settled law that a notification is not applicable retrospectively unless the law applicable confers such a power on the concerned authorities, the respondents have chosen to issue such a notification despite there being no express or implied power under the law applicable to do so and despite it being open to the respondents to obtain opinion with regard to the legality of the proposed action. We expect that in situations warranting exercise of power to issue a notification with retrospective effect, the State satisfies itself as to the legality of the proposed action as power the law applicable before resorting to the same. The same would be in keeping with the Rule of law.

PUNJAB VAT TRIBUNAL

VAT APPEAL NO. 47 OF 2013

SAMRAT PLYWOOD LTD

Vs.

STATE OF PUNJAB

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

18th December, 2014

HF ▶ Assessee

PRE DEPOSIT – APPEAL – ENTERTAINMENT OF – REQUIREMENT OF 25% WAIVED OFF WHEN ASSESSMENT BARRED BY LIMITATION – ASSESSMENT FOR THE YEAR 2005-06 FRAMED IN 2010 – LEVY OF TAX, INTEREST AND PENALTY – DISMISSAL OF FIRST APPEAL ON GROUNDS OF NON COMPLIANCE OF SEC. 62(5) OF PVAT ACT – APPEAL FILED BEFORE TRIBUNAL – REQUIREMENT OF PRE DEPOSIT WAIVED OFF BY COURT WHEN ASSESSMENT IS CLEARLY TIME BARRED – NOTHING TO SHOW EXISTENCE OF CIRCUMSTANCES PREVENTING THE OFFICER TO PASS ORDER WITHIN TIME FRAME OF 3 YEARS – NO USEFUL PURPOSE WOULD BE SERVED BY COMPELLING FOR PRE DEPOSIT FOR ENTERTAINING OF APPEAL – APPELLATE AUTHORITY DIRECTED TO DECIDE AFRESH WITHOUT REQUISITE OF PRE DEPOSIT – APPEAL ALLOWED.

The appellant – assessee was assessed for the year 2005-06 and an order was passed in 2010. The first appeal was dismissed on the grounds that the petitioner had failed to deposit 25% of the amount levied as tax, interest and penalty as per the assessment order for the entertainment of appeal. However, on appeal before Tribunal it is held that since the assessment ought to have been framed within period of 3 years i.e. upto 2009, the assessment is clearly time barred and there is nothing to show that any circumstances existed that prevented the officer to pass an order within the time frame. Following the judgment delivered in the case of M/s Malwa Cotton Spinning Mills Ltd. it is held that no useful purpose would be served by requiring the Assessee to first deposit 25% of additional demand raised and then get the appeal decided before the Fist Appellate Authority. Therefore, allowing the appeal. Tribunal remanded the case back to Appellate Authority to decide afresh without requisite of deposit of 25%.

Present: K.L. Goyal, Sr. Advocate alongwith Mr. Sandeep Goyal,

Advocate counsel for the appellant.

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

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

1. Counsel for the appellant has filed copy of the resolution of Sh. Rajiv Singhal which is placed on record.

2. This appeal is against the order dated 30.7,2010 passed by the Assistant Excise and Taxation Commissioner-cum-Senior Auditor, SAS Nagar Mohali to frame the assessment qua the returns filed by the appellant for the year 2005-06 filed on 20.11.2006. On 30.7.2010 appeal was dismissed only on the ground that the petitioner had failed to comply with the provisions of section 62(5) of the PVAT, Act 2005. The order dated 22.12.2010 passed by the DETC has been challenged before me in appeal. The DETC(A) dismissed the appeal on the ground of non-compliance of the provisions of section 62(5) of the Act.

3. As per section 62(5) of the Act (prior to the amendment dated 17.8.2011), No appeal could be entertained without depositing of 25% of the tax, penalty and interest. The counsel for the appellant has contended that the assessment of the year 2005-06, though was filed within time, i.e. by 20.11.2006, yet the assessment was not framed within 3 years i.e. upto 20.11,2006, yet the assessment was not framed within 3 years i.e, upto 20.11,2009. However, the assessing authority framed the assessment on 30.7.2010. Therefore, in case, where the assessment was apparently time barred, no useful purpose would be served to compel the appellant to deposit 25% of the penalty and interest before entertaining the appeal and for hearing the appeal. Rather the appellant should have heard the appeal without such deposit. On the other hand, Sh. N.D.S. Maan, AAG for the State has submitted that irrespective of the question of limitation involved in the appeal, the condition deposit of 25% was mandatory. To support this contention, he has taken me through the judgment delivered in the case of National Sales Corporation and others CWP No. 16452 of 2010 decided on 14.9,2010. On the other hand, counsel for the respondent has referred to a judgment delivered in case VATAP 3i of 2009 State of Punjab and another V/S M/s Malwa Cotton Spinning Mills Ltd, decided on 20.7.2009.

4. After going through the judgment of National Sales Corporation, It transpires their the appeal was dismissed in limine without deciding the effect of the assessment, which is apparently time barred. Whereas, the judgment passed by M/s Malwa Cotton Spinning Mills Ltd. is applicable to the facts of the present case. It is not denied by Mr. Maan that the return of the year2005-06, is in question. He could not show such intervening the circumstances which prevented the Assessing Officer to pass the order after the period of 3 years, Of course, if the delay is on the part of the appellant for delayed decisions that could be excluded.

5. In any case, without going into the merits of the case, I am of the opinion that where there is serious question of limitation and the assessment framed is prima facie time barred, no useful purpose would be served for depositing tht'25% of the amount of tax before hearing the appeal. I find of support to my this now from the judgment delivered in case M/s Maiwa Cotton Spinning Mills Ltd. supra, wherein, their Lordships observed as under:-

> *Having heard learned counsel for the appellants and perusing the record, we are of he considered view that the first appellate authority like Deputy Excise and Taxation Commissioner was not competent to entertain the appeal without compliance of mandatory provisions of Section 62(5) of the Act yet it is equally true that the order dated 6.6.2008 granting extended period of limitation was set*

aside by the Tribunal on 20.11.2008(A.6). Therefore, in the facts and circumstances of this case, no useful purpose would be served by requiring the Assessee-respondent to first deposit 25% of additional demand raised, and then get the appeal decided before the Deputy Excise and Taxation Commissioner".

6. In these circumstances, this appeal is accepted, impugned order is set-aside and the Assessing Authority is directed to decide the appeal afresh without depositing requisite 25% of the amount of Tax, penalty and interest.

7. The parties be directed to appear before the DETC on 20.2.2015. Pronounced in the open court.

PUNJAB VAT TRRIBUNAL

VATAP NO 491 of 2013

BHAGWATI TRADING CO.
Vs.
THE STATE OF PUNJAB

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

19th December, 2014

HF ▶ Appellant

APPEAL - NON-SPEAKING ORDER – PROVISIONAL ASSESSMENT FRAMED – DEMAND RAISED – DISMISSAL OF APPEAL BY 1ST APPELLATE AUTHORITY – REASONS FOR DISMISSAL NOT MENTIONED AND GROUNDS SET OUT BY APPELLANT NOT EXAMINED – APPEAL BEFORE TRIBUNAL – FAILURE TO PERFORM ITS OBLIGATION BY 1ST APPELLATE AUTHORITY OBSERVED – HELD, NON-SPEAKING ORDER PASSED BY DETC – CASE REMANDED TO PASS A SPEAKING ORDER.

Pursuant to framing of assessment, an inspection was conducted in the business premises of the appellant. Provisional assessment was framed and an additional demand was raised. The Ld. DETC dismissed the appeal without considering the grounds set out by the appellant nor mentioning any reasons for dismissal. Aggrieved by the order, an appeal is filed before the Tribunal. It is held that the Ld. DETC passed a non-speaking order. It did not record the contentions raised nor any reasons for its order. Therefore, the matter is remanded to 1st appellate authority to pass a speaking order.

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

Mrs. Sudeepti Sharma, Deputy Advocate General for the State

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

1. This appeal is directed against the order dated 19.6.2013 passed by the Deputy Excise and Taxation Commissioner (Appeals), Ludhiana Division, Ludhiana, who while upholding the

order dated 4.3.2013 passed by the Excise and Taxation Officer-cum-Designated officer, Ludhiana-II dismissed the appeal of the appellant.

2. Pursuant to the assessment of the firm for the period 1.4.2012 to 6.9.2012, framed by the Designated Officer, Ludhiana-II inspected the premises of the appellant on 6.9.2012 in the presence of Shri Devi Dass, proprietor of the firm. During Inspection one bill book for the year 2011-12, sale bill file for the year 2012-13, 16 loose papers, one blank GR No. 147 of M/s H.S. Road line, 7 VAT-XXXVI export slips, original and 14 photostat copies of VAT XXXVI, export slips, one sale bill original and one laptop were impounded for verification Since the appellant had no evidence to produce in support of the discrepancies pointed out by the Designated Officer. The latter framed the provisional assessment u/s 30 of Punjab Value Added Tax Act, 2005 for the period from 1.4.2012 to 6.9.2012 and created an additional demand of Rs. 42,24,422. The appellant preferred the appeal before the First Appellate Authority which was dismissed on 19.6.2013.

3. The main grouse of the appellant is that the Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana did not examine the grounds as set-out by the appellant against the additional demand raised. He did not assign any reason for maintaining the order passed by the Designated Officer and did not assign any reasons to brush aside the plea as set-out by him before the Appellate Authority.

4. Having heard the rival contentions and perused the impugned orders, it transpires that though, the appellant raised various contentions in the grounds of appeal but not a word was mentioned regarding the same and no observations have been made by the Appellate Authority to ignore such contentions. The only observations which the Appellate Authority made in the impugned order read as under:-

> *"I have heard both the sides and gone through the record of the case and grounds of the appeal carefully and also thoroughly examined the documents produced by the departmental officer. I am of the view that the arguments put forth by the counsel have no force and the arguments put forth by the ETO/ETI have some merit. So in view of the facts of the case and in the interest of the natural justice, the appeal is dismissed."*

5. The basic spirit behind the passing of the judgment is to apprise a party of the decision of the officer and the reasons for his decision. The Officer while passing the judgment must record the contentions as raised by the counsel for the appellant and reasons for his agreement or dis-agreement with them while recording his conclusions. The Appellate Authority has failed in performing its obligations while passing the impugned order. The order being non speaking needs to be set-aside.

6. Resultantly, this appeal is accepted, the impugned order is set-aside and the case is remanded back to the Deputy Excise and Taxation Commissioner(A), Ludhiana Division, Ludhiana for passing a speaking order. Parties are directed to appear before the Deputy Excise and Taxation Commissioner, Ludhiana Division, Ludhiana on 20.02.2015.

PUNJAB VAT TRIBUNAL

VATAP NO 145 OF 2014

MALWA INDUSTRIES LTD.
Vs.
THE STATE OF PUNJAB

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

9th January, 2015

HF ▶ Appellant

APPEAL – PRE-DEPOSIT – ENTERTAINMENT OF – ADJUSTMENT AGAINST INPUT TAX CREDIT – ITC ALLEGEDLY AVAILABLE TO APPELLANT AS COMPUTED BY THE DEPARTMENT – APPEAL TO ADJUST 25% OF ADDITIONAL DEMAND OUT OF AVAILABLE ITC FOR ENTERTAINMENT OF APPEAL – APPEAL ALLOWED BY TRIBUNAL – ANY BALANCE DUE AFTER ADJUSTING THE AMOUNT TO BE DEPOSITED BY APPELLANT – FAILURE TO COMPLY WITH THE ORDER TO LEAD TO ORDER OF ASSESSING AUTHORITY BEING INTACT.

In this case, an assessment order was passed against the appellant. The appellant appealed before the Tribunal for entertainment of appeal by allowing adjustment of 25% as pre-deposit against the amount available as ITC to the appellant. The Tribunal has accepted the appeal and allowed the adjustment of the requisite amount against the ITC. Also, any balance due would be deposited by the appellant. The receipt alongwith any amount due was ordered to be produced before the DETC failing which the order of the Assessing Authority would remain intact.

Present: Mr. Sandeep Goyal, Advocate alongwith Mr. Rohit Gupta, Advocate
counsel for the appellant.
Mr. N.D.S. Mann, Addl. Advocate General for the State.

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

1. As per the order dated 23.9.2013, total ITC available to the appellant as computed by the Department was 4,15,89,047. The counsel for the appellant has submitted that he is ready to get the amount of 25% of the additional demand adjusted from the ITC available to the appellant.

2. On the other hand, the counsel for the respondent State has stated that we do not know the exact position as on today about the availability of the Input Tax Credits. In any case, the amount of ITC if any, available to the appellant could be adjusted against the additional demand of 25%, which is pre-requisite for hearing of the case the appeal.

3. Resultantly, this appeal is accepted and the impugned order is set-aside. The amount of 25% of additional demand may be adjusted against the Input Tax Credits available to the appellant. However, if any balance remains due, the appellant would deposit the same. The amount of Input Tax Credit would be adjusted within one and half month, thereafter, a receipt alongwith the remaining amount, if any, would be produced before the DETC within one week. In that situation, the appeal would be entertained, failing to comply with this order, the order of the assessing authority would remain intact.

PUNJAB VAT TRIBUNAL

VATAP NO 38 of 2014

MANAK CHAND GOBIND RAM
Vs.
THE STATE OF PUNJAB

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

19th January, 2015

HF ▶ Appellant

PRE-DEPOSIT – APPEAL – ENTERTAINMENT OF – 25% OF DEMAND RAISED ALLEGEDLY DEPOSITED BY APPELLANT FOR ENTERTAINMENT OF APPEAL - DISMISSAL OF APPEAL FOR NON-COMPLIANCE OF SECTION 62(5) OF THE ACT BY THE LD. DETC – APPEAL BEFORE TRIBUNAL – DETC DIRECTED TO ENTERTAIN APPEAL PROVIDED REQUIREMENT OF PRE-DEPOSIT FULFILLED – OTHERWISE, PREVIOUS ORDERS PASSED BY THE LD. DETC AGAINST THE APPELLANT TO PREVAIL – APPEAL ACCEPTED BY THE TRIBUNAL.

The appellant had allegedly deposited 25% of the additional demand as required under Section 62(5) of the Act for the entertainment of its appeal before the 1st appellate authority. Despite the fulfilment of pre-condition, the appeal was dismissed for failure to comply with Section 62(5) of the Act by the Ld. DETC, Faridkot. Aggrieved by the order an appeal is filed before the Tribunal. Accepting the appeal, the Tribunal has directed the Ld. DETC to satisfy itself regarding the deposit of 25% by appellant and then hear appeal on merits. Otherwise, the previous order passed by the Ld. Authority would prevail.

Present: Mr. K.L. Goyal, Sr. Advocate alongwith Rishab Singla,
Advocate counsel for the appellant.
Mrs. Sudeepti Sharma, Deputy Advocate General for the State.

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

1. This is an appeal against the order dated 29.7.2013 passed by the Deputy Excise and Taxation Commissioner (Appeals) Ferozepur Division, HQ Bathinda. He had dismissed the appeal for non-compliance of section 62(5) of the Act, 2005.

2. The counsel for the appellant has submitted that the appellant has deposited the requisite 25% of the amount and now there would be no handicap for the Deputy Excise and Taxation Commissioner to entertain and decide the appeal on merits.

3. Heard. The counsel for the appellant has vehemently contended that the appellant has deposited 25% of the additional demand, which is a pre-requisite for entertaining the appeal.

4. I believe the counsel and leave it to the Deputy Excise and Taxation Commissioner to examine this fact. The Deputy Excise and Taxation Commissioner would be well within his rights to examine if the appellant has deposited 25% of the additional demand.

5. Resultantly, this appeal is accepted. The Deputy Excise and taxation Commissioner would entertain the appeal and decide the same on merits, if he feels satisfied that the amount of 25% of the additional demand has been deposited by the appellant, otherwise order passed by the Deputy Excise and Taxation Commissioner, Faridkot Division, HQ Bathinda would remain intact and he would not entertain the appeal.

PUNJAB VAT TRIBUNAL

VATAP NO 576 of 2013

RELIANCE INDUSTRIES LTD.
Vs.
THE STATE OF PUNJAB

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

22th December, 2014

HF ▶ Appellant

PRE-DEPOSIT – APPEAL – ENTERTAINMENT OF – APPEAL BEFORE TRIBUNAL AGAINST THE ORDER DECLINING ENTERTAINMENT OF APPEAL WITHOUT DEPOSIT OF 25% ON PART OF APPELLANT – TIME GIVEN FOR PAYMENT OF PRE-DEPOSIT – SECOND APPEAL DISMISSED FOR FAILURE TO DEPOSIT 25% WITHIN THE TIME FIXED BY THE COURT – REQUISITE AMOUNT DEPOSITED BY THE APPELLANT LATER – EVENTUALLY, BOTH APPEALS FILED BEFORE TRIBUNAL ACCEPTED ON THIS GROUND – 1ST APPELLATE AUTHORITY DIRECTED TO HEAR APPEAL ON MERITS.

The court had declined the request of the appellant praying for not depositing 25% of the additional demand by it and had given time to make the payment. The second appeal of the appellant was also dismissed as the appellant had failed to deposit 25% of the additional demand till the time fixed by the court. However, the said amount was deposited later. The Tribunal accepted both the appeals and directed the Ld. Authority to hear the appeal on merits.

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

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

1. This order of mine will dispose of two connected in appeal Nos. 699 and 576 of 2013. In appeal No. 576 of 2013, Court had declined the request of the appellant for not depositing 25% of the additional demand and had given time to make payment of the said amount. The second appeal No. 699 of 2013 relates to the same appellant, which was dismissed on the ground

that the appellant had failed to deposit 25% of the additional demand, till the time fixed by the court.

2. Today, the counsel for the appellant has submitted that he has deposited the additional demand of 25% after correcting the same. Therefore, his right of appeal being heard on merits be not allowed to be destroyed.

3. The State has no objection, if the appeal is heard on merits. In view of the matter, both the appeals are accepted, impugned orders are set-aside and DETC is directed to hear and decide the appeal on merits according to law. The copy of the order be placed in Appeal No. 699 of 2013.

PUNJAB VAT TRIBUNAL

VATAP No. 582 of 2013

INDIAN SUCROSE LTD
Vs.
STATE OF PUNJAB

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

23rd December, 2014

HF ▶ Revenue

PRE-DEPOSIT – APPEAL – ENTERTAINMENT OF – DEMAND RAISED ON ACCOUNT OF SHORTAGE OF TAX DEPOSITED - PENALTY AND INTEREST LEVIED – MORE THAN HALF OF OUTPUT TAX ASSESSED CONTENDED TO HAVE BEEN PAID – PRAYER FOR ENTERTAINMENT OF APPEAL WITHOUT ANY FURTHER PRE-DEPOSIT AS MORE THAN 25% OF TAX, INTEREST AND PENALTY CONTENDED TO BE ALREADY DEPOSITED – AMOUNT ALREADY PAID ALLEGED BY DEPARTMENT AS NOT INCLUSIVE OF INTEREST AND PENALTY AMOUNT THAT HAD BEEN LEVIED – HELD, APPELLANT LIABLE TO PAY 25% OF TAX, PENALTY AND INTEREST AS DUE AGAINST IT – FIRST APPELLATE AUTHORITY DIRECTED TO ENTERTAINMENT APPEAL IF 25% AMOUNT OF TAX, PENALTY AND INTEREST DUE PAID BY APPELLANT – *SECTION 62(5) OF PVAT ACT, 2005.*

In this case, a demand had been raised against the assessee on the basis of purchases amounting to Rs. 54,65,37,761/- showed whereas expenses on the procurement not being added, thereby amounting to Rs. 66,26,57,782/-. An appeal is filed before the Tribunal against the assessment order contending that there was no requirement to deposit 25% of the demand raised as more than the requisite amount was already paid as tax by the appellant. As per the department, the amount already paid as tax was short of the amount of penalty and interest. It is held by the Tribunal that the appeal would be entertained by the 1st appellate authority after it is satisfied that 25% amount of tax, penalty and interest as due against the appellant has been paid by the latter.

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

Smt. Sudeepti Sharma, Deputy Advocate General for the State

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

1. This appeal is directed against the order dated 1.8.2013 passed by the Deputy Excise and Taxation Commissioner, Camp Office, Jalandhar, whereby he dismissed the appeal of the appellant against the order dated 18.10.2010 passed by the Assistant Excise and Taxation

Commissioner-cum-Designated Officer, Hoshiarpur, creating an additional demand of Rs.2,09,83,714/- for the assessment year 2006-07 on the ground of non compliance of the 62 (5) of the Punjab Value Added Tax Act, 2005.

2. The facts in the background of the case are that the appellant had purchased the sugarcane of Rs.54,65,37,761/- and had showed the same in the return but the expenses on the procurement of sugarcane Rs.34,30,864/- are not shown and total unexplained amount comes to Rs.66,26,57,782/-.

3. Being not satisfied with the vat return filed by the taxable person, the Designated Officer issued a statutory notice U/s (29) read with rule 47 of the Punjab Value Added Tax Act, 2005 on 23.09.2010 and again for 18.10.2010. Ultimately, after verification of the returns the additional demand of Rs.2,09,83,714/- was created. The penalty and interest proceedings were ordered to be taken afterwards.

4. The Counsel for the appellant has first contended that the assessment is time barred. In this regard, it may be observed that it was the assessment of the financial year of 2006-07. Notice was Issued within three years i.e. 23.9.2010 and the order was passed on 18.10.2010 as such the assessment is not time barred.

5. The second contention raised by the Counsel is that out of the total output tax assessed by the ld. Officer was 4,89,68,650/-, out of which Rs.2,79,84,936/- stands paid. Therefore, more than 25% of the tax due stands already deposited, as such appeal should have been entertained. Having considered this contention, it transpires that there is no dispute with the fact total out put tax was Rs.4,89,68,650.00, out of which the tax already paid was Rs.2,79,84,936.00. The State Counsel has contended that this amount does not include penalty and Interest regarding which the proceedings are taken separately, as such the appellant was required to deposit 25% amount i.e.2,09,83,714/-, which can be termed as additional demand. The Counsel for the appellant has next contended that the order of assessment is void as no tax under Punjab Value Added Tax Act could be levied by the State Government on the sugarcane. In support of his case, he has quoted judgment delivered in case Gobind Sagar decided on 29.7.2010 because on decision of this issue, the right of appeal of the party against whom it is decided would be lost.

6. As regards, the validity of the imposition of tax, this court keeps reservations to go into the said issue and leaves it to the Appellate Authority to decide about the same.

7. As regards compliance of Section 62(5) of the Act, the Assessing Authority framed the assessment on 18.10.2010 against which the appeal was filed on 16.1.2011 that is much prior to the introduction of the amendment. Therefore, the law as was inforce at the time, when the appeal was filed, would be applied. The Section 62 (5) which was applicable at the time of filing of the appeal reads as under:-

> Section 62 (5) *"No appeal shall be entertained, unless such appeal is accompanied by satisfactory proof of the prior minimum payment of twenty-five per cent of the total amount of additional demand, penalty and interest, if any."*

8. Thus, the appellant is liable to pay 25% of the tax, penalty and interest if any due against the appellant.

9. Resultantly, this appeal is accepted. The impugned orders are set-aside and the Deputy Excise and Taxation Commissioner would entertain the appeal after satisfying himself if 25% amount of tax, penalty and interest as due against the appellant has been paid by the appellant.

10. Pronounced in the open court.

PUNJAB VAT TRIBUNAL

VATAP No. 448 of 2014

OM STEELS
Vs.
STATE OF PUNJAB

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

23rd December, 2014

HF ▶ Dealer

NOTICE – PENALTY UNDER SECTION 51(7) PVAT ACT – GOODS IN TRANSIT SEIZED – PENALTY U/S 51(7)(B) IMPOSED BY AETC BY ISSUING UNDATED NOTICE TO DEALER – IGNORANCE OF RULE 47 REQUIRING 10 DAYS CLEAR NOTICE – ORDER PASSED AGAINST APPELLANT WITHOUT CALLING FOR EVIDENCE – FINDINGS RECORDED WITHOUT CONSIDERING ANY DOCUMENTS PRESUMING THAT THE COMPUTERISED BILL WAS SUSPECTED TO BE DELETED FROM THE CPU – ORDERS PASSED BY AETC SET ASIDE BY TRIBUNAL BEING CRYPTIC IN NATURE – CASE REMITTED TO DECIDE AFRESH – *SECTION 51(7) OF PVAT ACT 2005, RULE 47 OF PVAT RULES.*

In this case, the goods of the dealer had been seized and penalty u/s 51(7)(b) of the PVAT Act 2005 had been imposed by the AETC-cum-Dy. Director. The dealer had filed an appeal before the Tribunal questioning the procedure undertaken by the Ld. Officer while imposing penalty. It was held that the said notice was undated and not clear regarding the date of service. The Ld. AETC neither gave 10 days clear notice nor did he call for the evidence to be produced before him and misstated that the GR books and the CPU were not produced by the appellant. Without considering any documents, he has recorded that the computerised bill was suspected to be deleted from CPU. Finding the order of the Ld. Officer cryptic in nature, the case is remitted to be decided afresh.

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

1. The respondents have urged that as per Punjab VAT Rules 2005 that within 72 hours of the seizure of the goods, the case has to be forwarded to 2005 to invite the objections of the party or reply to the notice regarding the detention of the goods at the Information Collection Centre or seizure by the Mobile Wing, as the case may be. After that, in response to the notice, the dealer or the consignee or the consignor as the case may be (of the goods), has to appear before the Designated Officer to file the reply and thereafter, it is required to produce the account books. Then after taking into consideration, the entire evidence (including documents) produced by the dealer / appeallant, the penalty is imposed, if the case is found fit. Now in this case, though notice was issued by the Assistant Excise and Taxation Commissioner-cum-Deputy Director (Investigation) Mobile Wing, Patiala u/s 51(7)(b) of the Punjab Value Added Tax Act,

2005, but the said notice is undated and it is also not clear as to on which date this notice was served. As per Rule 47, ten days clear notice was to be served upon the appellant before passing any order. It is not denied by the State counsel that the detention was made on 15.09.2011 and the case forwarded to the AETC by the detaining officer on 19.2.2011. The Assistant Excise and Taxation Commissioner ignored the basic provisions of law before deciding the case. Neither, he gave 10 days clear notice nor he called for the evidence to be produced before him, but without so asking, he misstated that the GR books and CPU were not produced by the appellant. It appears that he even did not open the sealed envelop containing the documents to record the findings. But without documents, he recorded that the computerized bill was suspected to be deleted from the CPU.

2. In these circumstances, it would have to held that the impugned order passed by the Assistant Excise and Taxation Commissioner, MW Patiala is cryptic in nature and has to be set aside.

3. Resultantly, this appeal is accepted. Impugned order is set-aside and the case is remitted back to the Assistant Excise and Taxation Commissioner, MW Patiala to decide the same afresh in accordance with law. The parties are directed to appear before the Assistant Excise and Taxation Commissioner on 7.4.2015.

STATUTES, CIRCULARS AND NOTIFICATIONS

PART-III

GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION

(EXCISE AND TAXATION-II BRANCH)

PUNJAB VAT ACT
AMENDMENT - SCHEDULE B - ENTRIES 172-173 INSERTED

NOTIFICATION

The 20th January, 2015

No. S.O.3/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 excise of powers conferred by 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 Schedule B appended to the said Act, with immediate effect by dispensing with the condition of previous notice, namely:-

AMENDMENT

In Schedule B, after Serial Number 171, the following serial numbers shall be inserted, namely:-

"172. Earth moving equipments like Wheel Excavators, Track Excavators, Backhoe Loaders, Telescopic handlers, road rollers wheel loading shovel, skid steer and vibratory compactors.

173. Tower Cranes, Mobile Cranes, Crawler Cranes, Backhoe Loaders, Pick and carry cranes and Truck Mounted."

D.P. REDDY

Financial Commissioner Taxation and

Secretary to Government of Punjab,

Department of Excise and Taxation

PART-III

GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION

(EXCISE AND TAXATION-II BRANCH)

PUNJAB VAT ACT
SEC. 8(3) – EXEMPTION TO SUGAR MILLS – PURCHASE TAX FOR THE YEAR 2014-15

NOTIFICATION

The 16th January, 2015

No. S.O.2/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 excise of powers conferred by 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 exempt the Sugar Mills situated in the State of Punjab, from the purchase tax paid or payable during the financial year 2014-015.

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

INSTRUCTION
REGARDING EXEMPTION TO WORKS CONTRACTOR FROM PAYMENT OF ADVANCE TAX

OFFICE OF EXCISE AND TAXATION COMMISSIONER, PUNJAB, PATIALA

To

1. Smt Neelam Chaudhary,
   Addl. Excise and Taxation Commissioner (X),
2. Smt. Sarojini Gautam Sharda, PCS
   DETC Jalandhar Division, Jalandhar,
3. Smt. Amrit Kaur Gill, PCS
   DETC Ludhiana Division, Ludhiana

Memo No. VAT-1/1042-44

Dated, the 31, December, 2014

Subject:- Instructions regarding exemption from the payment of Tax in Advance according to provisions of Section 6(7) of Punjab VAT Act, 2005.

Memorandum

1. It has come to our notice that some work contractors are applying for the exemption from the payment of tax in advance on the ground that they are liable for reduction of TDS on the Works Contracts including the value of material under section 27 of the Punjab VAT Act, 2005.
2. Proviso to subsection 7(a) of section 6 of Punjab VAT Act, 2005, added vide notification dated 15 November, 2013 is reproduced hereunder:

   "*Provided that the State Government may be notification exempt any taxable person or class of taxable persons from payment of tax in advance or reduce the rate of payment of tax in advance subject to such conditions, as may be notified:*

   Provided further that if on an application made by a taxable person, the Commissioner or an officer authorized by him, after verifying all aspects of the case, arrives at a decision that such taxable person should be exempted from payment of tax in advance or that the rate of payment of tax in advance should be reduced for such taxable person, he may do so and impose such terms and conditions on such taxable person as he may deem fit."
3. In light of above, you are advised to allow exemption from the payment of tax in advance to the works contractors where they have already paid TDS on the Works Contracts including the value of material under section 27 of the Punjab VAT Act, 2005.

Excise & Taxation Commissioner,
Punjab
Dated: 31/12/2014

Endst. No. 1045-69

A copy is forwarded to All the Assistant Excise & Taxation Commissioners, incharges of the Districts in the State for information.

ETC ORDER U/R 64A EXEMPTING CERTAIN ITEMS FROM E-TRIP

OFFICE OF EXCISE & TAXATION COMMISSIONER PUNJAB PATIALA

ORDER

In continuation of my order dated 17th July, 2013 and order dated 2nd September, 2014, under Rule 2(hh) for the purposes of Rule 64A of Punjab Value Added Tax Rules 2005, read with section 3 A of the PVAT Act, I hereby exempt the following items from the list of specified goods:

a. Iron and Steel
b. Yarn
c. Sarson
d. Cotton
e. Vegetable Oils
f. Paper Board

Dated: 31st, January, 2015

Anurag Verma
Excise & Taxation Commissioner,
Punjab.

SGA
LAW OFFICES

PUBLIC NOTICE REGARDING CLARIFICATION ABOUT CHANGE IN RATE OF TAX

GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE AND TAXATION
PUBLIC NOTICE

KIND ATTENTION : DEALERS/LAWYERS/CHARTERED ACCOUNTANTS/OTHER STAKEHOLDERS

It is clarified that on 30-01-2015, Hon'ble Deputy Chief Minister had announced change in rate of VAT on Iron & Steel only. Change in rate of VAT on any other item was **NOT** announced.

Dated: 2-2-2015 Excise & Taxation Commissioner, Punjab

PUBLIC NOTICE REGARDING CLARIFICATION ABOUT CHANGE IN RATE OF TAX OF IRON AND STEEL

GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE AND TAXATION
PUBLIC NOTICE

KIND ATTENTION : DEALERS/LAWYERS/CHARTERED ACCOUNTANTS/OTHER STAKEHOLDERS

In continuation to Public Notice dated 2-2-15, it is further clarified that the hike in the rate of VAT on iron and steel has only been announced. It will come into effect only once it is duly notified. Further, no change in rate of VAT on any other item has been announced or notified.

Dated: 3-2-2015

Excise & Taxation Commissioner, Punjab

SGA
LAW OFFICES

PUBLIC NOTICE REGARDING CLARIFICATION ABOUT RATE OF TAX ON YARN

GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE AND TAXATION
PUBLIC NOTICE

KIND ATTENTION : DEALERS/LAWYERS/CHARTERED ACCOUNTANTS/OTHER STAKEHOLDERS

It has been reported in some sections of media that rate of tax on yarn has been reduced. In this regard it is clarified that the rate of tax on yarn has **NOT** been reduced.

Dated: 31-1-12015 Excise & Taxation Commissioner, Punjab

PUBLIC NOTICE REGARDING EXTENTION OF E-FILING OF VAT-15 IN U.T. CHANDIGARH

CHANDIGARH ADMINISTRATION
DEPARTMENT OF EXCISE & TAXATION
PUBLIC NOTICE

KIND ATTENTION: DEALERS/CHARTERED ACCOUNTANTS/ LAWYERS/OTHER STAKEHOLDERS

This is to inform all the concerned that the last date of e-filing of VAT-15 for the 3rd Quarter of 2014-15 has been extended till 5th February, 2015.

Excise & Taxation Commissioner,

Dated 30.01.2015

Chandigarh.

CIRCULAR REGARDING APPEARANCE BY UNAUTHORISED PERSON

OFFICE OF THE EXCISE & TAXATION COMMISSIONER, PUNJAB

To

All Assistant Excise & Taxation Commissioners,

Incharge of Districts.

No. VAT-1-2015/379-404 Dated 03.03.2015

Subject: Representation by unauthorized person.

The department has been regularly receiving complaints that officials and subordinate staff are allowing unauthorized persons to appear in the office. Your attention is drawn to section 73 of Punjab VAT Act which is reproduced as under:-

"73. (1) A person, who is entitled or required to attend before any authority in connection with any proceedings under this Act, may represent through an agent. For the purpose of this section, an agent means a person authorised by the principal in writing to appear on his behalf before a designated officer, the Commissioner or the Tribunal or any other officer appointed by the State Government to assist the Commissioner under sub-section (2) of section 3 being:-

(a) a relative; or
(b) a person regularly employed; or
(c) a legal practitioner, who is entitled to plead in any court of law in India; or
(d) a bonafide income tax practitioner; or
(e) a chartered accountant within the meaning of the Chartered Accountants Act, 1949, (38 of 1949) and includes a person who by virtue of the provisions of sub-section (2) of section 226 of the Companies Act, 1956 (1 of 1956), is entitled to be appointed to act as an auditor of companies registered in the State; or
(f) a retired gazetted officer of the Punjab Excise and Taxation Department, who has an experience of working in any capacity for a minimum period of five years under this Act and/or the repealed Act; provided a period of two years had elapsed since the date of his retirement."

You are hereby directed to ensure that no unauthorized person should be allowed to attend the proceedings before any officer/officials of the department. These instructions should be meticulously followed and any lapse shall be seriously viewed.

Deputy Excise & Taxation Commissioner (VAT)
For Excise & Taxation Commissioner, Punjab

No. VAT-1-2015/405-411 Dated: 03.03.2015

A copy is forwarded to the All the Deputy Excise & Taxation Commissioners, incharge of divisions for information and necessary action.

Deputy Excise & Taxation Commissioner (VAT)
For Excise & Taxation Commissioner, Punjab

NOTIFICATIONS

NOTIFICATION REGARDING AMENDMENT OF SMALL TRADERS RAHAT SCHEME, 2014

PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF .EXCISE AND TAXATION

(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 11th March, 2015

No. S. O. 11/P.A.8/2005/S.8-A/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 section 8-A 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 the Government of Punjab, Department of Excise and Taxation, Notification No. S.O.l5/PA.8/2005/S.8-A/2014 dated the 11th February, 2014, with immediate effect, by dispensing with the condition of previous notice namely:-

AMENDMENT

In the said notification, -

(i) in clause 1, sub- clause (b) shall be omitted;

(ii) in clause 2, for the existing Table, the following Table shall be substituted, namely: -

``Serial No.	Taxable turnover (excluding the turnover of goods covered under single stage taxation)	Tax liability
l.	Rs. 5 lac - Rs. 10 lac	Rs. 1000
2.	Rs. I0 lac - Rs. 25 lac	Rs. 5000
3.	Rs. 25 lac - Rs. 50 lac	Rs. 10000
4.	Rs. 50 lac - Rs. 75 lac	Rs. 15000
5.	Rs. 75 Lac - Rs. l Crore	Rs. 20000;

Provided that no tax is payable by a person whose taxable turnover is less than rupees five Lac, who can obtain the `No Tax Liability' Certificate from the department, on payment of fifty rupees. "

(iii) in clause 8, after Sub-clause (5), the following clause shall be inserted, namely :-

"(6) The lump sum tax and the tax slabs, shall remain un-changed till the 3lst March, 20l8, whereafter, the same would be increased at the rate of five percent of the lump sum tax."

D.P. REDDY,

Financial Commissioner Taxation and

Secretary to Government of Punjab,

Department of Excise and Taxation.

NOTIFICATION REGARDING CHANGE IN RATE OF ADVANCE TAX OF IRON AND STEEL

PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION

(EXCISE AND TAXATION-Il BRANCH)

NOTIFICATION

The 11th March, 2015

No. S. O. 10/P.A.8/2005/S.6/2015.-Whereas the State Government is satisfied that circumstances exist, which render it necessary to take immediate action in public interest;

Now, therefore, in exercise of the powers conferred by sub-section (7) of section 6 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 the Government of Punjab, Department of Excise and Taxation, Notification No. S.O.90/P.A.8/2005/S.6/2013 dated the 4th October, 2013, namely:-

AMENDMENT

In the said Notification, in Serial No. l 6, for item (i), the following shall be substituted, namely:-

"(i) Iron and Steel (including its scrap) and Iron and Steel goods, specified in clause (iv) of section I4 of the Central Sales Tax Act, 1956, except Wheels, Tyres, Axles, Wheel Sets and Non-Cenvat paid Iron and Steel Scrap.''	3.5 percent

D.P. REDDY,

Financial Commissioner Taxation and

Secretary to Government of Punjab,

Department of Excise and Taxation.

NOTIFICATION REGARDING AMENDMENT IN SCHEDULE B AND SCHEDULE E

PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION

(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 11th March, 2015-03-13

No. S.O. 9/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 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 amendments of 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) In the 'list of industrial inputs and packing materials given as per Serial No. 58', the items given at Serial Nos. 35, 37, 161, 162, 163 and 166 and the entries relating thereto shall be omitted; and

(ii) Serial No. 163 and the entries thereto, shall be omitted;

2. In the said Schedule 'E',-

(i) for Serial No. 3 and the entries relating thereto, the following shall be substituted, namely:-

"3. Plastic granules, plastic powder, master batches Polyvinyl Chloride, Linear low density polyethylene (LLDPE) and low density polyethylene (LDPE), High Density Polyethylene and Polymers of propylene in primary forms."	8.5 percent

(ii) for serial No. 21 and entries relating thereto, the following shall be substituted, namely:

"21. Iron and steel goods as enumerated in clause-iv of Section 14 of Central Sales tax Act, 1956 except Non-Cenvat paid Iron and Steel Scrap.''	3.5 percent

(iii) after Serial No. 25 and the entries relating thereto, the following serial No. shall be added, namely:-

``26. Aviation Turbine Fuel when sold at the airports in Punjab to scheduled and non scheduled airlines carrying passengers''.	4 percent

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

NOTIFICATION REGARDING AMENDMENT IN RULE 21 IN PUNJAB VAT RULES

PART III
GOVERNMENT OR PUNJAB
DEPARTMENT OF EXCISE AND TAXATION
(EXCISE AND TAXATION-II BRANCH)
NOTIFICATION
The 11th March, 2015

No. G.S.R. 4/P.A.8/2005/S.70/Amd.(54)/2015.-ln exercise of the powers conferred by sub-section (1) of section 70 of the Punjab Value Added Tax Act, 2005 (Punjab Act No. 8 of 2005), and all other powers enabling him in this behalf the Governor of Punjab is pleased to make the following rules further to amend the Punjab Value Added Tax Rules, 2005, namely:-

RULES

l. (I) These Rules may be called the Punjab Value Added Tax (Amendment) Rules, 2015.

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

2. In the Punjab Value Added Tax Rules, 2005 (hereinafter referred to as the said rules), in rule 2, alter clause (hhh), the following clause shall be inserted, namely: -

"(hhhh) "third stage taxable person" means a taxable person, who purchase goods from the second stage taxable person."

3. In the said rules, in rule 2 l, in sub-rule (7), for the words "second stage taxable person", the words "second stage taxable person or third stage taxable person" shall be substituted.

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

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PUNJAB CABINET DECISIONS ON VAT

Key Cabinet decisions

- The Budget session will be held between March 12 and 25. Budget to be presented on March 20
- Punjab State Civil Services Rules 2009 amended to recruit Deputy Superintendent (Jails)/District Probation Officers (Grade- II) through exam to be conducted by the PPSC
- Rahat scheme approved. A lumpsum tax for dealers having annual turnover of less than Rs 10 lakh reduced. Now, shopkeepers having Rs 5-10 lakh turnover to pay Rs 1,000 instead of Rs 5,000. No tax for turnover less than Rs 5 lakh

Notwithstanding the fall in revenue, the Punjab Cabinet today approved Value Added Tax (VAT) rationalisation for some goods. The decision has been taken just before the Budget session that will be held between March 12 and 25.

By giving its nod to either doing away with e-reporting on sale of goods (eTRIP) for major items of consumption in Punjab or reducing VAT on Aviation Turbine Fuel (ATF), the move of the Cabinet, which met under the leadership of Chief Minister Parkash Singh Badal, will only be leading to a further dip in the state's total VAT collection.

When in 2013, the state government had introduced eTRIP, the government had projected that it would help increase VAT by Rs 250-300 crore. Though the exact details of loss in revenue have not been worked out, sources say that the state government will lose around Rs 100 crore in revenue through these "relief measures" approved today.

With the Cabinet nod for doing away with eTRIP system for iron and steel, yarn, mustard, cotton, vegetable oils and paper board, sources in the government admit that tax compliance will certainly decrease and hit VAT collection.

Officials in the Excise and Taxation Department insist that they would come up with some other methods of tax compliance, but till then, the loss in revenue will have to be borne. The Cabinet has also decided to reduce VAT on Aviation Turbine Fuel (ATF) from 6.05 per cent (including surcharge) to 4.04 per cent for all scheduled and non-scheduled flights.

Government sources say that the loss will be notional as in the long run, once the Mohali International Airport gets commissioned, the airlines will refuel from here and the jump in sales will offset the loss in VAT cut.

To bring in additional revenue, the Cabinet has decided to increase VAT on natural gas that is used in large quantities by fertiliser plants in the state. VAT rate has been increased from 6 to 14 per cent.

As a result of the fall in price of crude oil and subsequent fall in price of natural gas, the state's VAT kitty has suffered a loss of Rs 39 crore under this head. By increasing the VAT rate, the state hopes to offset this loss.

Some plastic products have also been brought under VAT and the government hopes to rake in an additional Rs 20 crore VAT through these.

It may be mentioned that as against a projected growth of 15 per cent in VAT collections for the ongoing fiscal, this tax is growing at just 6.01 per cent over last year (the audited figures show that VAT collection till November 2014 was Rs 10,589.27 crore as against Rs 9,988.70 crore between April and November 2013). The state had set the target of collecting Rs 17,760 crore as VAT in 2014-15.

Courtesy: The Tribune

04th March, 2015