SGA
LAW OFFICES

**Issue 3**
**1st February 2016**

*"Collecting more taxes than is absolutely necessary is legalized robbery."*

— Calvin Coolidge

## NOMINAL INDEX



## PUBLIC NOTICE & NOTIFICATION

### PUNJAB



### CHANDIGARH



## NEWS OF YOUR INTEREST



**Edited by**

**Aanchal Goyal, Advocate**
**Partner SGA Law Offices**
#224, Sector 35-A, Chandigarh – 160022
Tele: +91-172-5016400, 2614017, 2608532, 4608532

# News From Court Rooms

**ALLAHABAD HC:**

**Service Tax**: Where assessee has been taking different stands (reasons of delay) at every stage of appeal, it is clear that assessee's explanations are afterthought and therefore, delay cannot be condoned. (Vedant Clearing Agency – December 17, 2015).

**CESTAT, CHENNAI:**

Service used to control pollution in factory area is eligible for Cenvat Credit.

**Cenvat Credit:** Services meant for maintenance of green-belt to reduce pollution are eligible for input service credit, as control of pollution in factory area is an indispensable necessity. (Dalmia Cement (Bharat) Ltd. – December 28,2015)

**SUPREME COURT:**

**Central Excise :** Where all relevant facts were within knowledge/notice of Department while issuing first notice and said notice was even dropped on merits, department cannot issue second notice invoking extended period alleging mis-statement/mis-declaration on part of assessee. (Caprihans India Ltd – September 9, 2015)

**CESTAT, NEW DELHI :**

**Central Excise :** Bailing charges collected from buyers towards additional/ special packing sought by the buyers as includable in assessable value. As it is an issue of interpretation of valuation rules and appellant has shown in the invoices itself that they are receiving bailing charges, mala fides against the appellant stands unproved. Extended extended period of limitation is not invocable and consequently, penalties are also not imposable. Duty and interest is payable for normal period. (Alps Texfab P Ltd - August 5, 2015).

**ALLAHABAD HC:**

**Sales Tax :** Once the assessment order is set aside by the Appellate Authority the security relating to the demand comes to an end. There is no requirement for the assessee to continue to furnish security or in the instant case the bank guarantee. *(P P G Asian Paints P Ltd. - January 19, 2016).*

**SIKKIM HIGH COURT:**

**Service Tax:** Levy of service tax on the activity of promoting, organising or assisting in sale of lottery tickets is ultra vires the Finance Act, 1994 and is accordingly struck down. Resultantly, circular No.334/5/2015 dt 19 May, 2015 Stands quashed - WP No.39 of 2015


**Issue 3**
**1st February 2016**

# SUBJECT INDEX


**Issue 3**
**1st February 2015**

# PUNJAB & HARYANA HIGH COURT

**CWP NO. 26920 OF 2013**

Go to Index Page

**PUNJAB STATE POWER CORPORATION LIMITED**
**Vs**
**STATE OF PUNJAB AND OTHERS**

**A.K. MITTAL AND RAMENDRA JAIN, JJ.**

23rd December, 2015

**HF ▶ Assessee / Revenue**

*Appellate authority has the inherent power to grant interim protection/injunction in deserving cases and waive the condition of pre-deposit.*

**APPEAL – PRE-DEPOSIT – SECTION 62(5) OF PVAT ACT, 2005 - CONSTITUTIONAL VALIDITY – REQUIREMENT OF 25% DEPOSIT OF ADDITIONAL DEMAND BEFORE ENTERTAINMENT OF APPEAL BY 1ST APPELLATE AUTHORITY – CONSTITUTIONAL VALIDITY CHALLENGED BEFORE THE HIGH COURT – HELD RIGHT OF APPEAL IS A STATUTORY RIGHT – STATE CAN PROVIDE CONDITIONS FOR ENTERTAINMENT OF APPEAL INCLUDING PRE-DEPOSIT – PROVISION NEITHER ARBITRARY NOR HARSH OR ONEROUS – NOT VIOLATIVE OF ARTICLE 14 –SECTION 62(5) HELD TO BE CONSTITUTIONAL -** *SECTION 62(5) OF PUNJAB VAT ACT, ARTICLE 14 OF CONSTITUTION OF INDIA.*

**APPEAL – PRE-DEPOSIT – ENTERTAINMENT OF APPEAL – APPELLATE AUTHORITY – INHERENT POWER – REQUIREMENT OF PRE-DEPOSIT OF 25% BEFORE ENTERTAINMENT OF APPEAL – HELD TO BE DIRECTORY IN NATURE – 1ST APPELLATE AUTHORITY CAN GRANT WAIVER IN DESERVING CASES WHERE THE ENTIRE PURPOSE OF APPEAL WILL BE FRUSTRATED OR RENDERED NUGATORY -** *SECTION 62(5) OF PUNJAB VAT ACT, ARTICLE 14 OF CONSTITUTION OF INDIA.*

**INTERPRETATION OF STATUTE –WORDS AND PHRASES – "SHALL" AND "MAY" – "SHALL" DOES NOT ALWAYS MEAN THAT UNLESS THE WORDS OF STATUTE ARE PUNCTILIOUSLY FOLLOWED, THE PROCEEDINGS OR THE OUTCOME OF PROCEEDINGS WOULD BE INVALID – "MAY" DOES NOT ALWAYS MEAN THAT NON-COMPLIANCE OF THOSE PROCEEDINGS WILL NOT RENDER THE PROCEEDINGS INVALID -** *SECTION 62(5) OF PUNJAB VAT ACT, ARTICLE 14 OF CONSTITUTION OF INDIA.*

*The petitioner Corporation was assessed to tax by the Excise and Taxation Department for different years. Penalties were imposed by separate orders. In the appeals filed before the appellate authority against said orders, the Tribunal agreed for adjustment of voluntary tax paid by the Corporation but insisted that deposit of remaining amount of 25% of amount of tax,*

*penalty and interest is mandatory and is required to be paid. The petitioner Corporation approached the High Court against the orders of Tribunal by challenging vires of Section 62(5) of Punjab VAT Act.*

*The High Court on the basis of submissions made by parties, considered the following questions:*

*(a) Whether the State is empowered to enact Section 62(5) of the PVAT Act?*
*(b) Whether the condition of 25% pre-deposit for hearing first appeal is onerous, harsh, unreasonable and, therefore, violative of Article 14 of the Constitution of India?*
*(c) Whether the first appellate authority in its right to hear appeal has inherent powers to grant interim protection against imposition of such a condition for hearing of appeals on merits?*

*On the reading of judicial pronouncements, the inevitable conclusion is that right of appeal is a creature of a statute and it being a statutory right, can be conditional or qualified. The right of appeal being a statutory right, can be circumscribed by the conditions in the grant and the Legislature can impose conditions for exercise of such right and there is no constitutional or legal impediment for imposition of such a condition. The requirement of deposit of an amount as a condition precedent to the entertainment of an appeal does not nullify the right of appeal. The objective of the provision is to keep balance between the right of appeal and right of the revenue to speedy recovery of the amount.*

*A perusal of Section 62(5) would show that pre-deposit of 25% of the total amount of tax, interest and penalty has been provided as a condition precedent for hearing an appeal before the 1st appellate authority. In challenge to the constitutional validity of such provision on the ground that onerous condition has been imposed and right to appeal has become illusory must be negatived and such provision cannot be said to be ultravires Article 14 of the Constitution of India. It is thus, concluded that the State is empowered to enact Section 62(5) of the Act and the said provision is legal and valid.*

*With regard to the powers of 1st appellate authority to grant interim protection against imposition of a condition for hearing of appeal on merits, the court has to examine the inherent powers of an appellate authority to grant interim protection and whether the expression "shall" used in Section 62(5) of Punjab VAT Act would be a mandatory condition or can be read as directory so as to enable the 1st appellate authority to grant partial or complete waiver of condition of pre-deposit.*

*The use of the word "shall" in a statutory provision generally taken in a mandatory sense does not necessarily mean that in every case, it shall have that effect, i.e. to say unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceeding would be invalid. On the other hand, it is not always correct to say that where the word "may" has been used, the statute is only permissible or directory in the sense that non-compliance with those provisions will not render the proceedings invalid.*

*It is thus, concluded that even when no express power has been conferred on the 1st appellate authority to pass an order of interim injunction/protection, by necessary implication and intendment in view of the various pronouncements and legal proposition and in the interest of justice, it would be essentially held that the power to grant interim injunction/protection is embedded in Section 62(5) of the Punjab VAT Act. Instead of rushing to the High Court under Article 226 of the Constitution of India, the grievance can be remedied at the stage of 1st appellate authority. Accordingly, it is held that provisions of Section 62(5) of Punjab VAT Act are directory in nature meaning thereby that the 1st appellate authority is empowered to partially or completely waive the condition of pre-deposit contained therein in the given facts*

*and circumstances. It is not to be exercised in routine way or as a matter of course in view of special nature of taxation and revenue laws. Only when a strong prima facie case is made out, will the 1st appellate authority consider whether to grant interim protection/injunction or not. Partial or complete waiver will be granted only in deserving and appropriate cases where the 1st appellate authority is satisfied that the entire purpose of the appeal would be frustrated or rendered nugatory by allowing the condition of pre-deposit to continue as a condition precedent to the hearing of appeal before it.*

*The matters were accordingly remitted to the 1st appellate authority to enable the petitioners to file requisite applications for interim injunction/protection before appeals are taken up for hearing by the 1st appellate authority and in case such an application is filed, the same shall be decided by the said authority keeping in view all the legal principles enunciated hereinbefore.*

***Cases referred:***

- *Anant Mills Co. Limited vs. State of Gujarat and others,* (1975) 2 SCC 175,
- *Seth Nand Lal and others vs. State of Haryana and others, (*1980) (Supp.) SCC 574
- *Vijay Prakash D.Mehta and another vs. Collector of Customs (Preventive) Bombay,* AIR 1988 SC 2010
- *Shyam Kishore vs. Municipal Corporation of Delhi,* AIR 1991 Delhi 104
- *Shyam Kishore and others vs. Municipal Corporation of Delhi*, (1993) 1 SCC 22
- *Gujarat Agro Industries Co. Limited vs. Municipal Corporation of City of Ahmedabad and others*, (1999) 4 SCC 468
- *Government of Andhra Pradesh and others vs. P.Laxmi Devi,* (2008) 4 SCC 720
- *Smt.Har Devi Asnani vs. State of Rajasthan and others,* AIR 2011 SC 3748
- *Emerald International Limited vs. State of Punjab and others, (2001)122 STC 382*
- *Elora Construction Company vs. The Municipal Corporation of Gr. Bombay and others*, AIR 1980 Bombay 162
- *Chatter Singh Baid and others vs. Corporation of Calcutta and others*, AIR 1984 Calcutta 283
- *Syed Mahfooz Hussain vs. State of UP and others, AIR 2004 Allahabad 299*
- *Sujana Metal Products Limited and another vs. State of Andhra Pradesh, 2005 Law Suit (AP) 1157*
- *R.V. Saxena vs. Union of India and others*, AIR 2006 Delhi 96
- *Walchandnagar Industries Limited Mumbai vs. Municipal Corporation of the City of Pune and others*, AIR 2014 Bombay 47
- *Ganesh Yadav vs. Union of India and others,* 2015 Law Suit (Allahabad) 1541
- *Maxwell On Interpretation of Statutes, eleventh Edition at page 350*
- *Income Tax Officer, Cannanore vs. M.K. Mohamad Kunhi*, AIR 1969 SC 430
- *Bharat Heavy Electricals Limited vs. The State of Karnataka,* (2006) 147 STC 638
- *ITC vs. Commissioner of Central Excise,* 2001 (127) ELT 338 Mad
- *Debasish Moulik N. vs Dy. Commissioner Of Income Tax,* (1998) 150 CTR Cal 387
- *CIT vs. Punjab Financial Corporation*, (2002) 254 ITR 6
- *P.T.Rajan vs. TPMSahir and others*, (2003) 8 SCC 498
- *Principles of Statutory Interpretation by Justice G.P.Singh* (12th Edition, 2010)
- *Ranjit Singh vs. State of Haryana and others,* (2012) 2 RCR (Civil) 353

**Present:** Mr. K.L.Goyal, Senior Advocate with Mr. Sandeep Goyal,
Dr. Naveen Rattan, Mr. Rohit Gupta,
Mr. Rishabh Singla, Mr. J.S.Bedi, Mr. Amit Bajaj,
Mr. G.R.Sethi, Mr. Varun Chadha, Advocates,
Mr. Inderpal Singh Parmar, Advocate in CWP Nos.16820 to 16824 of 2015.
Mr. SP Garg, Advocate in CWP No.7994 of 2015.
Mr. Divya Suri, Advocate with Mr. Sachin Bhardwaj,
Advocate and Mr. Madhur Sharma, Advocate in CWP No.8361 of 2015.
Mr. Aman Bansal, Advocate in CWP No.10920, 10994 and 11004 of 2015.
Mr. Gaurav Dhull, Advocate (in CWP Nos.9675 and 10032 of 2015)
Mr. Avneesh Jhingan, Advocate with Ms. Tanvi Gupta, Advocate for the petitioners.
Ms. Radhika Suri, Addl.A.G. Punjab with Ms.Anita Gupta, AAG, Punjab.

Mr. IPS Doabia, Advocate for the respondent-UT Chandigarh in CWP No.8361 of 2015.

******

**AJAY KUMAR MITTAL, J.**

**1.** This order shall dispose of a bunch of 386 petitions viz. CWP Nos.26920, 22437, 27788, 27789 of 2013, 10554, 10560, 19587, 2343, 3297, 6844, 21260, 21260, 21774, 23041, 21860, 23397, 23454, 25146, 26316, 26323, 26371, 26559, 26589, 11405, 22928, 22947, 24389, 24390, 24391 of 2014, 28, 149, 319, 315, 423, 456, 478, 1105, 1118, 1119, 1142, 1253, 1254, 1299, 1393, 1813, 1817, 1998, 2059, 2090, 2184, 2334, 2345, 2346, 2406,2407,2409,2412,2416, 2628,2483, 2633,2635,2858, 2944, 3043, 3073, 3096, 3099, 3561, 3605, 3615, 3573, 3196, 3132, 3038,3302, 3462,3501, 3504,3526,3554,3567, 3649, 1932, 5337, 5338, 5341, 5471, 4791, 4860, 1931, 4100, 4101, 4104,4106, 4167, 4245, 4407, 4426, 4429, 4697, 4704, 4707,4874, 4906,4907, 4919, 4949, 4970, 4992, 5043,5074,5084, 5098,5168, 5229,5520, 5522, 5547, 5076, 5548, 5551,5736,5758, 5772, 5790, 5803,5910, 5918, 5920, 5926, 5937, 5943,5967,5986, 6065, 6097, 6104,6123, 6209, 6407, 6408, 6522, 6847,7036,7185, 7188, 7205, 7216,7242, 7447, 7498, 7520, 7526, 7537,7576,7779, 7882, 7883, 7884, 7886, 7887, 7888, 7891 7893, 10118, 10142, 10144, 10878, 10915, 10920, 10956, 10960, 10990, 10991, 10993, 10994, 11246, 11755, 11757, 11828, 11852, 11884, 11903, 11938, 11952, 12001, 12020, 11537, 11660, 7994, 11307, 11322, 11352, 4578, 8120, 8482, 8600, 8707, 8804,8814,8835, 8880,8893, 8896, 9007, 9008, 9014, 9023,9026,9028,9113, 9250, 9269, 9270, 9346,9468, 9625,9641, 9675, 9744, 10020, 10029, 10032, 10034, 10035, 10100, 10264, 10295, 10302, 10456, 10457, 10532, 10555, 10575, 10738, 10723,11158, 11294, 11351, 12316, 12852, 12885, 12925, 12932, 12934,12991, 12993, 12996, 13000, 13021, 13027, 13031,13041, 13043, 13075, 13195, 13217, 13227, 13237, 13355, 13357, 13466, 13772, 13787, 13884, 13918, 14024, 4675, 11004, 10998, 7491, 11763, 13894, 14510, 14183, 13003, 15373, 15374, 15377, 15254, 15270,15903, 16141, 16158, 16532, 16820, 16824, 16848, 16869, 16871,16880, 15261, 15522, 15523, 15536, 15550, 15553, 15653, 15664,15677, 16101, 16165, 16190, 16202, 16203, 16189, 16988, 17073,17075, 17038, 17303, 15915, 17849, 16382, 17561, 17568, 17584,17595, 18097, 18104, 18108, 18109, 18127, 18128, 18136, 18148,18166, 18174, 18246, 18730, 18733, 18914, 18915, 19012,19290, 19292, 19295, 19390, 19233, 19421, 19543, 20660, 20686, 20691,20840, 21451, 21539. 21561, 21584. 21644, 22058, 22263, 22278,22414, 22426, 22432, 22560, 22544, 22692, 22812, 22813, 22814,22821, 23416, 23658, 23936, 23940, 24099, 24509, 24598, 24681,24689, 24692, 24695, 24701, 24799, 24803, 24842, 24851, 24946,24954, 24999, 25012, 25015, 25200, 25064 and 22829 of 2015, as according to the learned counsel for the parties, the issue involved in all these petitions is identical. However, the facts are being extracted from CWP No.26920 of 2013.

**2.** The petitioner - Punjab State Power Corporation Limited is a statutory body constituted under the Electricity (Supply) Act, 1948. It is engaged in generation, distribution and supply of electric energy/electricity power and other allied material to the consumers viz. domestic, commercial and industrial consumers in the State of Punjab and for that purpose, it is governed by the Indian Electricity Act, 1910 and Electricity (Supply) Act, 1948 as well as the Rules and Regulations framed thereunder. The petitioner had been filing returns as prescribed and whatever tax was payable in terms of Section 15 of the Punjab Value Added Tax, 2005 (in short, "the PVAT Act") was being deposited. For the year 2007-08, returns for the period from 1.4.2007 to 31.3.2008 under the PVAT Act alongwith requisite information in prescribed form had been filed with the authority. Thereafter, annual statement in Form VAT 20 had been filed before the last date as prescribed under section 26 of the PVAT Act and Rule 40(1) of the Punjab Value Added Tax Rules, 2005 (in short, "the Rules"). Similarly, for the years 2008-09 and 2009-10, returns were filed in time and annual statements in Form VAT 20 were also filed

before the last dates. The Excise and Taxation Officer cum Designated Officer (ETO) - respondent No.2 initiated assessment proceedings for the years 2007-08, 2008-09 and 2009-10 by issuing notice under section 29 of the PVAT Act. The representatives of the petitioner attended the proceedings and tendered explanation. Assessments had been framed under the PVAT Act vide orders dated 19.9.2011, 31.10.2012 and 31.11.2012 for the assessment years 200708, 2008-09 and 2009-10, Annexures P.1, P.1/A and P.1/B respectively. The officer made following additions to the taxable turnover declared

i) the receipts in respect of charges from the customers as meter rent had been brought to tax;

ii) the receipts in respect of charges from the customers as service line rental had been brought to tax while treating these as meter rent.

In addition to the above tax, the ETO imposed penalties under section 53 and interest under section 32 of the PVAT Act, resulting in raising demand of Rs. 26,52,79,716/-, Rs. 27,64,73,245/- and Rs.22,18,31,454/- respectively for the aforesaid years. The petitioner challenged the order before this Court by filing CWP No.21127 of 2011. Vide order dated 7.11.2012, Annexure P.2, this Court relegated the petitioner to the remedy of appeal. The petitioner approached the appellate authority i.e. the Deputy Excise and Taxation Commissioner (Appeals) by filing appeals under Section 62 of the PVAT Act for all the aforesaid assessment years. Alongwith the appeals, applications under Section 62 of the PVAT Act for stay of recovery of tax and entertainment of the appeals by dispensing with the requirement of pre-deposits had also been filed on the ground that financial position of the petitioner was very tight and there were no liquid assets so as to make payment of demand involved. Vide order dated 13.2.2013, the appellate authority directed the petitioner to make deposit of 25% of the additional demand in the government treasury by 27.2.2013 failing which the appeals would be dismissed in limine. Aggrieved by the order, the petitioner filed appeals before the Punjab VAT Tribunal (in short, "the Tribunal"). It was pleaded by the petitioner that its financial position was very poor and it was not in a condition to make payment of 25% and the losses incurred by the petitioner had been duly explained to the appellate authority. Since the petitioner had already paid voluntarily tax of Rs.1,97,05,910/-, Rs.1,88,34,187/- and Rs.1,94,93,597/- for the assessment years in question, the same should be adjusted against the additional demand created by the assessing authority. The Tribunal agreed with the contentions raised by the petitioner to the extent that the amount of voluntarily tax was required to be adjusted against the additional demand created by the assessing authority. However, the Tribunal while disposing of he appeals had observed that the petitioner was required to deposit 25% of the amount of tax, penalty and interest in terms of the order in the case of Ahulwalia Contracts India Pvt. Limited. Aggrieved by the order, the petitioner filed CWP No.17370 of 2013, 17031 and 17053 of 2013 which were disposed of vide order dated 31.10.2013, Annexure P.8. The petitioner was allowed to withdraw the writ petition so as to enable it to challenge the vires of Section 62(5) of the PVAT Act alongwith challenge to the orders passed by the Tribunal. Hence the instant writ petitions by the petitioner(s).

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

**4.** From the submissions made by learned counsel for the parties, the following questions emerge for our consideration:-

*(a) Whether the State is empowered to enact Section 62(5)*

(b) Whether the condition of 25% pre-deposit for hearing first appeal is onerous, harsh, unreasonable and, therefore, violative of Article 14 of the Constitution of India?

(c) Whether the first appellate authority in its right to hear appeal has inherent powers to grant interim protection against imposition of such a condition for hearing of appeals on merits?

**5.** Examining questions No.(a) and (b) as noticed above, these are being taken up together as the issue involved therein is overlapping. It may be noticed that vide sub section (5) of Section 62 of the PVAT Act, the State has imposed a condition of 25% of the tax etc. to be deposited as a condition precedent for hearing of an appeal.

**6.** It would be expedient to notice Section 62 of the PVAT Act which reads thus:-

***"62. (1) An appeal against every original order passed under this Act or the rules made thereunder shall lie, -***

(a) *if the order is made by a Excise and Taxation Officer or by an officer-Incharge of the information collection centre or check post or any other officer below the rank of Deputy Excise and Taxation Commissioner, to the Deputy Excise and Taxation Commissioner; or*

*(b) if the order is made by the Deputy Excise and Taxation Commissioner, to the Commissioner; or*

*(c) if the order is made by the Commissioner or any officer exercising the powers of the Commissioner, to the Tribunal.*

*(2) An order passed in appeal by a Deputy Excise and Taxation Commissioner or by the Commissioner or any officer on whom the powers of the Commissioner are conferred, shall be further appealable to the Tribunal.*

*(3) Every order of the Tribunal and subject only to such order, the order of the Commissioner or any officer exercising the powers of the Commissioner or the order of the Deputy Excise and Taxation Commissioner or of the designated officer, if it was not challenged in appeal or revision, shall be final.*

*(4) No appeal shall be entertained, unless it is filed within a period of thirty days from the date of communication of the order appealed against.*

***(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 tax, penalty and interest, if any.***

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

*(a) affirming or amending or canceling the assessment or the order under appeal; or*

*(b) may pass such order, as it deems to be just and proper.*

*(7) The appellate authority shall pass a speaking order while deciding an appeal and send copies of the order to the appellant and the officer whose order was a subject matter of appeal."*

**7.** The issues relating to validity of Section 62(5) of the PVAT Act embedded in Questions (a) and (b) have been subject matter of judicial interpretation under different statutes incorporating similar provisions in several pronouncements of the Apex Court and also various

High Courts. Examining the legal proposition, reference is made to the catena of decisions as noticed hereinafter.

**8.** In ***Anant Mills Co. Limited vs. State of Gujarat and others,*** (1975) 2 SCC 175, the Apex Court while considering the issue of right of appeal and pre-deposit held as under:-

> *"40. After hearing the learned counsel for the parties, we are unable to subscribe to the view taken by the High Court. Section 406 (2) (e) as amended states that no appeal against a rateable value or tax fixed or charged under the Act shall be entertained by the Judge in the case of an appeal against a tax or in the case of an appeal made against a rateable value after a bill for any property tax assessed upon such value has been presented to the appellant unless the amount claimed from the appellant has been deposited by him with the Commissioner. According to the proviso to the above clause where in any particular case the Judge is of opinion that the deposit of the amount by the appellant will cause undue hardship to him, the Judge may in his discretion dispense with such deposit or part thereof, either unconditionally or subject to such conditions as he may deem fit. The object of the above provision apparently is to ensure the deposit of the amount claimed from an appellant in case he, seeks to file an appeal against a tax or against a rateable value after a bill for any property tax assessed upon such value has been presented to him. Power at the same time is given to the appellate judge to relieve the appellant from the rigour on the above provision in case the judge is of the opinion that it would cause undue hardship to the appellant. The requirement about the deposit of the amount claimed as a condition precedent to the entertainment of an appeal which seeks to challenge the imposition or the quantum of that tax, in our opinion, has not the effect of nullifying the right of appeal, especially when we keep in view the fact that discretion is vested in the appellate judge to dispense with the compliance of the above requirement. All that the, statutory provision seeks to do is to regulate the exercise of the, right of appeal. The object of the above provision is to keep in balance the right of appeal, which is conferred upon a person who is aggrieved with the demand of tax made from him, and the right of the Corporation to speedy recovery of the tax. The impugned provision accordingly confers a right of appeal and at the same time prevents the delay in the payment of the tax. We find ourselves unable to accede to the argument that the impugned provision has the effect of creating a discrimination as is offensive to the principle of equality enshrined in article 14 of the Constitution. It is significant that the right of appeal is conferred upon all persons who are aggrieved against the determination of tax or rateable value. The bar created by section 406(2)(e) to the entertainment of the appeal by a person who has not deposited the amount of tax due from him and who is not able to show to the appellate judge that the deposit of the amount would cause him undue hardship arises out of his own omission and default. The above provision, in our opinion, has not the effect of making invidious distinction or creating two classes with the object of meting out differential treatment to them; it only spells out the consequences flowing from the omission and default of a person who despite the fact that the deposit of the amount found due from him would cause him no hardship, declines of his own volition to deposit that amount. The right of appeal is the creature of a statute. Without a statutory provision creating such a right the person aggrieved is not entitled to file an appeal. We fail to understand as to why the legislature while granting the right of appeal cannot impose conditions for the exercise of such right. In the absence of any special reasons there*

*appears to be no legal or constitutional impediment to the imposition of such conditions. It is permissible, for example to prescribe a condition in criminal cases that unless a convicted person is released on bail, he must surrender to custody before his appeal against the sentence of imprisonment would be entertained. Likewise, it is permissible to enact a law that no appeal shall lie against an order relating to an assessment of tax unless the tax had been paid. Such a provision was on the statute book in section 30 of the Indian Income-tax Act, 1922. The proviso to that section provided that " no appeal shall lie against an order under sub-section (1) of section 46 unless the tax had been paid". Such conditions merely regulate the exercise of the right of appeal so that the same is not abused by a recalcitrant party and there is no difficulty in the enforcement of the order appealed against in case the appeal is ultimately dismissed. It is open to the legislature to impose an accompanying liability upon a party upon whom a legal right is conferred or to prescribe conditions for the exercise of the right. Any requirement for the discharge of that liability or the fulfillment of that condition in case the party concerned seeks to avail of the said right is a valid piece of legislation, and we can discern no contravention of article 14 in it. A disability or disadvantage arising out of a party's own default or omission cannot be taken to be tantamount to the creation of two classes offensive to article 14 of the Constitution, especially when that disability or disadvantage operates upon all persons who make the default or omission."*

**9.** Following judgment in ***Anant Mills Limited's*** case (supra), the Supreme Court in ***Seth Nand Lal and others vs. State of Haryana and others, (***1980) (Supp.) SCC 574 dealing with the validity of Section 18(7) of the Haryana Ceiling on Land Holdings Act, 1972 imposing a condition of making a deposit of a sum equal to 30 times the land holdings tax payable in respect of the disputed area before any appeal or revision was entertained by the appellate or revisional authority, upheld the same with the following observations:-

*"21. The next provision challenged as unconstitutional is the one contained in Section 18(7) imposing a condition of making a deposit of a sum equal to 30 times the land holdings tax payable in respect of the disputed area before any appeal or revision is entertained by the appellate or revisional authority-a provision inserted in the Act by Amending Act 40 of 1976. Section 18(1) and (2) provide for an appeal, review and revision of the orders of the prescribed authority and the position was that prior to 1976 there was no fetter placed on the appellate/revisional remedy by the statute. However, by the amendments made by Haryana Act No. 40 of 1976, sub sections (7) and (8) were added and the newly inserted sub section (7) for the first time imposed a condition that all appeals under sub section (1) or sub section (2) and revisions under sub section (4) would be entertained only on the appellant or the petitioner depositing with the appellate or the revisional authority a sum equal to 30 times the land holdings tax payable in respect of the disputed surplus area. Under sub section (8) it was provided that if the appellant or the petitioner coming against the order declaring the land surplus failed in his appeal or revision, he shall be liable to pay for the period he has at any time been in possession of the land declared surplus to which he was not entitled under the law, a licence fee equal to 30 times the landholdings tax recoverable in respect of this area. On 6th June, 1978, the Act was further amended by Amending Act 18 of 1978 whereby the rigour of the condition imposed under sub section (7) was reduced by permitting the appellant or the petitioner to furnish a bank guarantee for the requisite amount as an alternative to making cash deposit and while retaining sub section*

*(8) in its original form, a new sub section (9) was inserted under which it has been provided that if the appeal or revision succeeds, the amount deposited or the bank guarantee furnished shall be refunded or released, as the case may be, but if the appeal or revision fails the deposit or the guarantee shall be adjusted against the licence fee recoverable under sub section (8). In the High Court, two contentions were urged: first, that section 18(1) and (2), as originally enacted in 1972, gave an unrestricted and unconditional right of appeal and revision against the orders of the prescribed authority or the appellate authority but by inserting sub sections (7) and (8) by Act 40 of 1976, a fetter was put on this unrestricted right which was unconstitutional; secondly, even the mellowing down of the condition by Act 18 of 1978 did not have the effect of removing the vice of unconstitutionality, inasmuch as even the conditions imposed under the amended sub section (7) were so onerous in nature that they either virtually took away the vested right of appeal or in any event rendered it illusory. Both these contentions were rejected by the High Court and in our view rightly.*

*22. It is well settled by several decisions of this Court that the right of appeal is a creature of a statute and there is no reason why the legislature while granting the right cannot impose conditions for the exercise of such right so long as the conditions are not so onerous as to amount to unreasonable restrictions rendering the right almost illusory (vide the latest decision in* ***Anant Mills Ltd. v. State of Gujarat.*** *Counsel for the appellants, however, urged that the conditions imposed should be regarded as unreasonably onerous especially when no discretion has been left with the appellate or revisional authority to relax or waive the condition or grant exemption in respect thereof in fit and proper cases and, therefore, the fetter imposed must be regarded as unconstitutional and struck down. It is not possible to accept this contention for more than one reason. In the first place, the object of imposing the condition is obviously to prevent frivolous appeals and revision that impede the implementation of the ceiling policy; secondly, having regard to sub sections (8) and (9) it is clear that the cash deposit or bank guarantee is not by way of any exaction but in the nature of securing mesne profits from the person who is ultimately found to be in unlawful possession of the land; thirdly, the deposit or the guarantee is co-related to the landholdings tax (30 times the tax) which, we are informed, varies in the State of Haryana around a paltry amount of Rs. 8/- per acre annually; fourthly, the deposit to be made or bank guarantee to be furnished is confined to the landholdings tax payable in respect of the disputed area i.e. the area or part thereof which is declared surplus after leaving the permissible area to the appellant or petitioner. Having regard to these aspects, particularly the meagre rate of the annual land tax payable, the fetter imposed on the right of appeal/revision, even in the absence of a provision conferring discretion on the appellate/revisional authority to relax or waive the condition, cannot be regarded as onerous or unreasonable. The challenge to section 18(7) must, therefore, fail."*

**10.** In ***Vijay Prakash D.Mehta and another vs. Collector of Customs (Preventive) Bombay,*** AIR 1988 SC 2010, the Apex Court while considering identical issue held that right to appeal was neither an absolute right nor an ingredient of natural justice the principles of which must be followed in all judicial and quasi judicial adjudications. The right to appeal is a statutory right and it can be circumscribed by the conditions in the grant. If the statute gives a right to appeal upon certain conditions, it is upon fulfilment of those conditions that the right becomes vested and exercisable to the appellant. It was recorded as under:-

*"9. Right to appeal is neither an absolute right nor an ingredient of natural justice the principles of which must be followed in all judicial and quasi-judicial adjudications. The right to appeal is a statutory right and it can be circumscribed by the conditions in the grant.*

*Xx xx xx xx xx xx xx xx*

*13. It is not the law that adjudication by itself following the rules of natural justice would be violative of any right- constitutional or statutory, without any right of appeal, as such. If the statute gives a right to appeal upon certain conditions, it is upon fulfilment of those conditions that the right becomes vested and exercisable to the appellant. The proviso to Section l29E of the Act gives a discretion to the Tribunal in cases of undue hardships to condone the obligation to deposit or to reduce. It is a discretion vested in an obligation to act judicially and properly."*

**11.** The Full Bench of the Delhi High Court in ***Shyam Kishore vs. Municipal Corporation of Delhi,*** AIR 1991 Delhi 104 was adjudicating the issue as to whether the deposit of tax amount under Section 170(b) of the Delhi Municipal Corporation Act, 1937 as a condition precedent for hearing or determination of the appeal was ultra vires. The question was answered by the majority in the negative holding as under:-

*"43. We may also refer to the case* ***Chatter Singh Baid v. Corporation of Calcutta*** *and others, AIR 1984 Calcutta 283. It was a case relating to the payment of house-tax and the right of the aggrieved party who filed an appeal. Petitioners in the said case were the owners of Premises No. 11, Indra Kumar Karnani Street. and with effect from 4th quarter, 1978-79 the Corporation of Calcutta had determined the annual value of the said premises at Rs. 4,30,606/ - . Objections filed by the owners were disposed of by Special Officer of the Corporation and the value was fixed at Rs. 3,61,135/-.*

*44. owners were not satisfied by the assessment and so an appeal was filed in the Court of Small Causes, Calcutta.*

*45. Sub-section (3-A) added to S. 183 reads as under:-*

> *"No appeal under this section shall be entertained unless the consolidated rate payable up to the date of presentation of the appeal on the valuation determined*
>
> *(a) by an order under S. 182, in the case of an appeal to the Court of Small Causes,*
>
> *(b by the decision of the Court of Small Causes, in the case of an appeal to the High Court, has been deposited in the municipal office and -such consolidated rate is continued to be deposited until the appeal is finally decided."*

*46. This provision is similar to the provision contained in S. 170 of Delhi Municipal Corporation Act.*

*47. An argument was advanced by learned counsel for the petitioners that unless the appellate authority is given discretionary powers to relax or modify such condition for deposit of the disputed amount, the condition precedent ought to be pronounced as unreasonable. This argument was not accepted by observing that the observations made in para 40 of the Supreme Court decision in* ***Anant Mills'case*** *(supra) are directly against the above submission of the petitioners.*

*Reliance was also placed on the case of **Nand Lal v. State of Haryana** (supra) holding that condition of prepayment before appeal could be heard is not onerous on account of there being no discretion left to the appellate and revisional authority so relax or waive the said condition. This case fully supports the view we are taking.*

*48. The proviso to S. 170 of the Delhi Municipal Corporation Act does not make the right of appeal nugatory or illusory because it is only on account of his own default to comply with the condition for deposit, the appellant himself may fail to avail of the remedy by way of appeal. We are clearly of the view that the ratio of the decision in **Anant Mills'** case (supra) and **Nand Lal's** case (supra) is that the right of appeal is creature of statute and while granting the right of appeal the legislature can impose conditions for exercise of such right and there is no constitutional or legal impediment to imposition of such a condition for deposit of tax.*

*49. Absence of a discretion in the appellate Court to exempt the deposit, of the amount of tax cause hardship in some cases but the Court cannot test the validity of the statutory provision on the touchstone of hardship or stringency. If a provision made in a statute is not invalid, any person desirous of availing the right of appeal has no option but to comply with the condition under which this right of appeal can be exercised. A restriction is, undoubtedly, bound to be irksome and painful to the citizens even though it may be for public good. However, important the right of a citizen or an individual may be, it has to yield to the larger interest of the country or the community.*

*50. Learned counsel for the petitioner submits that there may be cases where the assessing authority goes palpably wrong in the determination of the rateable value of the property and may even assess a person not even being the owner of the premises. He has also suggested that on account of clerical mistake the assessment is made ten times or hundred times more and in such like cases the aggrieved person may not be in a position to deposit the amount of tax and, thus, would be deprived of his property even when no such tax was due from him. We do not agree with this submission. The law presumes that all authorities function properly and bona fide with due regard to the public interest, however, in case there is any such contingency a party can resort to the writ jurisdiction of the High Court under Art. 226 of the Constitution of India. The mere fact that an assessed might have to deposit the amount of the tax when filing an appeal could not in every case justify his bypassing the remedies provided by the Act. There must be some thing more in a case to warrant the entertainment of the petition under Article 226 something going to the root of the jurisdiction of the officer or something to show that it would be a case of palpable injustice to the assessed to force him to take the remedy provided under the Act. Reference in this regard can be made to the case **Sales Tax Officer, Jodhpur v. M/ s. Shiv Ratan G. Mohatta, . In case I. T. C. Limited v. Union of-India, 1983** ELT I (Delhi) it has been held that as a matter of practice and procedure the Courts do not normally permit the aggrieved party to abandon the normal remedies of appeal etc. under the Act in favor of a petition under Art. 226 of the Constitution of India but if any action is taken without jurisdiction or if the Court comes to the conclusion that the alternative remedy provided under the Act is not adequate cannot inspire confidence inasmuch as it would amount to an appeal from 'Ceaser to Ceaser' then the existence of an alternative remedy is no bar to the exercise of writ jurisdiction under Art. 226 of the Constitution. These two judgments*

*provide a complete answer to the argument of the assessing authority committing an illegality apparent on the face of the record or going beyond the jurisdiction. Except such like cases an individual has to comply with the provisions of deposit of the amount before he can be permitted to avail the right of appeal."*

**12.** An appeal was filed against the decision of the Full Bench of Delhi High Court in ***Shyam Kishore and others vs. Municipal Corporation of Delhi***, (1993) 1 SCC 22. The Apex Court hearing appeal ***in Shyam Kishore's case (supra***) concurred with the majority view taken by the Full Bench.

**13.** In ***Gujarat Agro Industries Co. Limited vs. Municipal Corporation of City of Ahmedabad and others***, (1999) 4 SCC 468, it was held by the Apex Court as under:-

*"8. By the Amending Act 1 of 1979 discretion of the Court in granting interim relief has now been limited to the extent of 25% of the tax required to be deposited. It is, therefore, contended that earlier decision of this Court in Anant Mills case may not have full application. We, however, do not think that such a contention can be raised in view of the law laid by this Court in Anant Mills case. This Court said that right of appeal is the creature of a statute and it is for the legislature to decide whether the right of appeal should be unconditionally given to an aggrieved party or it should be conditionally given. Right of appeal which is statutory right can be conditional or qualified. It cannot be said that such a law would be violative of Article 14 of the Constitution. If the statute does not create any right of appeal, no appeal can be filed. There is a clear distinction between a suit and an appeal. While every person has an inherent right to bring a suit of a civil nature unless the suit is barred by statute. However, in regard to an appeal, position is quite opposite. The right to appeal inheres in no one and, therefore, for maintainability of an appeal there must be authority of law. When such a law authorises filing of appeal, it can impose conditions as well {see* ***Smt. Ganga Bai vs. Vijay Kumar & Ors. [(1974) 2 SCC 393]}.***

*9. In* ***M/s. Elora Construction Company vs. Municipal Corporation of Greater Bombay & Ors.*** *(AIR 1980 Bom.162), the question before the Bombay High Court was as to the validity of Section 217 of the Bombay Municipal Corporation Act. This Section provided for filing of appeal against any rateable value or tax fixed or charged under that Act but no such appeal could be entertained unless :*

> *(d) in the case of an appeal against a tax, or in the case of an appeal made against a rateable value the amount of the disputed tax claimed from the appellant, or the amount of the tax chargeable on the basis of the disputed rateable value, up to the date of filing of the appeal, has been deposited by the appellant with the Commissioner.*

*It will be seen that clause (d) aforesaid was in similar terms as clause (e) of Section 406(2) as it originally existed. Bombay High Court upheld the constitutional validity of Section 217 of the Bombay Municipal Corporation Act. Calcutta High Court in* ***Chhatter Singh Baid & Ors. vs. Corporation of Calcutta & Ors.*** *(AIR 1984 Cal. 283) also took the same view. There it was sub-section (3A) of Section 183 of the Calcutta Municipal Act, 1951 which provided:*

*"No appeal under this section shall be entertained unless the consolidated rate payable up to the date of presentation of the appeal on the valuation determined*

*(a) by an order under Section 182, in the case of an appeal to the Court of Small Causes,*

*(b) by the decision of the Court of Small Causes, in the case of an appeal to the High Court, has been deposited in the municipal office and such consolidated rate is continued to be deposited until the appeal is finally decided."*

*Similar provisions existed in the Delhi Municipal Corporation Act, 1957. There it is Section 170 which is as under :*

*170. Conditions of right to appeal - No appeal shall be heard or determined under Section 169 unless*

*(a) the appeal is, in the case of a property tax, brought within thirty days next after the date of authentication of the assessment list under Section 124 (exclusive of the time requisite for obtaining a copy of the relevant entries therein) or, as the case may be, within thirty days of the date on which an amendment is finally made under Section 126, and, in the case of any other tax, within thirty days next after the date of the receipt of the notice of assessment or of alteration of assessment or, if no notice has been given, within thirty days after the date of the presentation of the first bill or, as the case may be, the first notice of demand in respect thereof :*

*Provided that an appeal may be admitted after the expiration of the period prescribed therefor by this section if the appellant satisfies the court that he had sufficient cause for not preferring the appeal within that period;*

*(b) the amount, if any, in dispute in the appeal has been deposited by the appellant in the office of the Corporation.*

*A Full Bench of the Delhi High Court, by majority, upheld the constitutional validity of the aforesaid provision though there was also challenge to the same based on Article 14 of the Constitution. Appeal against the judgment of the Delhi High Court was taken to this Court which upheld the view of the Delhi High Court. The decision of this Court is reported as* ***Shyam Kishore and Ors. vs. Municipal Corporation of Delhi & Anr.*** *[(1993) 1 SCC 22]. This Court relied on its earlier decisions in* ***Ganga Bai case and Anant Mills*** *case. Reference was also made to another decision of this Court in* ***Vijay Prakash D. Mehta/Shri Jawahar D. Mehta vs. Collector of Customs*** *(Preventive), Bombay [(1988) 4 SCC 402] where Justice Sabyasachi Mukharji, J., speaking for the Court, said :*

*Right to appeal is neither an absolute right nor an ingredient of natural justice the principles of which must be followed in all judicial and quasi-judicial adjudications. The right to appeal is a statutory right and it can be circumscribed by the conditions in the grant.*

> ***10.*** *It is not necessary for us to refer to other decisions asserting the same principle time and again. When the statement of law is so clear, we find no difficulty in upholding the vires of clause (e) of sub-section (2) of Section 406 read with proviso thereto. Any challenge to its constitutional validity on the ground that onerous conditions have been imposed and right to appeal has become illusory must be negatived.*
>
> ***11.*** *We also note that under clause (c) of sub-section (2) of Section 406, a complaint lies to the Municipal Commissioner against imposition of any property tax and only after that when the complaint is disposed of that appeal can be filed. Appeal to the Court as provided in clause (e) may appear to be rather a second appeal. Then under Section 408 of the Act provisions exist for referring the matter to arbitration. Under sub-section (1) of Section 408 where any person aggrieved by any order fixing or charging any rateable value or tax under the Act desires that any matter in difference between him and the other parties interested in such order should be referred to arbitration, then, if all such parties agree to do so, they may apply to the Court for an order of reference on such matter and when such an order is made provisions relating to arbitration in suits shall apply. That apart, if a person cannot avail of the right of appeal under Section 406 of the Act, other remedies are available to him under the law. In that case, it may not be possible for the Municipal Corporation to contend that an alternative remedy of appeal exist under Section 406 of the Act.*
>
> *12. When leave was granted in these appeals by order dated December 12, 1980 this Court granted stay on the condition that seventy-five per cent of the tax is deposited with the Municipal Commissioner within two months from that date and on such deposit being made, the appeals be heard and disposed of (by the Judge) and we believe by this time the appeals filed before the Judge under Section 406 must have been disposed of."*

**14.** In ***Government of Andhra Pradesh and others vs. P.Laxmi Devi,*** (2008) 4 SCC 720, the Apex Court was considering the matter relating to pre-deposit of 50% of the stamp duty for the purpose of making a reference to the Collector under Section 47A of the Indian Stamp Act, 1899. After considering its earlier pronouncements on the subject under different statutes interpreting similar provision, it was recorded as under:-

> *"22. In this connection we may also mention that just as the reference under Section 47A has been made subject to deposit of 50% of the deficit duty, similarly there are provisions in various statutes in which the right to appeal has been given subject to some conditions. The constitutional validity of these provisions has been upheld by this Court in various decisions which are noted below.*
>
> *23.* ***In Gujarat Agro Industries Co. Ltd. vs. Municipal Corporation*** *of the city of Ahmedabad and Ors. (1999) 4 SCC 468, this Court referred to its earlier decision in* ***Vijay Prakash D. Mehta vs. Collector of Customs (Preventive)*** *(1968) 4 SCC 402 wherein this Court observed : "The right to appeal is neither an absolute right nor an ingredient of natural justice the principles of which must be followed in all judicial and quasi-judicial adjudications. The right to appeal is a statutory right and it can be circumscribed by the conditions in the grant."*
>
> *24. In Anant Mills Ltd. vs. State of Gujarat (1975) 2 SCC 175 this Court held that the right of appeal is a creature of the statute and it is for the Legislature to*

*decide whether the right of appeal should be unconditionally given to an aggrieved party or it should be conditionally given. The right to appeal which is a statutory right can be conditional or qualified.*

*25.* ***In M/s. Elora Construction Company vs. The Municipal Corporation of Gr. Bombay and Ors. AIR 1980 Bombay 162****, the question before the Bombay High Court was as to the validity of Section 217 of the Bombay Municipal Act which required pre-deposit of the disputed tax for the entertainment of the appeal. The Bombay High Court upheld the said provision and its judgment has been referred to with approval in the decision of this Court in* ***Gujarat Agro Industries Co. Ltd. vs. Municipal Corporation*** *of the city of Ahmedabad and Ors. (supra). This Court has also referred to its decision in* ***Shyam Kishore and Ors. vs. Municipal Corporation of Delhi and Anr.*** *(1993) 1 SCC 22 in which a similar provision was upheld.*

*26. It may be noted that in Gujarat Agro Industries Co. Ltd. vs. Municipal Corporation of the city of Ahmedabad and Ors. (supra) the appellant had challenged the constitutional validity of Section 406(e) of the Bombay Municipal Corporation Act which required the deposit of the tax as a precondition for entertaining the appeal. The proviso to that provision permitted waiver of only 25% of the tax. In other words a minimum of 75% of the tax had to be deposited before the appeal could be entertained. The Supreme Court held that the provision did not violate Article 14 of the Constitution.*

*27. In view of the above, we are clearly of the opinion that Section 47A of the Indian Stamp Act as amended by A.P Act 8 of 1998 is constitutionally valid and the judgment of the High Court declaring it unconstitutional is not correct."*

**15.** In ***Smt.Har Devi Asnani vs. State of Rajasthan and others,*** AIR 2011 SC 3748, Proviso to Section 65(1) of the Rajasthan Act, 1998 requiring deposit of 50% of demand as precondition for filing revision against the order to pay deficit stamp duty was held to be within legislative powers of the State. It was recorded as under:-

*"5. For appreciating the contentions of the learned counsel for the parties, we must refer to Section 65 of the Act.*

*Section 65 of the Act is quoted hereinbelow:*

*"65. Revision by the Chief Controlling Revenue Authority (1) Any person aggrieved by an order made by the Collector under Chapter IV and V and under clause*

*(a) of the first proviso to section 29 and under section 35 of the Act, may within 90 days from the date of order, apply to the Chief Controlling Revenue Authority for revision of such order:*

*Provided that no revision application shall be entertained unless it is accompanied by a satisfactory proof of the payment of fifty percent of the recoverable amount.*

*(2) The Chief Controlling Revenue Authority may suo moto or on information received from the registering officer or otherwise call for and examine the record of any case decided in proceeding held by the Collector for the purpose of satisfying himself as to the legality or propriety of the order passed and as to the regularity of the proceedings and pass such order with respect thereto as it may think fit:*

> *Provided that no such order shall be made except after giving the person affected a reasonable opportunity of being heard in the matter. "*

*10. We need not refer to all the decisions cited by the learned counsel for the parties because we find that in* ***Government of Andhra Pradesh and Others vs. P. Laxmi Devi*** *(supra) this Court has examined a similar provision of Section 47-A of the Stamp Act, 1899, introduced by the Indian Stamp Act (A.P Amendment Act 8 of 1998). Subsection (1) of Section 47-A, introduced by Andhra Pradesh Act 8 of 1998 in the Indian Stamp Act, is extracted hereinbelow:*

> *"47-A. Instruments of conveyance, etc. how to be dealt with-(1) Where the registering officer appointed under the Registration Act, 1908, while registering any instrument of conveyance, exchange, gift, partition, settlement, release, agreement relating to construction, development or sale of any immovable property or power of attorney given for sale, development of immovable property, has reason to believe that the market value of the property which is the subject-matter of such instrument has not been truly set forth in the instrument, or that the value arrived at by him as per the guidelines prepared or caused to be prepared by the Government from time to time has not been adopted by the parties, he may keep pending such instrument and refer the matter to the Collector for determination of the market value of the property and the proper duty payable thereon.*

*Provided that no reference shall be made by the registering officer unless an amount equal to fifty per cent of the deficit duty arrived at by him is deposited by the party concerned."*

*Under sub-section (1) of Section 47-A quoted above, a reference can be made to the Collector for determination of the market value of property and the proper duty payable thereon where the registering officer has reason to believe that the market value of the property which is the subject- matter of the instrument has not been truly set forth in the instrument, or that the value arrived at by him as per the guidelines prepared or caused to be prepared by the Government from time to time has not been adopted by the parties. The proviso of sub-section (1) of Section 47-A, however, states that no such reference shall be made by the registering officer unless an amount equal to fifty per cent of the deficit duty arrived at by him is deposited by the party concerned. This proviso of sub-section (1) of Section 47-A was challenged before the Andhra Pradesh High Court by* ***P. Laxmi Devi*** *and the Andhra Pradesh High Court held that this proviso was arbitrary and violative of Article 14 of the Constitution and was unconstitutional. The Government of Andhra Pradesh, however, filed an appeal by special leave before this Court against the judgment of the Andhra Pradesh High Court and this Court held in para 18 at page 735 of [(2008) 4 SCC 720] that there was no violation of Articles 14, 19 or any other provision of the Constitution by the enactment of Section 47-A as amended by the Andhra Pradesh Amendment Act 8 of 1998 and that the amendment was only for plugging the loopholes and for quick realisation of the stamp duty and was within*

> *the power of the State Legislature vide Entry 63 of List-II read with Entry 44 of List-III of the Seventh Schedule to the Constitution. While coming to the aforesaid conclusions, this Court has relied on* ***The Anant Mills Co. Ltd. vs. State of Gujarat and others (supra), Vijay Prakash D. Mehta and Another vs. Collector of Customs (Preventive), Bombay (supra) and Gujarat Agro Industries Co. Ltd. vs. Municipal Corporation of the City of Ahmedabad and Others*** *(supra) in which this Court has taken a consistent view that the right of appeal or right of revision is not an absolute right and it is a statutory right which can be circumscribed by the conditions in the grant made by the statute. Following this consistent view of this Court, we hold that the proviso to Section 65(1) of the Act, requiring deposit of 50% of the demand before a revision is entertained against the demand is only a condition for the grant of the right of revision and the proviso does not render the right of revision illusory and is within the legislative power of the State legislature.*
>
> *11. We also find that in the impugned order the High Court has relied on an earlier Division Bench judgment of the High Court in* ***M/s Choksi Heraeus Pvt. Ltd., Udaipur v. State & Ors.*** *(supra) for rejecting the challenge to the proviso to Section 65(1) of the Act. We have perused the decision of the Division Bench of the High Court in* ***M/s Choksi Heraeus Pvt. Ltd., Udaipur v. State & Ors. (supra)*** *and we find that the Division Bench has rightly taken the view that the decision of this Court in the case of* ***Mardia Chemical Ltd. and Others vs. Union of India and Others*** *(supra) is not applicable to the challenge to the proviso to Section 65(1) of the Act inasmuch as the provision of sub-section (2) of Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, requiring deposit of 75% of the demand related to deposit at the stage of first adjudication of the demand and was therefore held to be onerous and oppressive, whereas the proviso to Section 65(1) of the Act in the present case requiring deposit of 50% of the demand is at the stage of revision against the order of first adjudication made by the Collector and cannot by the same reasoning held to be onerous and oppressive. In our considered opinion, therefore, the proviso to Section 65(1) of the Act is constitutionally valid and we are therefore not inclined to interfere with the order dated 16.11.2009 in D.B.CWP No.14220 of 2009. The Civil Appeal arising out of S.L.P. (C) No.20964 of 2010 is therefore dismissed."*

**16.** A full Bench of this Court in ***M/s Emerald International Limited vs. State of Punjab and others, (2001)122 STC 382***, summed up the legal position in the following terms:-

> "22. In addition to the law laid down by the honourable Supreme Court in various judicial pronouncements noticed above, two judgments of Calcutta and Punjab and Haryana High Court which have got direct bearing can be quoted with advantage. The Calcutta High Court in ***Chatter Singh Raid's*** case AIR 1984 Cal 283 was discussing Section 183 (3-A)' of the Calcutta Municipal Act, 1951, which reads as under :
>
> > *"No appeal under this section shall be entertained unless the consolidated rate payable up to the date of presentation of the appeal on the valuation determined—*
> >
> > *(a) by an order under Section 182, in the case of an appeal to the Court of Small Causes,*

> *(b) by the decision of the Court of Small Causes, in the case of an appeal to the High Court, has been deposited in the municipal office and such consolidated rate is continued to be deposited until the appeal is finally decided."*

While dealing with the aforementioned section, it was held that right of appeal was not a natural or inherent right attaching to every litigation and that such a right does not exist and cannot be assumed unless expressly given by the statute. Relying upon the ratio of ***Anant Mill's*** case AIR 1975 SC 1234 it was observed that right of appeal was a creature of statute and Legislature could impose conditions for the exercise of such right and there is no constitutional or legal impediment to imposition of such a condition for deposit of tax. Reference was made to other judicial pronouncements as well. The following observations of the Calcutta High Court deserve reproduction:

> *"A right of appeal is not a natural or inherent right attaching to every litigation and the right of appeal does not exist and cannot be assumed unless expressly given by statute (See* ***Rangoon Botatung Co. Ltd. v. Collector, Rangoon (1903) 30 Ind. App. 197 : ILR 40 Cal. 21, Soorajmull Nagarmull v. State of West Bengal,*** *AIR 1963 SC 393,* ***Smt. Ganga Bai v. Vijay Kumar*** *AIR 1974 SC 1126. Therefore, the provision, viz., Section 183 which conferred upon the petitioners right to prefer appeal against the order disposing of their objection under Section 181 of the Calcutta Municipal Act, could be lawfully amended by inserting a provision imposing the above condition for deposit for entertaining their appeal.*
>
> *The condition laid down by Sub-section (3-A) of Section 183 of the Calcutta Municipal Act is not something which is without any parallel. Both Mr. Dipankar Ghosh, learned Advocate for the petitioner, and Mr. Pradip Kumar Ghosh, learned Advocate for the respondents, has drawn my attention to nearly similar provisions for deposit of disputed tax duty and rates contained in various other taxing, municipal and fiscal laws. Mr. Dipankar Ghosh, however, submitted that unless the appellate authority is given discretionary powers to relax or modify such condition for deposit of the disputed amount, the condition precedent ought to be pronounced as unreasonable. In my view, the observations made in para 40 of the Supreme Court decision in* ***Anant Mills v. State of Gujarat AIR*** *1975 SC 1234, are directly against the above submission of the petitioners. With reference to Section 406(2) of the Bombay Provincial Municipal Act, the Supreme Court upheld the power of the Legislature to impose similar condition for deposit while granting right of appeal. According to the Supreme Court, there was no legal or constitutional impediment to imposition of such a condition. I respectfully agree and apply the aforesaid observations in upholding the validity of Section 183(3-A) of the Calcutta Municipal Act, I am unable to accept Mr. Dipankar Ghosh's submission, that, the court's power under Section 406(2) of the Bombay Provincial Municipal Act to relax the condition for deposit the tax due had at all weighed with the Supreme Court in making the aforesaid observations in* ***Anant Mills v. State of Gujarat*** *AIR 1975 SC 1234. The ratio of the said decision is that the right of appeal is a creature of statute and while granting the right of appeal the Legislature can impose conditions for exercise of such right and there is no*

*constitutional or legal impediment to imposition of such a condition for deposit of tax. The Supreme Court in their subsequent decision in the case of* ***Nand Lal v. State of Haryana*** *AIR 1980 SC 2097, had followed their earlier decision in* ***Anant Mills v. State of Gujarat*** *AIR 1975 SC 1234. The Supreme Court in* ***Nand Lal v. State of Haryana*** *AIR 1980 SC 2097 had rejected similar argument that conditions imposed on right of appeal were onerous because no discretion had been given to the appellate or revisional authority to relax or waive the said condition in view of subjects for imposing such a condition."*

*24. As a sequal to our discussion on the question of law referred to us the following conclusions can be deduced :*

*(a) The appeal is a creation of a statute and in case a person wants to avail of the right of appeal, he has to accept the conditions imposed by the statute.*

*(b) The right of appeal being a creature of statute, the Legislature could impose conditions for exercise of such a right. Neither there is a constitutional nor legal impediment for imposition of such a condition.*

*(c) The right of appeal is neither natural nor inherent attaching to a litigation and such a right neither exists nor can be assumed unless expressly given by the statute.*

*(d) Even if, this Court was to interpret the bare provisions of two statutes, i.e., the Punjab General Sales Tax Act, 1948 and the Haryana General Sales Tax Act, 1973, it could safely be held that there is a complete bar to the entertainment of an appeal by the appellate authority without the payment of tax amount unless the authority is satisfied that the dealer is unable to pay the amount so assessed and only in that situation the appellate authority for the reasons to be recorded in writing can entertain the appeal without deposit of the payment of such amount.*

*(e) Neither on the wording nor in view of the spirit of the Punjab and Haryana Acts it is possible to hold that the appellate authority should see the prima facie nature of the case while hearing the stay matter.*

*(f) The factum of tax assessed being illegal cannot be a relevant consideration for grant of stay by an Appellate Authority.*

*(g) The High Court in exercise of its jurisdiction under Article 226 of the Constitution of India in rarest of the rare cases in the given facts and circumstances, can grant stay and waive the condition of pre-deposit of tax and the existing alternative remedy in such circumstances would be no ground to refuse interference."*

**17.** In ***M/s Elora Construction Company vs. The Municipal Corporation of Gr. Bombay and others***, AIR 1980 Bombay 162, the validity of the provisions of amended Section 217 of the Bombay Municipal Corporation Act, 1888 (as amended in 1975) was challenged on the ground that it was violative of Articles 19, 31 and 265 of the Constitution of India. The payments of property tax sought as preconditions to hearing of an appeal under Section 217 was held to be validly leviable and recoverable at the time when appeal was filed. Requirement of such payment was not held to be violative of Article 31 or 265 of the Constitution of India.

**18.** In ***Chatter Singh Baid and others vs. Corporation of Calcutta and others***, AIR 1984 Calcutta 283, challenge to the validity of Section 183(3-A), 182, 183(1), 191 and 207 of

the Calcutta Municipal Act, 1951 came before the Calcutta High Court. The right of appeal under Section 183(1) of the Act was not held to be nugatory or illusory by requiring to deposit consolidated rate payable before filing appeal. It was observed thus:-

> *"15. The condition laid down by Sub-section (3-A) of Section 183 of the Calcutta Municipal Act is not something which is without any parallel. Both Mr. Dipankar Ghosh, learned advocate for the petitioner, and Mr. Pradip Kumar Ghosh, learned advocate for the respondents, has drawn my attention to nearly similar provisions for deposit of disputed tax duty and rates contained in various other taxing, municipal and fiscal laws. Mr. Dipankar Ghosh, however, submitted that unless the appellate authority is given discretionary powers to relax or modify such condition for deposit of the disputed amount, the condition precedent ought to be pronounced as unreasonable. In my view, the observations made in para 40 of the Supreme Court decision in* ***Anant Mills v. State of Guiara****. , are directly against the above submission of the petitioners. With reference to Section 406 (2) of the Bombay Provincial Municipal Act, the Supreme Court upheld the power of the legislature to impose similar condition for deposit while granting right of appeal. According to the Supreme Court, there was no legal or constitutional impediment to imposition of such a condition. I respectfully agree and apply the aforesaid observations in upholding the validity of* ***Section 183*** *(3-A) of the Calcutta Municipal Act. I am unable to accept Mr. Dipankar Gbosh's submission, that, the Court's power under Section 406 (2) of the Bombay Provincial Municipal Act to relax the condition for deposit the tax due had at all weighed with the Supreme Court in making the aforesaid observations in* ***Anant Mills v. State of Gujarat*** *(supra). The ratio of the said decision is that the right of appeal is a creature of statute and while granting the right of appeal the legislature can impose conditions for exercise of such right and there is no constitutional or legal impediment to imposition of such a condition for deposit of tax. The Supreme Court in their subsequent decision in the case of Nandalal v. State of Haryana, , had followed their earlier decision in* ***Anant Mills v. State of Gujarat*** *(supra). The Supreme Court in* ***Nandlal v. State of Haryana*** *(supra), had rejected similar argument that conditions imposed on right of appeal were onerous because no discretion had been given to the appellate or revisional authority to relax or waive the said condition in view of subjects for imposing such a condition.*
>
> *16. The Sub-section (3-A) of Section 183 of the Act does not make the appellate provision under Section 183 (1) nugatory or illusory but by his own default to comply with the condition for deposit the appellant himself may fail to avail of the remedy by way of appeal under Section 183 (1) of the Act. A law cannot be declared unconstitutional because an alleged possibility which may occur in future. Therefore, I find no substance in the petitioner's apprehension that in a given case the consolidated rate determined according to the new valuation may be so high that it might be impossible for the appellant under Section 183 (1) to deposit the consolidated rate according to the said new valuation is not a relevant point for deciding the validity of the statute. It is presumed that the power to determine valuation and to assess consolidated rate would be reasonably exercised and in case said powers arbitrarily or capriciously exercised, the person aggrieved without availing of the remedy under Section 183 (i) of the Act, may seek redress in other appropriate forum."*

**19.** In ***Syed Mahfooz Hussain vs. State of UP and others***, ***AIR 2004 Allahabad 299,*** constitutional validity of first proviso to Section 56(1-A) as inserted by Indian Stamp (U.P

Second Amendment) Act, 2001 into the Indian Stamp Act, 1899 was under challenge before the Allahabad High Court which provided that no application or stay recovery of any disputed amount of stamp duty including interest thereon or penalty shall be entertained unless the applicant had furnished satisfactory proof of the payment of not less than one third of such disputed amount. The provision was held to be valid.

**20.** In ***Sujana Metal Products Limited and another vs. State of Andhra Pradesh, 2005 Law Suit (AP) 1157***, the Andhra Pradesh High Court was considering the constitutional validity of second proviso to Section 19 of the Andhra Pradesh General Sales Tax Act, 1957 which provided deposit of 12.5 percent of the difference of the tax assessed by the assessing authority and the tax admitted by the appellant as precondition for the admission of the appeal. The provision was held to be valid piece of legislation. It was recorded thus:-

> *"2. Shorn of all the details, the petitioners challenge the constitutional validity of the second proviso to Section 19 of the Andhra Pradesh General Sales Tax Act, 1957 (for short "the Act"). Section 19 of the Act provides for an appeal to the prescribed authority against any order passed or proceeding recorded by any authority under the provisions of the Act other than an order passed or proceeding recorded by an Additional Commissioner or Joint Commissioner or Deputy Commissioner under Sub-section (4C) of Section 14 of the Act. The second proviso further provides that an appeal so preferred shall not be admitted by the appellate authority concerned unless the dealer produces proof of payment of tax admitted to be due, or of such instalments as have been granted, and the proof of payment of 12.5 per cent of the difference of tax assessed by the assessing authority and the tax admitted by the appellant, for the relevant assessment year, in respect of which the appeal is preferred.*
>
> *3. That a fair reading of the proviso makes it clear that deposit of 12.5 per cent of the difference of the tax assessed by the assessing authority and the tax admitted by the appellant is the pre-condition for the admission of the appeal. The proviso mandates that the appellate authority shall not admit the appeal preferred by the appellant in the absence of proof of payment of 12% per cent of the difference of the tax assessed by the assessing authority and the tax admitted by the appellant. The pre-condition of deposit as provided for under the proviso is an integral part of Section 19, which provides for an appeal against any order or proceeding recorded by the authority under the provisions of the Act other than the one excluded under Section 19 of the Act itself.*
>
> *4. It is fairly well-settled and needs no restatement at our hands that right of appeal is creature of statute and such right can be conditioned in any manner as the Legislature may consider in its wisdom to be appropriate. Right of appeal is not a fundamental right guaranteed as such either by Article 14 or by Article 19 as is sought to be contended by the petitioners in the instant case. That being the legal position, an appeal provided subject to complying with certain conditions cannot be characterised or held to be unconstitutional. It is unnecessary to burden this order with various pronouncements of the apex court whereunder the similar provisions under various enactments such as the Workmen's Compensation Act, 1923 and the Payment of Wages Act, 1936 requiring the pre-deposit as a condition precedent for entertaining the appeal have been upheld.*
>
> *5. In* ***Anant Mills Co. Ltd. v. State of Gujarat*** *the apex court in clear and categorical terms held that the Legislature while granting right of appeal can impose conditions for the exercise of such right. "In the absence of any special reasons, there appears to be no legal or constitutional impediment to the*

*imposition of such conditions". **In Shyam Kishore v. Municipal Corporation of Delhi** , the Supreme Court upheld the condition of deposit of tax amount under Section 170B of the Delhi Municipal Corporation Act, 1957 which is a condition precedent for hearing or determining of the appeal where the appellate authority has no discretion to grant any stay of the disputed amount or dispense with the requirement of pre-deposit of the amount in appeal with or without conditions.*

*6. **In Penguin Textiles Ltd. v. State of A.P.** [2000] 117 STC 378 : [1999] 29 6 APSTJ 244 a Full Bench of this court having exhaustively referred to the scheme of the Act relating to appeals, revisions and stay applications in relation thereto and certain well-settled principles relevant to the passing of interim order emerging from various pronouncements of the Supreme Court held that pending a revision under Section 22(1) of the Act, the High Court has no power to grant stay of recovery of tax and penalty "but the High Court may in its discretion permit the petitioner to pay the tax in specified instalments or give such other directions of limited nature, as explained above, so long as such directions do not tantamount to granting stay".*

*7. In view of the authoritative pronouncement of the Supreme Court **in Anant Mills's** case that it is permissible to enact a law to the effect that no appeal shall lie against an order relating to an assessment of tax unless the tax had been paid, nothing remains for us to decide as to whether the impugned proviso suffers from any constitutional infirmities. The law is so well-settled that the Legislature in its wisdom may impose accompanying liability upon a party upon whom a legal right of appeal is conferred or to prescribe conditions for the exercise of the right."*

**21.** In ***R.V. Saxena vs. Union of India and others***, AIR 2006 Delhi 96, Proviso to Section 18(1) of the Securitization and reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 requiring borrower to deposit 50% of the amount of debt before hearing of appeal was held to be legal by the Delhi High Court with the following observations:-

*"16. The right of appeal is not an inherent right but is a creature of the statute. The Legislature can impose conditions under which this is to be exercised. Moreover, the proviso to Section 18 does not require the entire amount to be deposited, but only 50% thereof which can be reduced to a minimum of 25% of the sum. We see no illegality in this proviso. There are similar provisions in many enactments and they are being upheld by the Supreme Court. For example, in the second proviso under Section 15 (1) of the Foreign Trade (Development and Regulation) Act, 1992, it is provided that the appeal against an order imposing a penalty or redemption charges shall not be entertained unless the amount of the penalty or redemption charges have been deposited by the appellant. Similarly in many other statutes, there are such similar provisions.*

*17. **In Gujarat Agro Industries Co. Ltd. v. Municipal Corporation** of the city of Ahmedabad and Ors. , the Supreme Court referred to its earlier decision in **Vijay Prakash D.Mehta v. Collector of Customs (Preventive)** 1968 4 SCC 402 wherein the Supreme Court observed:*

> *"The right to appeal is neither an absolute right nor an ingredient of natural justice the principles of which must be followed in all judicial and quasi-judicial adjudications. The right to appeal is a statutory right and it can be circumscribed by the conditions in the grant.*

*18. **In Anant Mills Ltd. v. State of Gujarat the Supreme Court** held that the right of appeal is a creature of the statute and it is for the Legislature to decide whether the right of appeal should be unconditionally given to an aggrieved party or it should be conditionally given. The right to appeal which is a statutory right can be conditional or qualified.*

*19. **In Elora Construction Company v. The Municipal Corporation of Gr.Bombay and Ors.** , the question before the Bombay High Court was as to the validity of Section 217 of the Bombay Municipal Act which required predeposit of the disputed tax for the entertainment of the appeal. The Bombay High Court upheld the said provision and its judgment has been referred to with approval in the decision of Supreme Court in **Gujarat Agro Industries Co. Ltd. v. Municipal Corporation** of the city of Ahmedabad and Ors. (supra). The Supreme Court has also referred to its decision in **Shyam Kishore and Ors. v. Municipal Corporation of Delhi and Anr.** in which a similar provision was upheld.*

*20. It may be noted that in **Gujarat Agro Industries Co. Ltd. v. Municipal Corporation** of the city of Ahmedabad and Ors.(supra) the appellant had challenged the constitutional validity of Section 406(e) of the Bombay Municipal Corporation Act which required the deposit of the tax as a precondition for entertaining the appeal. The proviso to that provision permitted waiver of only 25% of the tax . In other words a minimum of 75% of the tax had to be deposited before the appeal could be entertained. The Supreme Court held that the provision did not violate Article 14 of the Constitution."*

**22.** In ***Walchandnagar Industries Limited Mumbai vs. Municipal Corporation of the City of Pune and others***, AIR 2014 Bombay 47, the Bombay High Court was considering the constitutional validity of Section 406(2)(e) of the Bombay Provincial Municipal Corporations Act, 1949 which provided that no appeal shall be entertained unless the amount was deposited by the appellant with the Commissioner. It was noticed as under:-

*"4) Mr. S. G. Aney, the Senior Advocate appearing for the Petitioner made the following submissions in support of the Petition:*

*(A) That styling the proceedings under Section 406 of the said Act as an 'Appeal' is misnomer, since the said proceedings are in fact 'original proceedings before a judicial authority'. The imposition of any precondition of deposit of entire disputed tax claimed for entertainment of said proceedings is ex facie arbitrary, unreasonable, unconstitutional, null and void;*

*(B) The provisions contained in Section 406 (2)(e) of the said Act impose an onerous and unreasonable condition of depositing the entire disputed tax claimed as a precondition for entertainment of the appeal. The very imposition of such an onerous and unreasonable condition renders the right of appeal illusory. There is no provision contained in Section 406 empowering the judicial authority to waive this condition in case of genuine and undue hardships. For these reasons, the provisions contained in Section 406(2)(e) are ex facie illegal, arbitrary, unconstitutional, null and void.*

*5) to 17) xxxxxxxxxxxxxxxx*

*18) In upholding constitutional validity of clauses which provide for pre-deposit of disputed amount as a precondition for entertainment of an appeal, various courts have applied the position established in law, that the right of appeal is a*

*creature of a statute and it is for the legislature to decide whether the right of appeal should be unconditionally given to an aggrieved party or it should be conditionally given. If the statute does not create any right of appeal then no appeal can be filed. The right of appeal is neither an absolute right nor an ingredient of the principles of natural justice. There is a clear distinction between a suit and an appeal. While every person has an inherent right to bring a suit of civil nature unless the suit is barred by statute, in regard to an appeal, the position is opposite. The right to appeal inheres in no one and therefore, for maintainability of an appeal there must be authority of law. When such a law authorizes filing of an appeal, it can impose conditions as well. The object of such provisions is to keep in balance the right of appeal conferred upon a person aggrieved with a demand of tax and the right of the Corporation to speedy recovery of the tax. A disability or disadvantage arising out of parties own default or omission cannot be taken to be tantamount to the creation of two classes offensive to Article 14 of the Constitution of India, especially when that disability or disadvantage operates upon all persons who make the default or omission.*

*19) In this case, we are concerned with a statute which deals with recovery of tax upon lands and buildings in Municipal areas. In this sense, we are concerned with a statute dealing with an economic matter. There is always a presumption in favour of the constitutionality of a statute. Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call-trial and error method. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid. The courts cannot be converted into tribunals for relief from such crudities and inequities. The Court must therefore adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities or inequities or by the possibilities of abuse of any of its provisions. The Court must defer to legislative judgment in matters relating to social and economic policies and must not interfere, unless the exercise of legislative judgment appears to be palpably arbitrary."*

**23.** In ***Ganesh Yadav vs. Union of India and others,*** 2015 Law Suit (Allahabad) 1541, the Allahabad High Court was considering the provisions of section 35F of the Central Excise Act, 1944 requiring the deposit of 10% of the duty or penalty in case of an appeal to the Tribunal against the order passed by the Commissioner (Appeals). The said requirement was not held to be arbitrary or violative of Article 14 of the Constitution. It was recorded thus:-

*"9. Parliament while amending the provisions of Section 35F of the Act has required the payment of 7.5 percent of the duty in case the duty and penalty are in dispute or the penalty where such penalty is in dispute. In the case of an appeal to the Tribunal against an order passed by the Commissioner (Appeals), the requirement of deposit is 10% of the duty or as the case may be, the duty or penalty or of the penalty where the penalty is in dispute. The first proviso restricts the amount to be deposited to a maximum of Rs. 10 crores. Prior to the amendment, the Commissioner (Appeals) or the Appellate Tribunal were permitted to dispense with such deposit in a case of undue hardship subject to such conditions as may be imposed so as to safeguard the interest of the revenue. Stay applications and the issue of whether a case of undue hardship was made out, gave rise to endless litigation. There would be orders of remand in the litigative proceedings. All this was liable to result in a situation where the disposal of stay applications would consume the adjudicatory time and*

*resources of the Tribunal or, as the case may be, of the Commissioner (Appeals). Parliament has stepped in by providing a requirement of a deposit of 7.5% in the case of a First Appellate remedy before the Commissioner (Appeals) or to the Tribunal. The requirement of a deposit of 10% is in the case of an appeal to the Tribunal against an order of the Commissioner (Appeals). This requirement cannot be regarded or held as being arbitrary or as violative of Article 14.xxxxxxx"*

**24.** From the reading of the judicial pronouncements noticed above, the inevitable conclusion is that right of appeal is a creature of a statute and it being a statutory right can be conditional or qualified. If the statute does not create any right of appeal, no appeal can be filed. Right to appeal is neither an absolute right nor an ingredient of natural justice, the principles of which must be followed in all judicial and quasi judicial adjudications. The right to appeal is a statutory right and it can be circumscribed by the conditions in the grant. In other words, while granting this right, the legislature can impose conditions for exercise of such right and there is no constitutional or legal impediment to imposition of such a condition. The requirement about the deposit of the amount claimed as a condition precedent to the entertainment of an appeal does not nullify the right of appeal. All that the statutory provision seeks to do is to regulate the exercise of the right of appeal. The object of the provision is to keep balance between the right of appeal and the right of the revenue to speedy recovery of the amount. The conditions imposed including prescription of a pre-deposit are meant to regulate the right of appeal and the same cannot be held to be violative of Article 14 of the Constitution of India unless demonstrated to be onerous or unreasonable. To put it differently, right of appeal being a statutory right, it is for the legislature to decide whether to make the right subject to any condition or not. In the light of the above enunciation, we proceed to examine Section 62(5) of the PVAT Act. A perusal of sub section (5) of Section 62 of the PVAT Act shows that pre-deposit of twenty five percent of the total amount of tax, interest and penalty is a condition precedent for hearing an appeal before the first appellate authority. Any challenge to the constitutional validity of this provision for pre-deposit before entertaining an appeal on the ground that onerous condition has been imposed and right to appeal has become illusory must be negatived and such a provision cannot be said to be ultra vires Article 14 of the Constitution of India. The object of the provision is to keep in balance the right of appeal conferred upon a person aggrieved with a demand of tax and the right of the revenue to speedy recovery of the tax. It is, thus, concluded that the State is empowered to enact Section 62(5) of the Act and the said provision is legal and valid. The condition of 25% pre-deposit for hearing first appeal is not onerous, harsh, unreasonable and violative of the provisions of Article 14 of the Constitution of India.

**25.** Now question (c) remains to be answered. With regard to the said question whether the first appellate authority in its right to hear appeal has powers to grant interim protection against imposition of such a condition for hearing of appeals on merits, the following facets of the argument would arise for our consideration:-

*(a) Inherent powers of the Court to grant interim protection;*

*(b) Whether the expression "shall" used in Section 62(5) of the PVAT Act is mandatory or by implication would be read as directory meaning thereby whether the first appellate authority can grant partial or complete waiver of condition of pre-deposit;*

The legal position in this regard is being discussed hereinafter.

**26.** Taking up the issue of 'inherent powers of the Court', it may be observed that Constitution of India and the statutes confer different jurisdiction on the Court whereas "inherent powers" of the court are those necessary for ordinary and efficient exercise of

jurisdiction already conferred. They are as such result of the very nature of its organization and are essential to its existence and protection and for the due administration of justice. The inherent power of a court is the power to do all things that are reasonably necessary for administration of justice within the scope of court's jurisdiction. The basic principal is to be found in ***Maxwell On Interpretation of Statutes, eleventh Edition at page 350.*** The statement contained therein is that "where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means as are essentially necessary to its execution." Learned counsel for the petitioners vehemently argued that the provision has to be read down to include the right to waive the condition by the appellate authority in an appropriate case. Main emphasis was laid by the learned counsel for the petitioners on the judgment of the Apex Court in ***Income Tax Officer, Cannanore vs. M.K. Mohamad Kunhi***, AIR 1969 SC 430, wherein the question was whether the Income Tax Appellate Tribunal had the power under the relevant provisions of the Income Tax Act, 1961 to stay recovery of the realization of the penalty imposed by the departmental authorities on an assessee during the pendency of an appeal before it. After considering the matter, the Apex court held that the Appellate Tribunal has power to grant stay as incidental or ancillary to its appellate jurisdiction subject to there being a strong prima facie case and satisfaction that the entire purpose of the appeal will be frustrated or rendered nugatory by allowing the recovery proceedings to continue during the pendency of the appeal. The relevant observations read as under :-

> *"4. There can be no manner of doubt that by the provisions of the Act or the Income-tax Appellate Tribunal Rules, 1963 powers have not been expressly conferred upon the Appellate Tribunal to stay proceedings relating to the recovery of penalty or tax due from an assessee. At the same time it is significant that under s. 220 (6) the power of stay by treating the assessee as not being in default during the pendency of an appeal has been given to the Income-tax Officer only when an appeal has been presented under s. 246 which will be to the Appellate Assistant Commissioner and not to the Appellate Tribunal. There is no provision in s. 220 under which the Income-tax Officer or any of his superior departmental officers can be moved for granting stay in the recovery of penalty or tax. It may be that under s. 225 notwithstanding that a certificate has been issued to the Tax Recovery Officer for the recovery of any tax (the position will be the same with regard to penalty) the Income tax Officer may grant time for the payment of the tax. In this manner he can probably keep on granting extensions until the disposal of the appeal by the Tribunal. It may also be that as a matter of practice prevailing in the department the Commissioner or the Inspecting Assistant Commissioner in exercise of administrative powers can give the necessary relief of staying recovery to the assessee but that can hardly be put at par with a statutory power as is contained in section 220(6) which is confined only to the stage of pendency of an appeal before the Appellate Assistant Commissioner. The argument advanced on behalf of the appellant before us that in the absence of any express provisions in sections 254 and 255 of the Act relating to stay of recovery during the pendency of an appeal it must be held that no such power can be exercised by the Tribunal, suffers from a fundamental infirmity inasmuch as it assumes and proceeds on the premise that the statute confers such a power on the Income-tax Officer who can give the necessary relief to an assessee. The right of appeal is a substantive right and the questions of fact and law are at large and are open to review by the Appellate Tribunal. Indeed the Tribunal has been given very wide powers under section 254 (1) for it may pass such orders as it thinks fit after giving full hearing to both the parties to the appeal. If the Income- tax Officer and the Appellate Assistant Commissioner have made assessments or imposed penalties raising very large*

*demands and if the Appellate Tribunal is entirely helpless in the matter of stay or recovery the entire purpose of the appeal can be defeated if ultimately the orders of the departmental authorities are set aside. It is difficult to conceive that the Legislature should have left the entire matter to the administrative authorities to make such orders as they choose to pass in exercise of unfettered discretion. The assessee, as has been pointed out before, has no right to even move an application when an appeal is pending before the Appellate Tribunal under section 220 (6) and it is only at the earlier stage of appeal before the Appellate Assistant Commissioner that the statute provides for such a matter being dealt with by the Income-tax Officer. It is a firmly established rule that an express grant of statutory. power carries with it by necessary implication the authority to use all reasonable means to make such grant effective (Sutherland Statutory Construction, Third Edition, Arts. 5401 and 5402). The powers which have been conferred by section 254 on the Appellate Tribunal with widest possible amplitude must carry with them by necessary implication all powers and duties incidental and necessary to make the exercise of those powers, fully effective. In Domat's Civil Law Cushing's Edition, Vol. 1 at page 88, it has been stated:*

> *"It is the duty of the Judges to apply the laws, not only to what appears-to be regulated by their express dispositions, but to all the cases where a just application of them may be made, and which appear to be comprehended either within the consequences that may be gathered from it."*

*Maxwell on Interpretation of Statutes, Eleventh Edition, contains a statement at p. 350 that "where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution. Cui jurisdiction data est, ea quoqe concessa esse vindentur, sine quibus jurisdictio explicari non potuit." An instance is given based on Ex. parte Martin that "where an inferior court is empowered to grant an injunction, the power of punishing disobedience to it by commitment is impliedly conveyed by the enactment, for the power would be useless if it could not be enforced."*

*5. xxxxxxxxxxxx*

*6. It is well known that an Income-tax Appellate Tribunal is not a court but it exercises judicial powers. The Tribunal's powers in dealing with appeals are of the widest amplitude and have in some cases been held similar to and identical with the powers of an appellate court under the Civil Procedure Code. (See* ***Commissioner of Income tax, Bombay City v. Hazarimal Nagji & Co****. (1962) 46 ITR 1168 (Bom.) and* ***New India Assurance Co. Ltd. v. Commissioner of Income tax, Excess Profits, Bombay City, (1957) 31 ITR 844 (Bom.). In Polini v. Grey,*** *(1879) 12 Ch D 438, this is what Jessel M.R. said about the powers of the Court of Appeal to grant stay at page 443:*

> *"It appears to me on principle that the Court ought to possess that jurisdiction, because the principle which underlies all orders for the preservation of property pending litigation is this, that the successful party, is to reap the fruits of that litigation, and not obtain merely a barren success. That principle, as it appears to me, applies as much to the Court of first instance before the first trial, and to the Court of*

> *Appeal before the second trial, as to. the Court of last instance before the hearing of the final appeal".*

*There are certain decisions, however, in which difficulty was felt that the Appellate Tribunal did not possess the power to stay recovery during the pendency of an appeal. In* ***Vetcha Sreeramamurthy v. The Income Tax Officer Vizianagram & Another, (1956) 30 ITR 252****, the assessee had to file a writ petition because the realisation of the tax assessed had not been stayed during the pendency of an appeal before the Tribunal. The controversy centred in that case mainly on the scope of the discretionary power conferred by section 45 of the Indian Income-tax Act, 1922, on the Income-tax Officer. It was held that a writ petition to compel the Income-tax Officer to exercise his discretion under section 45 or to exercise it honestly and, objectively was not barred. But on the merits the Court declined issue a writ. Viswanatha Sastri J., in his separate judgment made the following observations at page 271:*

> *"Lastly it has to 'be observed that section 45 of the Income-tax Act is somewhat cryptic in its terms and merely gives the Income-tax Officer power to declare a person to be not in default pending the appeal. There is no provision for stay similar to Order XLI, Rules 5 & 6, of the Civil Procedure Code. There is no conferment of an express power of granting a stay of realisation of the tax, though the effect of an order in favour of the assessee under section 45 of the Act is a stay. Nor is there a provision for allowing the tax to be paid in instalments or for taking security for deferred payment. Neither the Appellate Assistant Commissioner nor the Appellate Tribunal is given the power to stay the colletion of tax. Whether the law should not be made more, liberal so as to enable an assessee who has preferred an appeal, to obtain from the appellate forum, a stay of collection of the tax, either in whole or in part, on furnishing suitable security, is a matter for the legislature to consider."*

*It is interesting that in another case* ***Pollisetti Narayana Rao v. Commissioner of Income-tax, Hyderabad, (1956)*** *29 ITR 222, the same High Court held that stay could be granted by it pending reference of a case by the Appellate Tribunal to the High Court. This power the High Court had under s. 151 of the Civil Procedure Code and under Art. 227 of the Constitution.*

*7. xxxxxxxxxxxxx*

*8. Section 255(5) of the Act does empower the Appellate Tribunal to regulate its own procedure, but it is very doubtful if the power of stay can be spelt out from that provision. In our opinion the Appellate Tribunal must be held to have the power to grant stay as incidental or ancillary to its appellate jurisdiction. This is particularly so when section 220(6) deals expressly with a situation when an appeal is pending before the Appellate Assistant Commissioner, but the Act is silent in that behalf when an appeal is pending before the Appellate Tribunal. It could well be said that when section 254 confers appellate jurisdiction, it impliedly grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution and that the statutory power carries with it the duty in proper cases to make such orders for staying proceedings as will prevent the appeal if successful from being rendered nugatory.*

*9. A certain apprehension may legitimately arise in the minds of the authorities administering the Act that if the Appellate Tribunals proceed to stay recovery of taxes or penalties payable by or imposed on the assessees as a matter of course*

*the revenue will be put to great loss because of the inordinate delay in the disposal of appeals by the Appellate Tribunals. It is needless to point out that the power of stay by the Tribunal is not likely to be exercised in a routine way or as a matter of course in view of the special nature of taxation and revenue. laws. It will only be when a strong prima facie case is made out that the Tribunal will consider whether to stay the recovery proceedings and on what conditions and the stay will be granted in most deserving and appropriate cases where the Tribunal is satisfied that the entire purpose of the appeal will be frustrated or rendered nugatory by allowing the recovery proceedings to continue during the pendency of the appeal."*

**27. *In Bharat Heavy Electricals Limited vs. The State of Karnataka,*** (2006) 147 STC 638, a Full bench of the Karnataka High Court extensively considered the scope of "inherent powers" of a Court. It would be advantageous to notice the relevant observations which read as under :-

*"8. This takes us to the question as to what is 'inherent power'. Words and Phrases. (Permanent Edition, volume 21 A, pages 16 and 17) defines inherent power as follows: "Jurisdiction" is conferred on Court by constitutions and statutes, whereas "inherent powers" of Court are those necessary to ordinary and efficient exercise of jurisdiction already conferred.... The "inherent powers" of a Court are such as result of the very nature of its organization and are essential to its existence and protection and to the due administration of justice, and the "inherent power" of a Court is the power to do all things that are reasonably necessary for administration of justice within scope of Court's jurisdiction. The "inherent powers" of a Court are an unexpressed quantity and undefinable term, and Courts have indulged in more or less loose explanations concerning it. It must necessarily be that the Court has inherent power to preserve its existence, and to fully protect itself in the orderly administration of its business. Its inherent power will not carry it beyond this.*

*That Courts possess certain "inherent powers" means that when the constitution declares that the legislative, judicial and executive powers shall remain separate, it thereby invests those officials charged with the duty of administering justice according to law with all necessary authority to efficiently and completely discharge those duties and to maintain the dignity and independence of the Courts.*

*9. xxxxxxxxxx*

*10. Therefore the Courts have the inherent power in addition to and complementary to the powers expressly conferred under a statute, to make incidental orders necessary to make the exercise of express power effective for the ends of justice. Inherent power does not create 'jurisdiction' nor increases the 'jurisdiction' of a Court. Inherent power merely enables the orderly and efficient exercise of the jurisdiction conferred on, or possessed by, the Court. When a statute specifies how a jurisdiction should be exercised or restricts the jurisdiction of a Court, the inherent power of the Court cannot be invoked either to expand the jurisdiction or alter the manner of exercise of jurisdiction. Consequently exercise of inherent power cannot in any way conflict with what has been expressly provided in a statute, nor go against the intention of the Legislature.*

*11. The Supreme Court in* ***Income Tax Officer vs. Mohammed Kunhi,*** *(1969) 71 ITR 815, considered the question whether power to grant stay of recovery,*

*pending an appeal, was incidental and ancillary to the power to hear and dispose of appeals. The question was considered with reference to Section 254 of Income Tax Act, 1961 which at the relevant point of time read thus:*

> *"The Appellate Tribunal may, after giving both the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit."*

*The Supreme Court quoted with approval the following passage from Maxwell on Interpretation of Statutes [XI Edition, page 350]:*

> *"Where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts or employing such means, as are essentially necessary to its execution."*

*The Supreme Court answered the question raised before it in the affirmative in* ***MOHAMMED KUNHI*** *(supra) on the following reasoning:*

> *"The argument advanced on behalf of the appellant before us that, in the absence of any express provisions in Sections 254 and 255 of the Act relating to stay of recovery during the pendency of an appeal, it must be held that no such power can he exercised by the Tribunal, suffers from a fundamental infirmity. The right of appeal is a substantive right and the questions of fact and law are at large and are open to review by the Appellate Tribunal. Indeed, the Tribunal has been given very wide powers under Section 254(1), for it may pass such orders as it thinks fit after giving full hearing to both the parties to the appeal. If the Income-tax Officer and the Appellate Assistant Commissioner have made assessments or imposed penalties raising very large demands and if the Appellate Tribunal is entirely helpless in the matter of stay of recovery, the entire purpose of the appeal can be defeated if ultimately the orders of the departmental authorities are set aside.... It is a firmly established rule that an express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective. The powers which have been conferred by Section 254 on the Appellate Tribunal with widest possible amplitude must carry with them by necessary implication all powers and duties incidental and necessary to make the exercise of those powers dully effective " (emphasis supplied)*

*12. In* ***COMMISSIONER OF INCOME TAX, DELHI v. BANSI DHAR*** *, (1986) 157 ITR 665 (SC), the Supreme Court considered whether the incidental or inherent power to grant stay in appellate jurisdiction will extend to reference jurisdiction also. It referred to the following passage from* ***HUKUM CHAND BOID v. KAMALANAND SINGH,*** *ILR 33 (1906) CAL 927 :*

> *"It may be added that the exercise by Courts, of what are called their inherent powers or "incidental powers' is familiar in other systems of law, and such exercise is justified on the ground that it is necessary to make its ordinary exercise of jurisdiction effectual, because, 'when jurisdiction has once attached, it continues necessarily and all the powers requisite to give it full and complete effect can be exercised, until the end of the law shall be attained. "*

*The Supreme Court explained the said observations in HUKUM CHAND thus:*

> *"These observations, however, will have to be understood in the context in which the same were made. If there was jurisdiction to do certain*

> *matters then all powers to make that jurisdiction effective must be implied to the authority unless expressly prohibited. But in references under the 1922 Act as well as the 1961 Act, the Courts merely exercised an advisory or consultative jurisdiction while the appeals are kept pending before the Tribunal. Therefore, nothing should be implied as detracting from the jurisdiction of the Tribunal. Power to grant stay is incidental and ancillary to the appellate jurisdiction. What was true of the appellate jurisdiction could not be predicated of the referential jurisdiction.*

*13. to 18. Xxxxxxxxx*

*19. The State expressed an apprehension that granting of stay will impede collection of tax. The answer is found in the case of MOHAMMED KUNHI where the Supreme Court observed;*

> *"A Certain apprehension may legitimately arise in the minds of the authorities administering the Act that, if the Appellate Tribunal proceeded to stay recovery of taxes or penalties payable by or imposed on the assessees as a matter of course, the revenue will be put to great loss because of the inordinate delay in the disposal of appeals by the Appellate Tribunal. It is needless to point out that the power of stay by the Tribunal is not likely to be exercised in a routine way or as a matter of course in view of the special nature of taxation and revenue laws. It will only be when a strong prima facie case is out that the Tribunal will consider whether to stay the recovery proceedings and on what conditions, and the stay will be granted in most deserving and appropriate cases where the Tribunal is satisfied that the entire purpose of the appeal will be frustrated or rendered nugatory by allowing the recovery proceedings to continue during the pendency of the appeal."*

*One another aspect may be noticed at this juncture. When the appeal is filed under Section 20, the assessee is required to pay the admitted tax in full. He may obtain a stay of the disputed tax subject to furnishing security to the satisfaction of the Appellate Authority in respect of the disputed tax. When he files a second appeal to the Tribunal, Section 22 provides for stay of 50% of the disputed tax on payment of 50% of the disputed tax. Thus, by the time the matter comes up before the High Court under Section 23, admitted tax would have been paid, 50% of the disputed tax would have been paid and remaining 50% of the disputed tax would be covered by adequate security. Further, the High Court will not grant stay in a routine way. It will grant stay only when a strong prima facie is made out. The High Court may also make the grant of stay subject to conditions in appropriate cases.*

*20. In view of the above, we answer the question as follows:*

> *"High Court has the power to grant stay during the pendency of a Revision Petition under Section 23 or appeal under Section 24 of the Karnataka Sales Tax Act, 1957.*
>
> *It is needless to say that the High Court shall exercise such power of stay only in appropriate cases, if need be, by imposing appropriate terms and conditions depending on the facts of the case."*

**28.** In ***ITC vs. Commissioner of Central Excise***, 2001 (127) ELT 338 Mad, the Madras High Court following the law laid down in **MohamadKunhi**'s case (supra) held as under:-

*"43. Even if there is no particular provision for grant of stay, it is by now well settled that the Appellate Authority who has got the power to set aside, modify or reverse the orders of the Original Authority has also the incidental power to grant stay of order appealed against. In this respect, it is useful to refer to the decision of the Apex Court in Income Tax Officer. Cannanore v. M.K. Mohammed Kunhi reported in AIR 1969 Supreme Court 430. The Apex Court held that the Tribunal has got power to grant stay as it is an incidental or ancillary to its appellate jurisdiction and also expressed a view that the appellate jurisdiction implies doing all such acts, or employing such means, as are essentially necessary to its execution and that the statutory power carries with it the duty in proper cases to make such orders for staying proceeding as will prevent the appeal if successful from being rendered nugatory.*

*44. Their Lordships of the Apex Court in this respect held thus :*

> *"Section 255(5) of the Act does empower the Appellate Tribunal to regulate its own procedure, but it is very doubtful if the power of stay can be spelt out from that provision. In our opinion the Appellate Tribunal must be held to have the power to grant stay as incidental or ancillary to its appellate jurisdiction. This is particularly so when Section 220(6) deals expressly with a situation when an appeal is pending before the Appellate Assistant Commissioner but the Act is silent in that behalf when an appeal is pending before the Appellate Tribunal. It could well be said that when Section 254 confers appellate jurisdiction, it impliedly grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution and that the statutory power carries with it the duty in proper cases to make such orders for staying proceeding as will prevent the appeal if successful from being rendered nugatory.*
>
> *A certain apprehension may legitimately arise in the minds of the authorities administering the Act that if the Appellate Tribunals proceed to stay recovery of taxes or penalties payable by or imposed on the assessees as a matter of course the Revenue will be put to great loss because of the inordinate delay in disposal of appeals by the Appellate Tribunals. It is needless to point out that the power of stay by the Tribunal is not likely to be exercised in a routine way or as a matter of course in view of the special nature of taxation and revenue laws. It will only be when a strong prima facie case is made out that the tribunal will consider whether to stay the recovery proceedings and on what conditions and the stay will be granted in most deserving and appropriate cases where the tribunal is satisfied that the entire purpose of the appeal will be frustrated or rendered nugatory by allowing the recovery proceedings to continue during the pendency of the appeal."*

**29.** In ***Debasish Moulik N. vs Dy. Commissioner Of Income Tax,*** (1998) 150 CTR Cal 387, the Calcutta High Court observed as under:-

> *"4. Admittedly an appeal has been preferred by the petitioner and the same is pending adjudication. The power to grant stay of collection of tax, as has been held in a decision of the Supreme Court in the case of ITO v. M.K. Mohammed Kunhi (1969) 71 ITR 815 (SC) is an inherent and incidental power of the appellate authority for the effective exercise of the appellate powers. The appellate authority, i.e., the Commissioner (Appeals), thus has an inherent*

*power to grant stay of collection of tax in appropriate cases. Merely because power has been conferred upon the assessing authority under section 220(6) of the Income Tax Act to treat an assessee as not in default, the same will not in any way militate against the power of the appellate authority to grant stay. I am fortified by a judgment of the Kerala High Court in the case of V.N. Purushothaman v. Agrl. ITO (1984) 149 ITR 120 (Ker) and also by the judgment of the Allahabad High Court in the case of Prem Prakash Tripathi v. CIT (1994) 208 ITR 461 (All).*

*5. The appellate authority before whom the appeal is pending has the power to grant stay of the demand impugned in the appeal pending before him. It is appropriate that the petitioner-assessee should be relegated to availing of the said remedy before invoking the jurisdiction of this court under article 226 of the Constitution of India. I cannot accede to the contention of learned counsel for the petitioner that the petitioner has no other efficacious remedy except invoking the jurisdiction of this court in the light of the judgments of the Allahabad High Court and the Kerala High Court referred to above, which, in turn, are based upon the Supreme Court judgment in* ***M.K. Mohammed Kunhis*** *case (Supra)*

*5. The appellate authority before whom the appeal is pending has the power to grant stay of the demand impugned in the appeal pending before him. It is appropriate that the petitioner-assessee should be relegated to availing of the said remedy before invoking the jurisdiction of this court under article 226 of the Constitution of India. I cannot accede to the contention of learned counsel for the petitioner that the petitioner has no other efficacious remedy except invoking the jurisdiction of this court in the light of the judgments of the Allahabad High Court and the Kerala High Court referred to above, which, in turn, are based upon the Supreme Court judgment in* ***M.K. Mohammed Kunhis*** *case (Supra)."*

**30.** Adverting to the second facet of the argument as to whether a statute is mandatory or directory, the same depends upon the intent of the legislature and not upon the language in which the intent is clothed. The issue has been considered by a Full Bench of this Court ***in CIT vs. Punjab Financial Corporation***, (2002) 254 ITR 6 wherein it was noticed that the meaning and intention of the legislature must govern and these are to be ascertained not only from the phraseology of the provision but also by considering its nature, design and the consequences which would follow from construing it one way or the other. The use of the word "shall" in a statutory provision, though generally taken in a mandatory sense does not necessarily mean that in every case it shall have that effect, that is to say, unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceeding would be invalid. On the other hand, it is not always correct to say that where the word "may" has been used, the statute is only permissive or directory in the sense that non compliance with those provisions will not render the proceedings invalid. The relevant portion reads thus:-

*"6. Before proceeding further, we may notice some of the principles of interpretation of the statutes. These are :*

*(1) The question as to whether a statute is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed. The meaning and intention of the Legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow*

*from construing it one way or the other--Crawford on Statutory Construction (Edition 1940, art. 261, page 516).*

*(2) The use of the word "shall" in a statutory provision, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect, that is to say, that unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceeding, would be invalid. On the other hand, it is not always correct to say that where the word "may" has been used, the statute is only permissible or directory in the sense that non-compliance with those provisions will not render the proceedings invalid--State of U. P. v. Manbodhan Lal Srivastava, AIR 1957 SC 912 (headnote).*

*(3) All the parts of a statute or sections must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction put to be on a particular provision makes consistent enactment of the whole statute. This would be more so if a literal construction of a particular clause leads to manifestly absurd and anomalous results which could not have been intended by the Legislature.*

*(4) The principle that a fiscal statute should be construed strictly is applicable only to taxing provisions such as a charging provision or a provision imposing penalty and not to those parts of the statute which contain machinery provisions--CIT v. National Taj Traders [1980] 121 ITR 535 (SC) (headnote)."*

**31.** In ***P.T.Rajan vs. TPMSahir and others***, (2003) 8 SCC 498, it was recorded as under:-

*"45. A statute as is well known must be read in the text and context thereof. Whether a statute is directory or mandatory would not be dependent on the user of the words "shall" and "may". Such a question must be posed and answered having regard to the purpose and object it seeks to achieve."*

Reference may be made to quoting from ***Domat's Civil Law Cushing's*** Edition, Volume I at page 88 as under:-

*"It is the duty of the judges to apply the laws, not only to what appears to be regulated by their express dispositions, but to all the cases where a just application of them may be made, and which appear to be comprehended either within the consequences that may be gathered from it".*

Further relying on the maxim "Cui jurisdiction date est, ea quoque concessa essee videntur, sinequibus jurisdictio explicari non potuit, which means 'where an inferior court is empowered to grant an injunction, the power of pushing disobedience to it by commitment is impliedly conveyed by the enactment, for the power would be useless if it could not be enforced. In ***Principles of Statutory Interpretation by Justice G.P.Singh*** (12th Edition, 2010), the learned author has stated as under:-

*"In selecting out of different interpretations 'the court will adopt that which is just, reasonable and sensible rather than that which is none of those things' ...A construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system which the statute purports to regulate has to be rejected and preference should be given to that construction which avoids such results."*

**32.** Before we record our conclusion on question No.(c), noticed hereinbefore, it would also be apposite to refer to a five Judges Full Bench of this Court in ***Ranjit Singh vs. State of Haryana and others***, (2012) 2 RCR (Civil) 353 to which one of us (Ajay Kumar Mittal,J.) was

a member which was dealing with similar provision i.e. Section 13B of the Punjab Village Common Lands (Regulation) 1961 wherein entertainment of appeal was subject to deposit of amount of penalty imposed under sub section (2) of Section 7 of the said Act with the Collector. This court after considering the entire case law on the point and by reading down the provision held that Section 13B of the said Act would be read down to incorporate within it the power in appellate authority to grant interim relief in an appropriate case by passing a speaking order even while normally insistence may be made on pre-deposit of the penalty. In such a case, the appellate authority would have to give reasons for granting interim relief of stay.

**33.** It is, thus, concluded that even when no express power has been conferred on the first appellate authority to pass an order of interim injunction/protection, in our opinion, by necessary implication and intendment in view of various pronouncements and legal proposition expounded above and in the interest of justice, it would essentially be held that the power to grant interim injunction/protection is embedded in Section 62(5) of the PVAT Act. Instead of rushing to the High Court under Article 226 of the Constitution of India, the grievance can be remedied at the stage of first appellate authority. As a sequel, it would follow that the provisions of Section 62(5) of the PVAT Act are directory in nature meaning thereby that the first appellate authority is empowered to partially or completely waive the condition of pre-deposit contained therein in the given facts and circumstances. It is not to be exercised in a routine way or as a matter of course in view of the special nature of taxation and revenue laws. Only when a strong prima facie case is made out will the first appellate authority consider whether to grant interim protection/injunction or not. Partial or complete waiver will be granted only in deserving and appropriate cases where the first appellate authority is satisfied that the entire purpose of the appeal will be frustrated or rendered nugatory by allowing the condition of pre-deposit to continue as a condition precedent to the hearing of the appeal before it. Therefore, the power to grant interim protection/injunction by the first appellate authority in appropriate cases in case of undue hardship is legal and valid. As a result, question (c) posed is answered accordingly.

**34.** In some of the petitions, the petitioners had filed an appeal without filing an application for interim injunction/protection which are still pending whereas in other petitions, the first appellate authority had dismissed the appeal for want of pre-deposit and further appeal has also been dismissed by the Tribunal on the same ground without touching the merits of the controversy. Where the appeals are pending without an application for interim injunction/protection before the first appellate authority, the petitioner may file an application for interim injunction/protection before the appeals are taken up for hearing by first appellate authority and in case such an application is filed, the same shall be decided by the said authority keeping in view all the legal principles enunciated hereinbefore. The other cases where the first appellate authority had dismissed the appeal for want of pre-deposit without touching merits of the controversy or further appeal has been dismissed by the Tribunal, the said orders are set aside and the matter is remitted to the first appellate authority where the petitioners may file an application for interim injunction/protection before the appeals are taken up for hearing by the first appellate authority who shall adjudicate the application for grant of interim injunction/protection to the petitioner in the light of the observations made above. All the cases stand disposed of in the above terms.

———

SGA
LAW OFFICES

# SUPREME COURT OF INDIA

**CIVIL APPEAL NO. 1829 OF 2008**

Go to Index Page

**COMMISSIONER OF CENTRAL EXCISE, PUNE**
**Vs**
**HINDUSTAN NATIONAL GLASS AND INDUSTRIES LIMITED**

**DIPAK MISRA AND N.V. RAMANA, JJ.**

14th January, 2016

**HF ▶ None / Remand**

*Onus is on the revenue to prove that 'advance consideration' received by manufacturing seller is a consideration towards lowering of sale price thereby resulting in depressed assessable value of goods.*

**EXCISE DUTY – ADVANCE CONSIDERATION – DEPRESSION OF SALE PRICE – BURDEN OF PROOF – ADVANCED CONSIDERATION RECEIVED FROM PURCHASING COMPANIES FOR SALE OF GLASS BOTTLES BY MANUFACTURER – DEMAND RAISED FOR SHORT PAYMENT OF DUTY AS A RESULT OF DEPRESSION IN SALE PRICE (ASSESSABLE VALUE OF GOODS) THERE BEING NO ADDING OF NOTIONAL INTEREST ACCRUING THEREON TO SALE PRICE -PENALTY LEVIED – ORDER REVERSED BY TRIBUNAL HOLDING THAT NO EVIDENCE PRODUCED BY REVENUE SHOWING ADVANCE CONSIDERATION ACTUALLY RESULTED IN DEPRESSED SALE PRICE – APPEAL BEFORE SUPREME COURT – HELD: ONUS IS ON REVENUE TO PROVE THAT THERE IS A LINK BETWEEN MONEY ADVANCED AND IT BEING CONSIDERATION FOR LOWERING SALE PRICE – MATTER REMITTED TO TRIBUNAL TO DECIDE AFRESH IN THE LIGHT OF OBSERVATIONS MADE – APPEAL ACCEPTED -** *S 11A AND 11 AC OF CENTRAL EXCISE ACT, 1944*

***Facts***

*The appellant was engaged in manufacturing of glass bottles. It had received additional consideration from its customers in the form of advance for their purchases. It was alleged that the notional interest that had accrued thereon was to be added to the sale price and that non addition by the manufacturer resulted in depression of assessable value of the goods. Therefore, a notice was issued in this regard for short payment of duty by undervaluing the same at the time of clearance. A demand was raised u/s 11A of Central Excise Act, 1944 being the duty payable on additional consideration. Penalty was also imposed u/s 11 AC of the Act. On appeal before Tribunal, it was held by the technical member that the revenue had not been able to discharge the onus by adducing cogent material evidence that the advances obtained from a buyer had really been instrumental in depression of the price. It was also opined that there was no nexus of interest with the price and no demand or penalty was acceptable. However, the judicial member had opined that in view of Hero Honda motors ltd. case, the matter needs to be remitted for fresh decision. The third member concurred with the technical member's decision. Thus, an appeal is filed before the Supreme Court by the revenue.*

***Held:***

1) *There has to be a connect and link between money advanced and that it was consideration for lowering of sale price. The Tribunal has to apply its mind regarding the money advanced by the companies for purchase and its effect of sales made to the purchasing companies in percentile terms, whether it had any effect of depressing the sale price. Liberty is granted to revenue to produce the documents in this regard to discharge the onus.*

2) *The submission of respondent assessee that as the entire activity was well within the knowledge of the department, penalty should be deleted has to be taken in to account by Tribunal.*

3) *Appeal is allowed and the matter is remitted to Tribunal for fresh disposal keeping the observation made in this case.*

**Present:** For Appellant(s): Mr. Yashank Adhyaru, Sr. Adv.
Ms. Nisha Bagchi, Adv.
Mr. A.K. Srivastava, Adv.
Ms. Pooja Sharma, Adv.
Mr. B. Krishna Prasad, AOR

For Respondent(s) Mr. Aarohi Bhalla, Adv.
Mr. Ankit Singh, Adv.
Ms. Sujata Kurdukar, AOR

***Case referred:***

- *Commissioner of Central Excise, New Delhi vs. Hero Honda Motors Ltd. (2005) 4 SCC 182*
- *Metal Box India Ltd. vs. Collector of Central Excise, Madras (1995) 2 SCC 90*

******

**DIPAK MISRA, J.**

**1.** A show cause notice under F. No. Prev/CEX/AEI/OBL/ 141/99/797 dated 16th August, 2002, was issued to M/s. Owens Brockway (I) Pvt. Ltd., the predecessor-company of the respondent which is presently known as Hindustan National Glass and Industries Limited, by the Commissioner of Central Excise, Pune-I, alleging that the manufacturing company was not adding the additional consideration received from the customers in the form of advance and, therefore, the notional interest accrued thereon is to be added to the sale price, for such non-addition had resulted in depression of the assessable value of the goods, namely, the bottles manufactured by the respondent-assessee.

**2.** In the show cause notice, it was mentioned that the assessee had short paid the duty on its products, that is, printed glass bottles, by under-valuing the same at the time of clearance from its factory inasmuch as it did not add "additional consideration" received from M/s. Coca Cola India and M/s. Pepsico India Holdings Pvt. Ltd. The show cause notice referred to the statement of the Manager (Sales) of the Company from which it was discernible that the respondent-assessee had received 90% advance from M/s. Coca Cola India and 100% advance from M/s. Pepsico India Holdings Pvt. Ltd. for the goods and it was giving 3-4% discount to the said Companies.

**3.** After the reply to the show cause was received, the adjudicating authority passed an order on 28th November, 2003, making a demand of Rs. 33,91,934,00/- under Section 11A(1) of the Central Excise Act, 1944 (for short "the Act") being the duty payable on the additional consideration received by the assessee from the customers in the form of notional interest

accrued on advance payments and also imposed penalty for the same amount under Section 11AC of the Act. Apart from that, the adjudicating authority confirmed certain other demands.

**4.** Being grieved by the aforesaid order of the adjudicating authority, the respondent-assessee preferred an appeal before the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Mumbai (for short, 'the tribunal'). Initially, the matter was heard by two Members consisting of Member (Judicial) and Member (Technical). The Member (Technical) came to hold that the revenue had not been able to discharge the onus by adducing cogent material evidence that the advances obtained from a buyer had really been instrumental in depression of the price. Learned Member further opined that there was no nexus of interest with the price and hence, the demand was not acceptable and consequently, no penalty could be levied.

**5.** The Member (Judicial) adverted to the order passed by the Commissioner wherein the statement of the Manager (Sales) had been adumbrated in detail, referred to the other documents that had been put-forth by the revenue before the adjudicating authority and in course of discussion adverted to the principle stated in Commissioner of Central Excise, New Delhi vs. Hero Honda Motors Ltd. (2005) 4 SCC 182 and opined as follows:

> *"In view of the above decision, I am of the opinion that the matter needs to be remanded to the Commissioner for fresh examination in the light of the observation made by the Hon'ble Supreme Court in the case of Hero Honda Motors Ltd. vs. CCE referred supra and after examining the entire aspect of the use of the advances, income generated from the said advances, their contribution of the pricing structure and their reflection in the Balance- sheet or the Annual Reports of the appellants, and the deployment of the funds so received by them, as I agree with the learned brother Shri Sekhon that onus to prove so is on the Revenue. However, the appellants would be at liberty to produce relevant evidences before the adjudicating authority in support of their contention that the interest accrued on such advances have not in any way resulted in depreciation of the price. All other issues are left open for the appellants to address before the adjudicating authority."*

**6.** As there was difference of opinion, the matter was referred to the third Member and the third Member, who was a Judicial Member, vide order dated 29th August, 2007, cogitated on the concept of assessable value under the Act, the concept of two prices and eventually opined that the decisions in Hero Honda Motors Ltd. (supra) and Metal Box India Ltd. vs. Collector of Central Excise, Madras (1995) 2 SCC 90 are not applicable to the case at hand and accordingly concurred with the opinion expressed by the Member (Technical). Hence, the revenue is before this Court in appeal.

**7.** We have heard Mr. Yashank Adhyaru, learned senior counsel for the appellant-revenue and Mr. Aarohi Bhalla, learned counsel for the respondent-assessee.

**8.** On a scrutiny of the factual score, it is noticeable that the respondent-assessee had obtained certain advance sums from some companies/users to supply the bottles and on that count it had granted 3-4 per cent discount. Though the quantum had not been stated precisely, yet it has been found as a matter of fact that M/s. Coca Cola India and M/s. Pepsico India Holdings Pvt. Ltd. had given advances for 90% and 100% respectively for their purchases.

**9.** In Metal Box India Ltd. (supra), the Court while dealing with the transaction between the appellant therein and M/s. Ponds (I) Ltd., who was a whole-sale buyer of the appellant's goods, had accepted the view of the tribunal and expressed thus:

> *"On the facts on record, therefore, it must be held that the Tribunal was perfectly justified in taking the view that charging a separate price for the metal*

*containers supplied to M/s Ponds (I) Limited could not stand justified under Section 4(1)(a) proviso and, therefore, to that separate price charged from the Ponds (I) Limited, the extent of benefit obtained by the assessee on interest-free loan was required to be reloaded by hiking the price charged from M/s. Ponds (I) Limited to that extent. Contention 2 also, therefore, fails and is rejected."*

**10.** In Hero Honda Motors Ltd. (supra), the question that arose for determination is whether receipt of advance and the income accruing thereon, had gone towards the depreciation of the sale price. In that context, the Court opined that there is conspectus of decisions which clearly establish that inclusion of notional interest in the assessable value or wholesale price will depend upon the facts of each case. The three-Judge Bench adverted to the facts of the case, the agreement existing between the parties and the lower price at which the respondent-assessee therein had sold the motor-cycles and after analysing the factual matrix opined as follows:

*"For the above reasons, we hold that the tribunal has disposed of the appeal before it in a most perfunctory manner without going into any figures at all but by merely on the statement made by counsel and on the basis of material which appears to have been produced first time before the tribunal. We, therefore, set aside the order of the tribunal and remand the matter back to the tribunal. The tribunal will consider in detail, if necessary, by taking the help of a Cost Accountant and after looking into the accounts of the respondent whether or not the advances or any part thereof have been used in the working capital and whether or not the advances received by the respondent and/or the interest earned thereon have been used in the working capital and/or whether it has the effect of reducing the price of the motorcycle. The tribunal to so decide on the material which was placed before the Commissioner and not to allow any additional documents/materials to be filed before it. None of our observations made herein shall bind the tribunal to which this case is remitted."*

**11.** In the case at hand, the Member (Judicial) has remitted the matter to the competent authority to deal with it afresh in the light of the decision rendered in Hero Honda Motors Ltd. (supra).

**12.** Mr. Aarohi Bhalla, learned counsel for the respondent-assessee would submit that when no evidence was adduced by the revenue at any point of time and the law is settled that the onus is on the revenue to establish that there has been depression of assessable value, the majority view of the tribunal cannot be found fault with.

**13.** Mr. Yashank Adhyaru, learned senior counsel appearing for the appellant-revenue would submit that the documents were produced before the adjudicating authority as well as the tribunal to show the nature of advance and the manner of transaction from which it is demonstrable that there has been depression of the assessable value.

**14.** On a perusal of the order passed by the Commissioner, it is seen that observations have been made on certain aspects and inferences have been drawn. It cannot be said that no material was produced by the revenue. The concerned Commissioner has taken note of the statement made by the Manager (Sales) of the assessee-Company. An aspect raised relates to percentage of total sales made to two companies, but the core issue is whether there was a depression of the sale price on account of receipt of advance. In the case of Metal Box India Ltd. (supra), the facts were extremely clear as there was an agreement that M/s. Ponds (I) Ltd. had given 50% advance with a stipulation that it would purchase 90% of the manufactured goods. It was a case where a separate price was charged. In the case of Hero Honda Motors Ltd. (supra), the facts, as we perceive, were not clear and, therefore, there was a remit. Be it noted, sale price agreed between two competing parties may get depressed, when substantial

and huge advances are periodically extended and given with the objective and purpose that the sale price paid or charged would be lowered, to set off the consideration paid by grant of advances. There should be a connect and link between the two i.e. the money advanced it should be established was a consideration paid which could form the basis for depression of sale price. Evidence and material to establish the said factual matrix has to be uncovered and brought on record to connect and link the sale price paid on paper and the "other" consideration, not gratis, but by way of interest free advances.

**15.** In our considered opinion, in the present case, there has to be application of mind by the tribunal regard being had to the amount of money paid by purchasers, namely, M/s. Coca Cola India and M/s. Pepsico India Holdings Pvt. Ltd. and what is the effect of the sales made to the two companies in percentile terms, whether this had the effect of depressing the sale price. The onus would be on the revenue. That being the thrust of the matter, liberty is granted to the revenue to produce the documents in this regard to discharge the onus. As we are remitting the matter, we may note one submission of the respondent-assessee. It is urged by the learned counsel that when the entire activities were within the knowledge of the excise authorities, penalty is not leviable. Needless to emphasize, the tribunal shall advert to the said submission, if required, in the ultimate eventuate, in proper perspective.

**16.** In the result, the appeal is allowed, the order passed by the tribunal is set aside and the matter is remitted to the tribunal for fresh disposal keeping in view the observations made herein-above. We may hasten to clarify that we have not expressed any opinion on any of the aspects.

There shall be no order as to costs.

# SUPREME COURT OF INDIA

**CIVIL APPEAL NO. 2446 OF 2007**

Go to Index Page

**COMMISSIONER OF COMMERCIAL TAXES, THIRUVANANTHAPURAM, KERALA**

**Vs**

**K.T.C. AUTOMOBILES**

**DIPAK MISRA AND N.V. RAMANA, JJ.**

29th January, 2016

**HF ▶ Assessee**

*Sale of Motor vehicles takes place only after the registration of vehicle by Registering Authority*

**SALE – MOTOR VEHICLES – TRANSFER OF PROPERTY IN THE GOODS – ASCERTAINED AND UNASCERTAINED GOODS – DEALER HAVING SALES OFFICES IN KERALA AND PONDICHERRY – INSPECTION MADE BY KERALA INTELLIGENCE OFFICER – ORDER PASSED HOLDING 263 VEHICLES REGISTERED AT MAHE WERE ACTUALLY SOLD IN KERALA AND TAX WRONGLY PAID IN PONDICHERRY – HIGH COURT ALLOWED APPEAL OF ASSESSEE - ON APPEAL BY REVENUE BEFORE SUPREME COURT – MOTOR VEHICLES ARE NOT APPROPRIATED AS ASCERTAINED GOODS TO CONTRACT UNLESS REGISTRATION IS OBTAINED FROM THE REGISTERING AUTHORITY – PROPERTY IN THE GOODS GETS TRANSFERRED ONLY AFTER A VEHICLE GETS REGISTERED IN THE NAME OF INTENDING PURCHASER – TILL SUCH TIME THE DEALER CONTINUES TO BE LAWFUL OWNER OF THE VEHICLE – HELD, SINCE REGISTRATION OF VEHICLES WAS IN PONDICHERRY, THE SALE WOULD BE DEEMED TO HAVE BEEN COMPLETED IN PONDICHERRY ONLY – REVENUE APPEAL DISMISSED.** *ARTICLE 286(2) OF CONSTITTION OF INDIA, SECTION 4(2) OF CENTRAL SALES TAX ACT, 1956, SECTIONS 4, 19 & 21 OF SALE OF GOODS ACT, 1930, MOTOR VEHICLES ACT, 1988, CENTRAL MOTOR VEHICLE RULES, 1930.*

*The respondent-assessee was a dealer of cars having sale offices at Kozhikode (Kerala) and Mahe (UT of Pondicherry). For the year 1999-2000, an inspection was carried out by Intelligence Officer, IB, Kozhikode (Kerala) and observed that respondent dealer had wrongly shown 263 number of cars as sold from its Mahe branch, wrongly arranged for registration under Motor Vehicles Act at Mahe and wrongly collected and remitted tax for those transactions under the provisions of Pondicherry Sales Tax Act. In the proceedings relating to penalty, it was concluded that since the sales were concluded at Kozhikode (Kerala) and hence the vehicles should have been registered within the State of Kerala and the dealer has evaded payment of tax during the relevant period.*

*Appeal filed by the dealer against said order was allowed by Deputy Commissioner, which was taken up in suo motu revisional proceedings and the appellate order was set aside restoring the original order of penalty passed by Intelligence Officer. Appeal filed against said order*

*before the High Court was allowed against which Revenue filed appeal before the Supreme Court.*

***Held:***

*Under the Motor Vehicles Act, 1988 and the Central Motor Vehicle Rules, 1989, the dealer cannot permit the purchaser to use the motor vehicle and thus enjoy its possession unless and until a temporary or permanent Registration is obtained by him. Only thereafter the vehicle can safely be said to be no more under possession of the dealer. Merely mentioning of Engine No. and Chassis No. of motor vehicle in the Invoice of sale does not entitle the intending purchaser to appropriate the goods i.e. motor vehicle till its possession can be handed over to him by the dealer without violating the statutory provisions governing Motor vehicles. Such transfer of possession can taken place only when the vehicle reaches the place where the registering authority will be obliged to inspect for the purpose of finding out whether it is a roadworthy and registerable motor vehicle and whether its identification marks tally with those given in the sale invoice and the application for registration. Law prohibits use of the motor vehicle by the owner until it is duly registered by the Registering Authority. With the handing over of possession of a specific motor vehicle just prior to registration, the dealer completes the agreement of sale rendering it a perfect sale. Purchaser as an "owner" under the Motor Vehicle Act is thereafter obliged to obtain Certificate of Registration which alone entitles him to enjoy the possession of the vehicle in practical terms.*

*Hence, technically though the registration of a motor vehicle is a post-sale event, the event of sale is closely linked in time with the event of registration. Thus seen, in practical terms, though sale precedes the event of registration, in normal circumstances and as the law stands, it is co-terminus with registration of a new motor vehicle. On account of statutory provisions governing motor vehicles, the intending owner or buyer of a motor vehicle cannot ascertain the particulars of the vehicle for appropriating it to the contract of sale till its possession is handed over to him after observing the requirements of Motor Vehicles Act and Rules. Such possession can be given only at the Registering office immediately preceding the registration.*

*Apropos the above, there can be no difficulty in holding that a motor vehicle remains in the category of unascertained or future goods till its appropriation to the amount of sale by the seller is occasioned by handing over its possession at or near the office of Registering Authority in a deliverable and registrable state.*

*In the light of legal formalities, the motor vehicles in question could come into the category of ascertained goods and could get appropriated to the contract of sale at the registration office at Mahe (Pondicherry) where admittedly all were registered in accordance with Motor Vehicles Act and Rules. The allegations and facts made or noted by the Intelligence Officer no doubt create some doubts but they do not lead to a conclusive inference that the sales under controversy had taken place at Kozhikode (Kerala). To the contrary in view of propositions of law discussed hereinbefore, the judgment of High Court gets reinforced and deserves affirmation. Revenue appeal is accordingly dismissed.*

**Present:** For Appellant(s): Mr. K. Radhakrishnan, Sr. Adv.
Ms. Liz Mathew,Adv.
Mr. Malavira Prabadan, Adv.
Mr. M.F. Philip,Adv.
For Respondent(s): Mr. K. Parasaran, Sr. Adv.
Mr. A. Raghunath,Adv. AOR
Mr. B.G. Bhaskar, Adv.
Ms. Aditi Dani, Adv.

******

**SHIVA KIRTI SINGH, J.**

**1.** The Commissioner of Commercial Taxes, Thiruvananthapuram, Kerala has preferred this appeal against judgment and order dated 20.3.2006 passed by the High Court of Kerala in MFA No. 1000 of 2002. The High Court exercising an appellate power allowed the appeal filed by M/s K.T.C. Automobiles, the respondent herein and set aside the original order passed by the Intelligence Officer under Section 45A of the Kerala General Sales Tax Act (for brevity 'KGST Act') imposing a penalty of Rs.86 lakhs upon the respondent dealer for the alleged non-maintenance of complete and true accounts during the period 1.4.1999 to 31.3.2000. The High Court also set aside the suo-motu order of Commissioner of Commercial Taxes dated 12.8.2002 passed under section 37 of the KGST Act whereby the Commissioner had set aside appellate order of the Deputy Commissioner dated 8.1.2002 and had restored the order of the Intelligence Officer.

**2.** The undisputed facts disclose that the respondent is in the business of purchase and sale of Hyundai cars manufactured by Hyundai Motors Limited, Chennai. As a dealer of said cars, both at Kozhikode (Calicut), Kerala where their head office is located and also at Mahe within the Union Territory of Pondicherry where they have a branch office, they are registered dealer and an assessee under the KGST Act, the Pondicherry Sales Tax Act as well as the Central Sales Tax Act. The dispute relates to assessment year 1999-2000. Its genesis is ingrained in the inspection of head office of the respondent on 1.6.2000 by the Intelligence Officer, IB, Kozhikode. After obtaining office copies of the sale invoices of M/s K.T.C. Automobiles, Mahe (branch office) for the relevant period as well as some additional period and also cash receipt books, cash book etc. maintained in the head office, he issued a show cause notice dated 10.8.2000 proposing to levy Rs.1 crore by way of penalty under Section 45A by the KGST Act on the alleged premise that the respondent had wrongly shown 263 number of cars as sold from its Mahe Branch, wrongly arranged for registration under the Motor Vehicles Act at Mahe and wrongly collected and remitted tax for those transactions under the provisions of Pondicherry Sales Tax Act. According to the Intelligence Officer, the sales were concluded at Kozhikode and hence the vehicles should have been registered within the State of Kerala. Therefore, by showing the sales at Mahe the respondent had failed to maintain true and complete accounts as an assessee under the KGST Act and had evaded payment of tax to the tune of Rs.86 lakhs and odd during the relevant period. The respondent submitted a detailed reply and denied the allegations and raised various objections to the proposed levy of penalty. The Intelligence Officer by his order dated 30.3.2001 stuck to his views in the show cause notice but instead of Rs.1 crore, he imposed a penalty of Rs.86 lakhs only.

**3.** The respondent appealed against that order. Their appeal was allowed by the Deputy Commissioner by a detailed order dated 8.1.2002 which has been noted and examined with meticulous care by the High Court in paragraphs 9 to 11 of the impugned judgment and later approved. Against the appellate order in favour of assessee, the Commissioner of Commercial Taxes initiated a suo-motu proceeding in exercise of power under Section 37 of the KGST Act and passed a final order on 12.8.2002 setting aside the appellate order and restoring the original order of penalty passed by the Intelligence officer. Against this suo-motu order the respondent preferred Miscellaneous First Appeal before the High Court of Kerala which was numbered as MFA No. 1000 of 2002 and ultimately allowed by the impugned order dated 20.3.2006.

**4.** Mr. K. Radhakrishnan, learned senior advocate for the appellant made detailed oral submissions on facts as well as law. The same has been supplemented by way of written submissions also. The submission on behalf of appellant is that the order imposing penalty is based upon proper appreciation of all the facts and circumstances noted by the Intelligence Officer in the show cause notice as well as in his final order. According to submissions, there was no other conclusion possible except to hold that the respondent dealer had created

colorable device to evade sales tax in Kerala by adopting questionable means such as providing incorrect addresses of buyers for the purpose of facilitating registration of the motor vehicles at Mahe. According to Mr. Radhkrishnan, the sales transactions stood concluded in Kozhikode, Kerala and hence the respondent should not have given any facilities to residents of Kerala in getting motor vehicles registered at Mahe. By adoption of such means, the respondent had derived advantage of paying sales tax in Pondicherry where the rate was lower and evaded payment of lawful tax under the KGST Act in Kerala.

**5.** To elaborate and support the aforesaid factual stance, the learned senior counsel has highlighted some facts which have been duly noticed by the authorities under the KGST Act as well as the High Court. He highlighted that in the "customer booking registration and necessary fitting instructions" issued from main office at Kozhikode the respondent gave an unwarranted option to the customers of registering the vehicle at Mahe. It was contended on behalf of appellant that such option was not for lawful purposes of promoting sales at Mahe but an offer to facilitate registration of cars at Mahe against the provisions of Motor Vehicles Act and the Rules which require registration at the place of residence or place of business of the owner of the vehicle. Some allegations were highlighted to contend that in some purchase orders the buyers had given Kerala addresses but the respondent as a dealer raised sale invoices showing Mahe addresses which were fictitious. This was alleged to be a deliberate act on the part of dealer to escape tax liability in Kerala. It was also highlighted that same cash receipt book in the head office at Kozhikode was at times used for issuance of cash receipts for transactions where the sale and registration was shown at Mahe. Letters of few buyers allegedly supported the allegation that sometimes even the delivery of the vehicle was given at Kozhikode although it was registered at Mahe.

**6.** A legal issue was raised on behalf of the appellant that as per Explanation under Section 45 of the KGST Act, the burden is on the assessee to show that penalty is not liable to be imposed on him. It is submitted that the respondent had failed to discharge such burden imposed by law. Reliance was placed upon Sections 39 and 40 of the Motor Vehicles Act along with Rules 46 and 47 of the Rules framed under the said Act, in support of the contention that in law the obligation to register a motor vehicle is on the owner and that necessarily implies that registration under the Motor Vehicles Act is a post-sale event. In support of this proposition reliance was placed upon a judgment of Bombay High Court in the case of **Additional Commissioner of Sales Tax v. Sehgal Autoriders Pvt. Ltd.**, 2011 SCC OnLine Bom 872 = 43 VST 398 (Bom) and also upon a judgment of this Court in **Association of Registration Plates v. Union of India**, (2004) 5 SCC 364. Paragraph 28 of this judgment is as follows:

> *"28. Section 2(21-A) defines "manufacturer' and it means a person who is engaged in the manufacture of motor vehicles. Section 2(28) defines "motor vehicles" or "vehicle" and it means any mechanically propelled vehicle adapted for sue upon roads. A motor vehicle manufactured by a manufacturer is sold without a registration plate. Thereafter the dealer sells the motor vehicle to a customer again without the registration plate. This position will be clear from the proviso to Section 39 of the Act which says that nothing in the section shall apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government. Section 41 also points to the same position as it enjoins an application on behalf of the owner of a motor vehicle for its registration. The question of issuing a certificate of registration and assigning it a registration mark arises only after sale of a motor vehicle. Therefore, until the motor vehicle has been sold to a person by a dealer, the registering authority would not come into the picture and there is no occasion for assigning it a registration mark....."*

**7.** The aforesaid issue need not detain us any further in view of cited judgments and combined reading of Section 39 and 41 of the Motor Vehicles Act, 1988. Section 41 in particular leaves no manner of doubt that application for registration of a motor vehicle is required to be made by or on behalf of the owner in the prescribed form along with prescribed fee within a specified period. The registering authority after being satisfied with all statutory compliances, has a corresponding duty to issue a certificate of registration in the form prescribed by the Central Government. But even after accepting the proposition that registration of a motor vehicle is a post-sale event, the question as to when the property in

a motor vehicle actually passes to the buyer remains to be examined in the light of provisions of Motor Vehicles Act and the Rules framed there under as well as the other relevant provisions of law. According to submissions advanced on behalf of appellant, for deciding the issue as to when and where sale takes place in respect of motor vehicle bought by a buyer from a dealer, the relevant provisions of law are in Article 286(2) of the Constitution of India, Section 4(2) Central Sales Tax Act, 1956 and Sections 4, 19 and 20 of the Sale of Goods Act, 1930. For the sake of clarity those provisions are extracted below:

> **"Article 286(2) of the Constitution of India –** Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1)."
>
> **"Section 4(2) Central Sales Tax Act, 1956** – A sale or purchase of goods shall be deemed to take place inside a State, if the goods are within the State –
>
> (a) in the case of specific or ascertained goods, at the time the contract of sale is made; and
>
> (b) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller or by the buyer, whether assent of the other party is prior or subsequent to such appropriation.
>
> **"Sale of Goods Act, 1930-**
>
> **Section 4 - Sale and agreement to sell**
>
> (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.
>
> (2) A contract of sale may be absolute or conditional.
>
> (3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.
>
> (4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.
>
> **Section 19 - Property passes when intended to pass**
>
> (1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.
>
> (2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

(3) Unless a different intention appears, the Rules contained in sections 20 to 24 are Rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

**Section 20 - Specific goods in a deliverable state**

Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed."

**8.** Before evaluating the impact of aforesaid legal provisions relied upon on behalf of the appellant, it would be appropriate to notice the arguments advanced and the stand adopted by Mr. K. Prasaran, learned senior advocate for the respondent. According to him, the situs of first sale of a motor vehicle by a dealer is only at the place of registration of the vehicle by the authority empowered to register motor vehicles under Chapter IV of the Motor Vehicles Act. This submission is founded upon a hypothesis that until the vehicle is registered in accordance with the provisions in Chapter IV of the Motor Vehicles Act read with the Central Motor Vehicles Rules, it continues to have the character of an unascertained good. In other words, till the engine number, chassis number is ascertained by the registering authority on physical verification of the vehicle and entered into the prescribed form for showing registration, the vehicle cannot be identified as one belonging to the purchaser. Only upon valid registration, as per submissions, the vehicle is appropriated to the purchaser. In support of this proposition, Mr. Prasaran also referred to Section 4 of the Central Sales Tax Act already noted earlier. He also referred to Section 2(xxi) of the KGST Act which defines sale to include every transfer of the property in goods by one person to another in the course of trade or business except transactions of a mortgage, hypothecation, charge or pledge. Particular emphasis was laid on explanation 4(a)(ii) to this definition of 'Sale'. This explanation is more or less similar in intent and meaning as Section 4(2) of the Central Sales Tax Act, 1956 extracted earlier. It conveys that for the purposes of KGST Act, the sale or purchase of unascertained or future goods shall be deemed, if the goods are within the State at the time of their appropriation to the contract of sale or purchase. Reliance was also placed on Paragraph 8 of the judgment of this Court in **Tata Engineering and Locomotive Co. Ltd. v. Assistant Commissioner of Commercial Taxes** (1970) 1 SCC 622, which reads as under:-

*"…There had been many instances where the vehicles had been actually delivered from the stockyards prior to the issue of the allocation letter. The vehicles delivered to the dealer from the stockyard were accounted for against the allocation over the period. It was the stockyard incharge who appropriated the required number of vehicles to the contract of sale out of the stocks available with him and put down the vehicle engine and chassis number in the delivery challan. This was done after a delivery order had been addressed by the sales office at Bombay to the stockyard in-charge for delivery of stated number of vehicles of specified model to a particular dealer. Till such appropriation of vehicles through specification of the engine and chassis numbers, it was always open to the company to "allot any vehicle to any purchaser or to transfer the vehicles from the stockyard in one State to a stock-yard in another State."" (emphasis supplied)*

**9.** According to the respondent the fact that the vehicles in question were registered at Mahe, irrefutably leads to the conclusion of their being produced before the Registering Authority at Mahe prior to registration, as per requirement of Section 44 of the Motor Vehicles Act. It was pointed out that Chapter III of the Central Motor Vehicles Rules deals with registration of motor vehicles and as per Rule 33, a dealer is exempted from the necessity of

registration even though in possession of a motor vehicle, if it obtains a Trade Certificate from the Registering Authority of the area where he carries on his business. Form 16 under Rule 34 is a form of application for grant or renewal of Trade Certificate whereas Form 17 contains the form of Trade Certificate. These forms show that only general information as to class of motor vehicle is noted for the purpose of Trade Certificate and not specific particulars of any vehicle such as engine number or chassis number. Rule 40 places restrictions on use of Trade Certificate by specifying that it shall be used only by the person to whom it is issued. The exceptions indicated in this Rule also do not permit use by a purchaser of a vehicle. Rule 41 enumerates the purposes for which motor vehicle with Trade Certificate may be used. A perusal of the purposes reveals that it is permissible for a dealer only who is holder of a Trade Certificate to use a vehicle with Trade Certificate for test, repair etc. including for proceeding to and from any place for its registration. Rule 42 prohibits the holder of a Trade Certificate from delivering a motor vehicle to a purchaser without registration, whether temporary or permanent.

**10.** On behalf of respondent, reliance was placed upon a judgment of Bombay High Court dated 17.1.2014 in First Appeal No. 166 of 2009 (entitled **The New India Assurance Co. Ltd. vs. Clancy Arcanjia Dias**). That judgment shows that a temporary registration number was obtained by the manufacturer of Mahindera Jeep at Nasik where the vehicle was manufactured and the manufacturer had also insured the vehicle during its transit by road from Nasik to Goa. After the vehicle was handed over to dealer at Goa, as per records, it was covered by a valid Trade Certificate and also insurance cover in respect of vehicles with the dealer. It was held that since the road accident leading to claim for compensation happened before the jeep was delivered to the purchaser, the liability to pay the compensation was upon the appellant, which had issued the cover note for vehicles held by the dealer under the valid Trade Certificate.

**11.** On facts it has been submitted on behalf of the respondent that the allegation by the Intelligence Officer that the assessee has not maintained proper accounts for justifying imposition of penalty, is based upon a wrong assumption that sales of 263 cars leading to their registration at Mahe were actually sales in Kerala.

**12.** According to respondent, when the entire facts, relevant documents and alleged evidence were before the authorities as well as the High Court, the burden of proof under Section 45A of the KGST Act loses its significance. The appeal to the High Court under Section 40 of the KGST Act is a statutory appeal on questions of law as well as fact and hence, the finding of facts returned by the High Court by confirming the findings of the Appellate Authority, the Deputy Commissioner need no interference by this Court. According to the respondent, the Deputy Commissioner and the High Court have come to a concurrent finding that the materials do not lead to any conclusive proof that the vehicles in question had been sold at Kozhikode in Kerala. According to both the authorities, the materials, at best, raise only some suspicion which can never take the place of proof which is necessary for imposition of penalty upon the assessee.

**13.** From the above submissions and counter submissions of the parties as well as relevant statutory provisions in the Motor Vehicles Act, 1988, Central Motor Vehicles Rules, 1989, Section 4(ii) of Central Sales Tax Act, 1956, Sections 4, 19 and 20 of the Sales of Goods Act and relevant provisions of the KGST Act and Rules noticed earlier, we find no difficulty in accepting the submissions advanced on behalf of the appellant that the application of registration is by law required to be made by or on behalf of the owner whose name is to be mentioned in the registration form along with relevant particulars of the vehicle such as engine number and chassis number and hence, registration of a motor vehicle is a post-sale event.

**14.** But this legal proposition does not take the appellant far. It must be carefully seen as to when the properties, particularly possession of a motor vehicle passes or can pass legally

to the purchaser, authorizing him to apply for registration. Only after obtaining valid registration under the Motor Vehicles Act, the purchaser gets entitled to use the vehicle in public places. Under the scheme of Motor Vehicles Act, 1988 and the Central Motor Vehicles Rules, 1989 the dealer cannot permit the purchaser to use the motor vehicle and thus enjoy its possession unless and until a temporary or permanent registration is obtained by him. Only thereafter, the vehicle can safely be said to be no more under possession of the

dealer. Clearly, mere mentioning of engine number and chassis number of a motor vehicle in the invoice of sale does not entitle the intending purchaser to appropriate all the goods, i.e. the motor vehicle till its possession is or can be lawfully handed over to him by the dealer without violating the statutory provisions governing motor vehicles. Such transfer of possession can take place only when the vehicle reaches the place where the registering authority will be obliged to inspect for the purpose of finding out whether it is a roadworthy and register-able motor vehicle and whether its identification marks tally with those given in the sale invoice and the application for registration. The possession can lawfully be handed over to the purchaser at this juncture because law requires the purchaser as an "owner" to make an application for registration but at the same time the law also prohibits use of the motor vehicle by the owner until it is duly registered by the Registering Authority. Hence, in order to satisfy the requirement of law noticed above, the dealer can deliver possession and owner can take possession and present the vehicle for registration only when it reaches the office of Registering Authority. With the handing over of the possession of a specific motor vehicle just prior to registration, the dealer completes the agreement of sale rendering it a perfected sale. The purchaser as an "owner" under the Motor Vehicles Act is thereafter obliged to obtain certificate of registration which alone entitles him to enjoy the possession of the vehicle in practical terms by enjoying the right to use the vehicle at public places, after meeting the other statutory obligations of Insurance etc. Hence, technically though the registration of a motor vehicle is a post-sale event, the event of sale is closely linked in time with the event of registration. Neither the manufacturer nor the dealer of a motor vehicle can permit the intended purchaser having an agreement of sale to use the motor vehicle even for taking it to the registration office in view of the statutory provisions already noticed. Hence lawful possession with the right of use is permissible to be given to the intended owner only after reaching the vehicle to the office of Registering Authority. Thus seen, in practical terms though sale precedes the event of registration, in normal

circumstances and as the law stands, it is co-terminus with registration of a new motor vehicle.

**15.** Article 286(2) of the Constitution of India empowers the Parliament to formulate by making law, the principles for determining when a sale or purchase of goods takes place in the context of clause (1). As per Section 4(2) of the Central Sales Tax Act, in the case of specific or ascertained goods the sale or purchase is deemed to have taken place inside the State where the goods happened to be at the time of making a contract of sale. However, in the case of unascertained or future goods, the sale or purchase shall be deemed to have taken place in a State where the goods happened to be at the time of their appropriation by the seller or buyer, as the case may be. Although on behalf of the respondent, it has been vehemently urged that motor vehicles remain unascertained goods till their engine number or chassis number is entered in the certificate of registration, this proposition does not merit acceptance because the sale invoice itself must disclose such particulars as engine number and chassis number so that as an owner, the purchaser may apply for registration of a specific vehicle in his name. But as discussed earlier, on account of statutory provisions governing motor vehicles, the intending owner or buyer of a motor vehicle cannot ascertain the particulars of the vehicle for appropriating it to the contract of sale till its possession is handed over to him after observing the requirement of Motor Vehicles Act and Rules. Such possession can be given only at the registering office immediately preceding the registration. Thereafter only the goods can stand ascertained when

the owner can actually verify the engine number and chassis number of the vehicle of which he gets possession. Then he can fill up those particulars claiming them to be true to his knowledge and seek registration of the vehicle in his name in accordance with law. Because of such legal position, prior to getting possession of a motor vehicle, the intending purchaser/owner does not have claim over any ascertained motor vehicle. Apropos the above, there can be no difficulty in holding that a motor vehicle remains in the category of unascertained or future goods till its appropriation to the contact of sale by the seller is occasioned by handing over its possession at or near the office of registration authority in a deliverable and registrable state. Only after getting certificate of registration the owner becomes entitled to enjoy the benefits of possession and can obtain required certificate of insurance in his name and meet other requirements of law to use the motor vehicle at any public place.

**16.** In the light of legal formulations discussed and noticed above, we find that in law, the motor vehicles in question could come into the category of ascertained goods and could get appropriated to the contract of sale at the registration office at Mahe where admittedly all were registered in accordance with Motor Vehicles Act and Rules. The aforesaid view, in the context of motor vehicles gets support from sub-section (4) of Section 4 of the Sale of Goods Act. It contemplates that an agreement to sell fructifies and becomes a sale when the conditions are fulfilled subject to which the properties of the goods is to be transferred. In case of motor vehicles the possession can be handed over, as noticed earlier, only at or near the office of registering authority, normally at the time of registration. In case there is a major accident when the dealer is taking the motor vehicle to the registration office and vehicle can no longer be ascertained or declared fit for registration, clearly the conditions for transfer of property in the goods do not get satisfied or fulfilled. Section 18 of the Sale of Goods Act postulates that when a contract for sale is in respect of unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained. Even when the contract for sale is in respect of specific or ascertained goods, the property in such goods is transferred to the buyer only at such time as the parties intend.

The intention of the parties in this regard is to be gathered from the terms of the contract, the conduct of the parties and the circumstances of the case. Even if the motor vehicles were to be treated as specific and ascertained goods at the time when the sale invoice with all the specific particulars may be issued, according to Section 21 of the Sale of Goods Act, in case of such a contract for sale also, when the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof. In the light of circumstances governing motor vehicles which may safely be gathered even from the Motor Vehicles Act and the Rules, it is obvious that the seller or the manufacturer/dealer is bound to transport the motor vehicle to the office of registering authority and only when it reaches there safe and sound, in accordance with the statutory provisions governing motor vehicles it can be said to be in a deliverable state and only then the property in such a motor vehicle can pass to the buyer once he has been given notice that the motor vehicle is fit and ready for his lawful possession and registration.

**17.** In view of discussions made earlier, there is no need to again traverse the factual matrix, which led the Deputy Commissioner and the High Court to decide the controversy in favour of the respondent. However, since we have gone through the judgment of the High Court carefully, we are in agreement with the contention advanced on behalf of the respondent that the allegations and facts made or noted by the Intelligence Officer no doubt

create some doubts but they do not lead to a conclusive inference that the sales under controversy had taken place at Kozhikode, Kerala. To the contrary, in view of propositions of law discussed hereinbefore, the judgment of the High Court gets reinforced and deserves

affirmation. We order accordingly. As a result, the Civil Appeal is found to be sans merits and is dismissed as such. In the facts of the case there shall be no order as to costs.

# PUNJAB & HARYANA HIGH COURT

**VATAP NO. 51 OF 2015**

Go to Index Page

**STATE OF HARYANA**
**Vs**
**LUMINOUS POWER TECHNOLOGIES PVT. LTD.**

**A.K. MITTAL AND RAMENDRA JAIN, JJ.**

11th December, 2015

**HF ▶ Assessee**

**APPEAL - CONDONATION OF DELAY - STATE FILING APPEAL BEFORE HIGH COURT AFTER 1298 DAYS - DELAY DUE TO DELAY IN RECEIVING COMMENS SOUGH BY COMMISSIONER FROM ASSESSING AUTHORITY - NOT A SUFFICIENT CAUSE - STATE NOT SERIOUS IN PURSUING THE LITIGATION - APPEAL DISMISSED BEING TIME BARRED -** *SECTION 36 OF HVAT ACT, 2003*

***Facts***

*The Department has filed an appeal against the order of Tribunal holding that the checking officer was not empowered to go into nature of transaction. An application for condoning the delay of 1298 days is also filed alongwith the appeal before High court. The plea raised by the department is that the delay was due to delay in receiving comments sought by the Commissioner from assessing authority, and subsequent transfer of file to another ward for comments. Finally, on approval being received reminder had to be sent thereby causing delay in filing of appeal.*

***Held:***

*No sufficient cause is given for such a colossal delay. The state was not serious in pursuing litigation as reflected by the facts. Therefore, no ground for condonation of delay is made out. The appeal is dismissed being time barred.*

***Case referred:***

- *Oriental Aroma Chemical Industries Ltd.V Gujarat Industrial Development Corporation and another (2010) 5 SCC 459*

**Present:** Ms. Mamta Singla Talwar, DAG, Haryana with

Mr. Saurabh Mago, AAG, Haryana, for the appellant.

******

**AJAY KUMAR MITTAL, J.**

**1.** This appeal has been filed by the State of Haryana under Section 36 of the Haryana Value Added Tax Act, 2003 (in short "the Act") against the order dated 18.11.2011 (Annexure A-3) passed by the Haryana Tax Tribunal (hereinafter referred to as "the Tribunal") in STA No. 482 of 2010-11, claiming the following substantial questions of law:-

(a) Whether in the facts and in the circumstances of the case, the Ld. Tribunal was justified while observing that the Checking Officer was not empowered to go in the nature of transactions, whereas sec. 31(8) clearly provides that the Checking Officer was fully empowered to decide the nature of transactions at hand?

(b) Whether in the facts and circumstances the checking officer was justified in imposing the penalty on the difference of price as provided under proviso 1s to Section 31(8)?

(c) Whether in the facts and circumstances of the case, the Ld. Tribunal was justified in setting aside the well reasoned orders of both the authorities below?

(d) Whether in the facts and circumstances of the case even if the observations of Ld. Tribunal that the case should have been handed over to the Assessing Authority are taken to be correct, the Haryana Tax Tribunal was justified in not remanding the case to the Assessing Authority?

**2.** Before deciding the application under Section 5 of the Limitation Act, 1963 (for brevity "the 1963 Act") for condonation of inordinate delay of 1298 days in filing the appeal, few facts on merit may also be noticed. The respondent is engaged in the activity of manufacturing/ distribution of power supply equipments like UPS, Invertors, Stabilizers, Batteries and other related consumer Electrical/Electronic goods. The manufacturing units are at different places outside the State including at Baddi in Himachal Pradesh. On 7.2.2010, vehicle bearing registration No. HR-12A-6781 was intercepted during the course of roadside checking and the goods were detained under Section 31(6) of the Act. The Assessing Authority vide order dated 1.4.2010 (Annexure A-1) found the goods under invoiced and were charged to tax under Section 31(8) of the Act amounting to Rs. 74,434/- and also imposed penalty to the tune of Rs. 2,23,302/-. Feeling aggrieved, the respondent filed an appeal before the Joint Excise and Taxation Commissioner (Appeals) who vide order dated 3.8.2010 (Annexure A-2) dismissed the appeal. Still dissatisfied, the respondent filed an appeal before the Tribunal. The Tribunal vide order dated 18.11.2011 (Annexure A-3) set aside the orders of the authorities holding that no inquiries were made regarding the sale price and sent the case to the Assessing Authority. Hence, the present appeal.

**3.** Since the appeal is barred by time, an application bearing CM No. 23224-CII of 2015 has been filed under Section 5 of the 1963 Act for condonation of 1298 days' delay in filing the appeal.

**4.** We have heard learned State counsel.

**5.** Before proceeding with the merits of the controversy, it would be essential to examine whether the State has been able to give any satisfactory explanation for condonation of colossal delay of 1298 days in filing the present appeal.

**6.** Analyzing the legal position relating to condonation of delay under Section 5 of the Limitation Act, 1963, 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."*

**7.** Adverting to the factual matrix in the present case, the plea for condoning the delay is that the impugned order was passed on 18.11.2011 and the certified copy thereof was received on 20.1.2012. The office of Excise and Taxation Commissioner, Haryana sought comments vide memo dated 11.1.2012 from the Assessing Authority which could not be sent and again the comments were sought vide memo dated 5.3.2012. Thereafter, on 19.3.2012, on the request of the Assessing Authority, the file was transferred to ward No.2 for comments. Since no comments were received, reminders were sent vide memos dated 17.4.2012 and 20.7.2012. Ultimately, the comments were sent but were not received and reminders dated 27.2.2013 and 2.9.2013 were sent which were duly replied informing that the comments had already been sent on 6.2.2013. The comments being not satisfactory were again called for which were received on 4.11.2014. Finally, on 30.12.2014, approval was received for filing the present appeal and a request was sent to the Legal Remembrancer and Secretary to Government of Haryana vide letter dated 12.1.2015. Due to these reasons, the appeal could not be filed within time. On these premises, condonation of delay has been prayed.

**8.** The question regarding whether there is sufficient cause or not depends upon each case and primarily is a question of fact to be considered taking into totality of events which had taken place in a particular case. There is a colossal delay of 1298 days in filing the appeal. The narration of cause for claiming condonation of delay in filing the present appeal does not satisfy the test of "sufficient cause" so as to entitle the State for condonation of inordinate delay of 1298 days in filing the appeal. Narration of above facts shows that the State was not serious in pursuing the litigation. The State should be more vigilant and serious in pursuing the litigation. It is very surprising and astonishing that it has taken such a long time for the decision making process for filing the appeal. The State must ensure in future that the matter is expedited and the responsibility is fixed on the officer/official dealing with the filing of the appeals in case any delay occurs on their part. Since no sufficient cause has been shown in the present case, no ground for condonation of delay is made out.

**9.** In view of the above, there is no merit in the application for condonation of delay and the same is hereby dismissed. Consequently, the appeal is also dismissed as barred by time.

———

# PUNJAB & HARYANA HIGH COURT

**CWP NO. 25061 OF 2015**

Go to Index Page

**SURENDRA STEEL SUPPLY CO.**
**Vs**
**STATE OF HARYANA AND ANOTHER**

**A.K. MITTAL AND RAMENDRA JAIN, JJ.**

7th December, 2015

**HF ▶ D**ealer

*The goods are ordered to be released against the surety bonds furnished by the dealer.*

**SURETY BONDS – RELEASE OF GOODS – WRIT FILED FOR RELEASE OF GOODS IN TRUCKS – SURETY BOND FURNISHED PRODUCED IN ORIGINAL – CONSEQUENTLY, PETITIONER ASKED TO APPEAR BEFORE THE OFFICER FOR RELEASE OF GOODS ON THE DATE SPECIFIED – WRIT DISPOSED OF –WRIT DISPOSED OF –** *SECTION 31(6) OF HVAT ACT, 2003*

***Facts***
*The petitioner has filed a writ seeking release of goods in trucks against the surety bond furnished by him*

***Held:***
*The original surety bonds have been produced before the Court. The Ld. AETC has stated that the petitioner may appear before him and the goods shall be released in accordance with law. The writ is disposed of.*

**Present:** Mr. Avneesh Jhingan, Advocate for the petitioner.
Ms. Mamta Singla Talwar, DAG, Haryana and
Mr. Saurabh Mago, AAG, Haryana.

******

**AJAY KUMAR MITTAL, J.**

**1.** The petitioner has approached this Court under Articles 226/227 of the Constitution of India, seeking release of the goods in Trucks bearing registration Nos. PB-23J-5531, PH-23H-8501 & MP-04HE-0296 against surety bond in terms of the provisions of the Haryana Value Added Tax Act, 2003 (in short 'the Act').

**2.** A written statement on behalf of respondents No.1 & 2 has been filed by the learned State counsel in Court today. The same is taken on record, subject to all just exceptions. It has been stated in the written statement that no such surety bonds have been furnished by the petitioner to respondent No.2. It has further been stated that in case the surety bonds in respect of the aforesaid goods are furnished by the petitioner, the goods shall be released in accordance

with law. However, this fact has been seriously controverted by the learned counsel for the petitioner.

**3.** Be that as it may, the original surety bonds duly notarized have been produced by the learned counsel for the petitioner in Court today, which have been handed over to Sh. Devender Lamba, Assistant Excise & Taxation Officer (Enforcement), Jind-respondent No.2, who is present in person in Court today. He states that the petitioner may appear before him on 08.12.2015 and the goods shall be released in accordance with law.

**4.** In view of the above, learned counsel for the petitioner states that the present writ petition has been rendered infructuous and may be disposed of as such.

**5.** Ordered accordingly.

———

# PUNJAB VAT TRIBUNAL

**MISC. (RECT.) APPLICATION NO. 21 OF 2015**

Go to Index Page

**RAJPAL AND CO.**
**Vs**
**STATE OF PUNJAB**

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

19th December, 2015

**HF ▶ Dealer**

*Input tax credit available in subsequent years allowed to be adjusted towards payment for predeposit.*

**PREDEPOSIT – APPEAL – ENTERTAINMENT OF – ADJUSTMENT OF INPUT TAX CREDIT- RECTIFICATION APPLICATION AGAINST ORDER PASSED BY TRIBUNAL PRAYING FOR ADJUSTMENT OF INPUT TAX CREDIT AVAILABLE IN SUBSEQUENT YEARS TOWARDS 25% OF ADDITIONAL DEMAND FOR HEARING OF APPEAL – APPEAL ACCEPTED THEREBY DIRECTING THE DEPARTMENT TO MAKE NOTIONAL TRANSFER OF THE SAID AMOUNT TO THE FIRST APPELLATE AUTHORITY –** *S. 62(5) OF PVAT ACT, 2005*

***Facts***
*The appellant dealer has filed a rectification application praying for adjustment of excess ITC available to it towards payment of predeposit for hearing of appeal.*

***Held:***
*Accepting the appeal, the respondents are directed to make a notional transfer of the ITC to the DETC whereupon the said amount would be adjusted by the first appellate authority against 25% of the additional demand. The balance, if any, would be deposited by the appellant within the time specified. The appeal would be then decided on merits.*

**Present:** Mr. K.L.Goyal, Sr. Advocate along with Mr. Rohit Gupta, Advocate Counsel for the appellant.

Mr. S.S.Brar, Additional Advocate General for the State.

******

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

**1.** This is an application for rectification of the order dated 19.1.2015 passed by this Tribunal accepting the appeal of the appellant on the ground that since had deposited the amount as required under Section 62 (5) of the Punjab Value Added Tax Act, 2005, therefore the appeal could be heard and decided on merits.

**2.** The Counsel for appellant has submitted that actually some ITC is available to the appellant in the subsequent years to the assessment year in question which could be adjusted against the requisite 25% of the additional demand which is a condition precedent for entertaining the appeal by the Deputy Excise and Taxation Commissioner.

**3.** Heard, After hearing the rival contentions, it transpires that the ITC available to the appellant could validly be adjusted against 25% of the additional demand which is a pre-requisite for entertaining the appeal. The State Counsel has no objection to the adjustment of 25% of the additional demand out of the ITC is admissible to the appellant.

**4.** Resultantly, this application is accepted, impugned order is rectified to the extent that the respondents would make a notional transfer of the ITC (if admissible to the appellant) to the Deputy Excise and Taxation Commissioner, whereupon, the said amount would be adjusted by the First Appellate Authority against 25% of the additional demand. The balance, if any due against the appellant to complete 25% of the additional demand,would be deposited by the appellant within two months from the date of receipt of the copy of the order. On his satisfaction, the First Appellate Authority would entertain and decide the appeal of the appellant on merits.

**5.** Pronounced in the open court.

———

# PUNJAB VAT TRIBUNAL

Go to Index Page

**APPEAL NO. 421 OF 2015**

**G.R. SALES (INDIA)**
**Vs**
**STATE OF PUNJAB**

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

5th January, 2016

**HF ▶ Assessee**

*Mere non participation or non cooperation with the department is not a good ground for dismissing an appeal.*

**APPEAL – APPELLATE AUTHORITY – NON COOPERATION BY ASSESSEE – NOTICES SERVED ON ASSESSEE FOR ASSESSMENT PROCEEDINGS – NO APPEARANCE PUT UP – EXPARTE ASSESSMENT FRAMED CONSEQUENTLY – DISMISSAL OF FIRST APPEAL ON MERE GROUNDS OF NON PARTICIPATION BY APPELLANT ASSESSEE – APPEAL BEFORE TRIBUNAL – IMPUGNED ORDER SET ASIDE AS MATTER OUGHT TO HAVE BEEN DEALT WITH ON MERITS INSTEAD OF MERE NON PARTICIPATION BY ASSESSEE – NO OTHER IRREGULARITY FOUND IN APPEAL FILED AT FIRST STAGE - MATTER REMANDED FOR FRESH DECISION – APPEAL ACCEPTED –** *S. 62 OF PVAT ACT, 2005*

***Facts***

*Notices for framing assessment were served on the appellant but none appeared before the designated officer to participate in assessment proceedings and thus exparte assessment was framed. First appeal was dismissed solely on the ground that the appellant failed to cooperate with the department and participate in the proceedings. An appeal is filed before Tribunal.*

***Held:***

*The order of the first appellate authority reveals that the appeal did not suffer from any defect of limitation or maintainability. The appeal could have been decided on merits by the Ld. DETC instead of dismissing the same on the ground of non cooperation or non participation. The order is, therefore, set aside and matter is remitted back to be decided on merits.*

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

Mr. Sukhdip Singh Brar, Addl. Advocate General for the State.

******

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

**1.** The Excise and Taxation Inspector-cum-Designated Officer, Ludhiana-II while framing the assessment for the financial year 2006-07 created additional demand of

Rs.2,18,705/- under the Central Sales Tax Act, 2 1956 and Rs.1,42,181/- under the Punjab Value Added Tax Act, 2005. This appeal relates to the demand created under the Punjab Vat Act. The First Appellate Authority Ludhiana Division, Ludhiana, vide order dated 23.5.2014, dismissed the appeal.

**2.** The facts in the background are that the form VAT 20 for the assessment year 2006-07 was furnished on time. On scrutiny, the notice for framing the assessment was issued U/s 29 (2) of the Act for 7.3.2011 but none appeared before the designated officer. Then again, notice was served upon him for 29.9.2011. But again none appeared to participate in the assessment proceedings, whereupon, the assessment was framed ex-parte on 4.11.2011.

**3.** The Deputy Excise and Taxation Commissioner (A) Ludhiana Division, Ludhiana dismissed the appeal solely on the ground that the appellant failed to cooperate the department and participate in the proceedings. The relevant observations made by the First Appellate Authority are produced as under:-

> *"It has been noticed from the record produced by the appellant that he did not cooperate the department during the proceedings of the assessment and have not willfully attended the proceedings during the preceding 8 months whereas so many opportunities have been provided to the appellant. So the argument put forth by the CA, that the opportunity has not been given by the designated officer are not admissible and have no weightage and the argument put forth by the ETI have merits. So in the view of facts of the case and in the interest of justice I do not want to interfere the order of the designated officer."*

**4.** On perusal of the order passed by the First Appellate Authority, it transpires that the appeal did not suffer from any defect relating to its maintainability or limitation. The appeal also could not be dismissed under Section 62 (5), of the Act. In these circumstances, irrespective of the fact that the appellant did not appear before the assessing authority and he wanted to assail the legality, validity and correctness of the order, the appellant was fully competent to do so. Therefore, the appeal could be decided by the First Appellate Authority on merits instead of dismissing the same on the preliminary ground i.e. for non cooperation or non participation in the proceedings before the assessing authority. It does not sound to law that the appeal could be dismissed on the aforesaid grounds alone but at the same time, if the appellate authority finds the order to be not sound legal and valid on merits or for want of service of notice upon the appellant he could proceed to decide the same accordingly. But non appeal could be dismissed merely on the ground that appellant did not cooperate the department or that he did not attend the proceedings. If on evidence, it transpires that the order is apparently illegal against facts and without jurisdiction, even though such order may be exparte, it could be set-aside. Secondly, if the appellant was not properly served in the case and for that he was deprived of saying nothing in support his pleas even then the ex-parte order could be set-aside.

**5.** As such this Tribunal is of the opinion that the appeal could not be dismissed only on the ground of non cooperation and non participation of the appellant before the assessing authority, therefore, such order deserves to be set-aside.

**6.** Resultantly, this appeal is accepted, impugned order is set-aside and case is remitted back to the First Appellate Authority to decide the same on merits in the light of the observation made above. The appellant is directed to appear before him on 15.2.2016.

**7.** Pronounced in the open court.

———

# PUNJAB VAT TRIBUNAL

Go to Index Page

**APPEAL NO. 370 OF 2013**

**SHIV SHANKER RICE MILL**
**Vs**
**STATE OF PUNJAB**

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

15th January, 2015

**HF ▶ Assessee**

*Assessment for the year 2005-06 being framed after expiry of three years is barred by limitation as per amended provision of S. 29(4-A) of the Act.*

**ASSESSMENT – LIMITATION – ASSESSMENT YEAR 2005-06 – FRAMING OF ASSESSMENT IN YEAR 2010 – APPEAL BEFORE TRIBUNAL CONTENDING ASSESSMENT ORDER BARRED BY LIMITATION – HELD: ASSESSMENT FOR YEAR 2005-06 OUGHT TO BE FRAMED WITHIN A PERIOD OF THREE YEARS IN VIEW OF S. 29(4-A) – NO EXTENSION ORDER PASSED - ASSESSMENT BEING FRAMED AFTER FOUR YEARS STANDS BARRED BY LIMITATION — APPEAL ACCEPTED –** *S 29(4-A) OF PVAT ACT,2005*

***Facts***
*The assessment for the year 2005-06 was framed on 29.1.2010. On dismissal of first appeal, an appeal is filed before Tribunal contending that the assessment framed is time barred.*

***Held:***
*In view of S. 29(4-A), assessment for the year 2005-06 can be framed within a period of 3 years commencing from 20th November,2006.in the present case it was framed after a period of three years in the year 2010. Also, no order of extension has been passed. Therefore, appeal is accepted and impugned orders are set aside.*

***Case relied upon:***
- *Talson Mills Store V/s State of Punjab VAT AP 18 of 2015(O&M)*

**Present:** Mr. K.L. Goyal, Sr. Advocate alongwith
Mr. Navdeep Monga, Advocate Counsel for the appellant.

Mr. Sukhdip Singh Brar, Addl. Advocate General for the State.

******

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

**1.** The case relates to the assessment year 2005-06. The assessing authority issued notice for framing the assessment for this financial year in response to which Ashvir Chander, Accountant alongwith Sh. Mukesh Goyal, Advocate appeared. But later on, they did not appear

on the subsequent dates except on 30.11.2009 when the case was adjourned to 30.12.2009. Ultimately the assessment was framed on 29.1.2010. The appeal filed by the appellant was dismissed on 20.7.2011.

**2.** Hence this second appeal. The delay has been condoned. The prime question raised in the appeal is that the assessment for the year 2005-06 could, at the most be framed till 20.11.2009. As such the assessment having been framed on 29.1.2010 is time barred.

**3.** To the contrary state counsel while refuting the arguments, has urged that since the appellant absented himself and did not cooperate the department, therefore, the delay in framing the assessment occurred for fault on the part of the appellant. As such the assessment cannot be condemned on the ground of limitation.

**4.** I have heard the counsel for the parties and pursued the record. Section 29 of the Punjab Value Added Tax Act is the relevant provision which governs the limitation for framing of the assessment for the year 2005-06. Section 4-A was inserted by way of introducing (the third amendment) Act 2010 particularly regarding framing of the assessment for the years 2005-06, it is to the following effect:-

> (4-A) 'Notwithstanding anything contained in sub-section (4), the assessment under sub-section (2) or sub-section (3), in respect of which annual statement for the assessment year 2005-06 has already been filed, can be made within a period of three years, commencing from the 20th day of November, 2006."

**5.** Therefore, it would not be wrong to say that the annual statement regarding assessment for the year 2005-06 having been filed prior to the amendment of 2010. The assessment in any case, could not be framed beyond the expiry period of 3 years commencing from 20th November of 2006.

**6.** The authorities did not pass any order for extension of time prior to the insertion of Section (4-A) in Section 29 of the Act, therefore, no extension could be granted later on for framing the assessment. The amendment made in Section 29 by way of inserting sub Section (4-A) in the Punjab Value Added Tax Act, 2005 has not been taken away by any subsequent amendment, therefore in the light of Sub-Section (4-A), the assessment for the year 2005-06 could not be framed beyond 20.11.2009. But in the present case, the assessment was framed on 29.1.2010, therefore, it was clearly time barred. I find support to my this view from the judgment delivered by the Division bench of Hon'ble High Court in the case page-1 (P & H) and Talson Mills Store V/s State of Punjab VAT AP 18 of 2015 ( 0 & M) decided on September 2, 2015 by the same Division Bench.

**7.** Resultantly, this appeal is accepted, impugned orders are set- aside with liberty to the respondents to have recourse to the remedy as provided under law.

Pronounced in the open court.

———

# PUNJAB VAT TRIBUNAL

Go to Index Page

**APPEAL NO. 133 -138 OF 2015**

**MAY FAIR OVERSEAS**
**Vs**
**STATE OF PUNJAB**

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

29th September, 2015

**HF ▶ Revenue**

*Condition of predeposit for hearing of appeal is mandatory.*

**PREDEPOSIT – APPEAL – ENTERTAINMENT OF – DEMAND RAISED ON ACCOUNT OF WRONGLY CLAIMED INPUT TAX CREDIT – DISMISSAL OF FIRST APPEAL FOR FAILURE TO DEPOSIT 25% OF ADDITIONAL DEMAND FOR ENTERTAINMENT OF APPEAL – APPEAL BEFORE TRIBUNAL PRAYING WAIVER OF PREDEPOSIT CONTENDING IMPUGNED ORDER TO BE ILLEGAL AND PLEADING FINANCIAL HARDSHIP – PROVISION OF PREDEPOSIT U/S 62(5) OF THE ACT IS MANDATORY AND NOT SHEER FORMALITY – APPELLANT OBSERVED TO BE COMPETENT TO DEPOSIT THE SAID AMOUNT IN VIEW OF HIS HUGE TURNOVER – APPEAL DISMISSED –** *S. 62(5) OF PVAT ACT, 2005*

***Facts***

*A demand was raised on account of wrongly claimed Input tax credit. It was alleged that the purchases were bogus and thus penalty and interest were imposed alongwith it. First appeal was dismissed for failure of predeposit u/s 62(5) of PVAT Act. An appeal is filed before tribunal contending that since the order is illegal there is no useful purpose for depositing the said amount. Also, plea of financial hardship is taken by appellant.*

***Held:***

*The provision of 62(5) of the Act is not a sheer formality but a mandate in the interest of revenue. The appellants have a huge turnover and it can't be said that they cannot deposit the said amount. The appeal is dismissed and appellants are directed to deposit the said amount within a period of two months for hearing of appeal.*

**Present:** Mr. Kulbir Singh, Advocate counsel for the appellant.

Mr. S.S. Brar, Addl., Advocate General for the State.

******

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

**1.** This order of mine shall dispose off eight connected appeals No.133, 134, 135 136, 137, 138, 141 of 2015 and 256 of 2014 against the order passed by the Deputy Excise and

Taxation Commissioner(A) Ludhiana Division, Ludhiana dismissing the appeals for non compliance of Section 62 (5) of the Punjab Value Added Tax Act, 2005. Since all these appeals involve the common question law, therefore all are decided together.

**2.** The facts of all these eight appeals are enumerated as under:-

**Appeal No. 133 of 2015**

| Assessment Year | Name of authority | Demand created | Date of order | Appeal dismissed on |
|---|---|---|---|---|
| 2009-10 | The Excise & Taxation Officer - cum- Designated Officer, Ludhiana-II | Rs. 12,69,046/- Under the PVAT Act, 2005 | 5.2.2014 | 29.9.2014 by the DETC(A), Ludhiana Division, Ludhiana. |

**3.** The brief facts are that the appellant filed the final statement for the year 2009-10 on time. However, after issuing notice U/s 29 (2) of the Punjab Value Added Tax Act, 2005, the Designated Officer observed that the appellant had claimed bogus ITC and could not produce the purchase vouchers/invoices and ITC mis-matched the data, therefore, ITC was disallowed. As such the Designated Officer created the demand of Rs. 12,69,046/- under the Punjab Value Added Tax Act on 5.2.2014. The Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana dismissed the appeal for non compliance of Section 62 (5) of the Act on 29.9.2014.

**Appeal No. 134 of 2015**

| Assessment Year | Name of authority | Demand created | Date of order | Appeal dismissed on |
|---|---|---|---|---|
| 2010-11 | The Excise & Taxation Officer - cum- Designated Officer, Ludhiana-II | Rs.18,76,719/- Under the PVAT Act, 2005 and Rs. 690/- under CST Act | 28.3.2014 | 29.9.2014 by the DETC(A), Ludhiana Division, Ludhiana. |

**4.** The allegations against the appellant are that the appellant had showed bogus purchase in order to claim in genuine ITC, there is a difference between VAT-20 data and the cardex data. The appellant did not appear despite service, therefore, the Excise and Taxation Officer after verification of the record framed the assessment, the appeal preferred by the appellant was dismissed under Section 62(5) of the Act.

**Appeal No. 135 of 2015**

| Assessment Year | Name of authority | Demand created | Date of order | Appeal dismissed on |
|---|---|---|---|---|
| 2010-11 | The Excise & Taxation Officer - cum- Designated | Rs.32,49,730/- Under the PVAT | 22.5.2014 | 29.9.2014 by the DETC(A), Ludhiana |

| | | | | |
|---|---|---|---|---|
| | Officer, Ludhiana-II | Act, 2005 | | Division, Ludhiana |

**5.** The allegations against the appellant are that he had made in genuine purchases from the canceled dealers. There is difference between VAT-20 submitted by the taxable person and the cardex data on the following points:-

1. Interstate sale as per cardex data is 3,12,49,259/- but as per VAT 20 it is 2,15,89,689/-.
2. Interstate sale as per cardex data is NIL but as per VAT 20 it is 80,48,065.

**6.** After scrutiny and in the absence of any documents, the demand to the tune of Rs.32,49,730/- was created. The appeal was dismissed under Section 62 (5) of the Act.

**Appeal No. 136 & 137 of 2015**

| Assessment Year | Name of authority | Demand created | Date of order | Appeal dismissed on |
|---|---|---|---|---|
| 2011-12 | The Excise & Taxation Officer -cum- Designated Officer, Ludhiana-II | Rs.98,28,158/- Under the PVAT Act, 2005 and Rs. 2905/- under CST Act | 28.3.2014 | 29.9.2014 by the DETC(A) Ludhiana Division, Ludhiana. |

**7.** The appellant had made bogus purchases, therefore, ITC claimed was dis-allowed and consequently, the demand was created. The appellant file the appeal which was dismissed.

**Appeal No.138 of 2015**

| Assessment Year | Name of authority | Demand created | Date of order | Appeal dismissed on |
|---|---|---|---|---|
| 2012-13 | The Excise & Taxation Officer -cum- Designated Officer, Ludhiana-II . | Rs. 1,06,35,593/- Under the PVAT Act, 2005 | 28.3.2014 | 29.9.2014 by the DETC(A), Ludhiana Division, Ludhiana, |

**8.** The appellant was granted registration certificate for trading of Nut bolts on 28.4.2009. It was observed from the cardex data available on the computer system that the appellant was indulging in purchases which were found to be in genuine and from cancelled dealers. The demand was created on account of non production of the original invoices and other relevant documents. The appeal was dismissed on 29.9.2014 under Section 62 (5) of the Act.

**Appeal No. 141 of 2015**

| Assessment | Name of | Demand created | Date of order | Appeal dismissed on |
|---|---|---|---|---|

| Year | authority | | | |
|---|---|---|---|---|
| 2012-13 | The Excise & Taxation Officer - cum-Designated Officer, Ludhiana- II | Rs.2,05,51,872/- Under the PVAT Act, 2005 | 22.5.2014 | 29.9.2014 by the DETC(A), Ludhiana Division, Ludhiana. |

**9.** The appellant was imposed tax for the assessment year 2011-12, thereafter, a notice for the penalty was issued against the appellant U/s 56 of the Punjab Value Added Tax Act whereupon penalty to the tune of Rs.2,05,51,872/- was imposed. The appeal filed by the appellant was dismissed by the Deputy Excise and Taxation Commissioner, Ludhiana Division, Ludhiana on 29.9.2014 under Section 62 (5) of the Act.

**Appeal No. 256 of 2014**

| Assessment Year | Name of authority | Demand created | Date of order | Appeal dismissed on |
|---|---|---|---|---|
| 2012-13 | The Excise & Taxation Officer - cum- Designated Officer, Ludhiana-I | Rs.63,67,657/- Under the PVAT Act, 2005 | 17/18.2.2014 | 21.5.2014 by the DETC(A), Ludhiana Division, Ludhiana. |

**10.** The appellant had claimed the tax ITC on demand, no explanation was submitted and no account books were produced. The Photostat of the purchase vouchers was not accepted, as such the ITC was rejected and the demand was created. The appeal was dismissed by the Deputy Excise and Taxation Commissioner, Ludhiana Division, Ludhiana-I on 21.5.2014. There is no question of error regarding territorial jurisdiction in the case.

**11.** Arguments heard. Record perused.

**12.** In these appeals, the appellant had also challenged vires of Section 62 (5) of the Act regarding compliance of the said section by way of deposit of 25% of the additional demand before the Hon'ble High Court, but the Hon'ble High Court vide order dated 23.7.2015 vacated the order of stay. The relevant extract of the order dated 23.7.2015 is reproduced as under:-

> *"The petitions shall be placed on board for final hearing on 17.8.2015. Previous interim orders shall cease to operate.*
>
> *In the meantime, no coercive steps for recovery of the amount shall be taken.*
>
> *A copy of this order be placed in the connected files.*
>
> (S.J.VAZIFDAR)
>
> ACTING CHIEF JUSTICE

23.7.2015

(G.S. SANDHAWALIA)

JUDGE

**13.** Now after the vacation of the stay, there is no embargo on hearing of the appeals on merits.

**14.** The common contention raised by the appellant in the appeals is that since the orders are illegal, therefore no useful purpose would be served by compelling the appellants to deposit 25% of the additional demand of tax, penalty and interest. It is also urged that the appellant is unable to deposit such a huge amount.

**15.** To the Contrary, the State Counsel has raised the arguments tooth and nail while contending that the appellant has a huge turn over, therefore, he can't be said to be a poor man and the appeal has been filed just to put off the tax liability. The demand has been created after comparing the data with all the relevant record.

**16.** After hearing both the parties on the issue of non compliance of Section 62 (5) of the Act, it transpires that the provisions as envisaged under Section 62 (5) of the Act are not a sheer formality but a mandate has been issued by the legislature to the appellate authority for not entertaining the appeal for non compliance of this provision, obviously in the interest of the revenue. In the revenue related statues, such similar clauses have been introduced in order to avoid the vaxious and superfluous litigation and to avoid delay in disposal of the appeals. If some percentage of the revenue is not deposited than whole of the development work of the state is likely to be stalled resultantly common man would suffer. It is also pertinent to mention here that if the appeal succeeds, then the amount so deposited could be refunded/adjusted in the yearly assessment. The money loss is no irreparable loss and the merits of the appeal could be seen at the final stage. The appellants have huge turn over therefore they can't be said to be unable to deposit 25% of the additional demand. As such, the appellate authority was justified in refusing to entertain the appeal for non compliance of these mandatory provisions of law.

**17.** Resultantly, appeals are dismissed. However, the appellants are directed to deposit 25% of the additional demand within two months from the date of receipt of certified copies of the orders. Copy of the order be placed in each file.

**18.** Pronounced in the open Court.

———

# PUNJAB VAT TRIBUNAL

Go to Index Page

**APPEAL NO. 37 OF 2014**

**GODAWRI MOTORS PRIVATE LIMITED**
**Vs**
**STATE OF PUNJAB**

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

29th September, 2015

**HF ▶ *Appellant - assessee***

*Sickness of employee entrusted with the task of filing of appeal considered sufficient cause for condoning the delay.*

**APPEAL – CONDONATION OF DELAY – SICKNESS OF EMPLOYEE – DEMAND RAISED – DISMISSAL OF FIRST APPEAL DUE TO DELAYED FILING – APPEAL BEFORE TRIBUNAL – MANAGER ENTRUSTED WITH TASK OF FILING OF APPEAL FELL SERIOUSLY SICK AND REMAINED UNDER MEDICAL TREATMENT CAUSING DELAY IN FILING – AFFIDAVIT AND MEDICAL RECORDS PRODUCED IN THIS REGARD – TAX ALREADY PAID BY APPELLANT INDICATED BONAFIDES - SUFFICIENT CAUSE FOUND CAUSING DELAY- APPEAL ACCEPTED – MATTER REMITTED FOR FRESH DECISION –** *SECTION 64 OF PVAT ACT, 2005*

***Facts***

*An additional demand was raised vide order dated 29/4/2013. The copy of order was issued on 31/5/2013. An appeal against the order was filed after a delay of 155 days which was dismissed being time barred. An appeal is thus filed before Tribunal explaining the cause of delay.*

***Held:***

*The contention raised by the appellant is that its previous account manager on whom the order was served was transferred. The work of filing appeal was entrusted to his successor manager. However, the the successor manager developed kidney problem and remained under treatment due to which the work was left pending. On joining back, he remained silent out of fear of employer. Thus, a huge delay was caused.*

*The affidavit by the accounts manger has been produced alongwith the medical documents. Sufficient cause is found for condoning the delay. Moreover, tax due from appellant stands paid which shows that he only wants to get his rights established by way of appeal. Therefore, the appeal is accepted and matter is remitted back to the appellate authority for deciding the same on merits.*

***Cases referred:***

- *Oriental Arma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation and another (2010) 5 SCC 459*
- *R.B. Ramlingam v. R.B. Bhavanneshwari 2009 (1) RCR (Civil) 892*

- *Super Metal, Faridabad Vs State of Haryana and others VATAP No.27 of 2013*
- *Indian Oil Corporation Ltd., Ambala Cantt Vs State of Haryana and another VATAP No.62 of 2014*

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

Mr. Sukhdip Singh Brar, Additional Advocate General for the State.

******

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

**1.** This appeal is directed against the order dated 23.12.2013 passed by the Deputy Excise and Taxation Commissioner(A), Patiala Division, Patiala(herein referred as the First Appellate Authority) dismissing the appeal on the ground of delay.

**2.** The Assessing Authority while framing the assessment for the year 2010-11, vide order dated 29.4.2013 created additional demand to the tune of Rs. 1,01,79,987/-. The copy of the order dated 29.4.2013 was issued to the appellant on 31.5.2013 whereupon the appeal was filed after delay of 155 days before the Deputy Excise and Taxation Commissioner. The First Appellate Authority dismissed the appeal being time barred. The appellant had submitted before the Deputy Excise and Taxation Commissioner that Sh. Amit Passi, Accounts Manager was representing the appellant company. The copy of the order was served upon Sh. Amit Passi, Accounts Manager on 31.5.2013 in routine, though he had already been transferred to the branch at Moga. The appellant having been transferred to Moga, could not file the appeal and kept the same in the drawer of the table and entrusted the work of filing the appeal to Mr. Tilak Raj, Accounts Manager to take necessary steps and seek instructions from the management regarding filing of the appeal but unfortunately Sh. Tilak Raj had developed a kidney problem in the year 2006 which was aggravated in 2013 and he remained under treatment. He went for treatment to Dr. A.K.Sharma of Pathankot, therefore, he could not seek the instructions and file the appeal due to the stress of serious illness. In the mean time, Amit Passi, Accounts Manager rejoined at the earlier place on 1.11.2013 but he could not lay his handover the judgment Ultimately, Tilak Raj came to know about the judgment on 14 August, 2013 when he found it from the drawer but he remained silent out of fear of the action which may be taken against him by his employer. Then after getting instructions of the Managing Director Shri Asheem Suri, Amit Passi filed the appeal on 2.12.2013 alongwith an application accompanied by an affidavit of Tilak Raj for condonation of delay. No reply to the application for condonation of delay has been filed.

**3.** Arguments heard. Record perused.

**4.** Besides the two affidavits, he has brought the documents relating to the treatment of Tilak Raj from 7.1.2006 onwards on record. The medical record reveals that Tilak Raj was suffering from kidney disease and remained under the treatment of Dr. A.K.Sharma for long time. Thus, the delay in filing the appeal was on part of the Tilak Raj who was prevented by sufficient cause from putting the copy of the order before the appellant and receiving the necessary directions regarding the filing of the appeal. The law of limitation has been enacted to regulate the time within which the violation of valuable rights could be challenged, yet the Section 5 of the Act has given protection to the parties, who have been prevented by sufficient cause to file the appeal within time. The Hon'ble Supreme Court in case of Oriental Arma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation and another (2010) 5 SCC 459 after considering the entire law on the question of condoning delay has laid down the broad principles for adjudicating the issue of condonation of delay. The Apex Court has 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. Bhavanneshwari 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."*

**7.** 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—"*

**8.** While following the aforesaid law on issue of condonation of delay. The Division Bench of Hon'ble High Court in case of Super Metal, Faridabad Vs State of Haryana and others VATAP No.27 of 2013 (O & M) decided on 12.5.2014 and M/s Indian Oil Corporation Ltd., Ambala Cantt Vs State of Haryana and another VATAP No.62 of 2014 decided on 9.9.2014, observed that the purposes behind enacting the law of limitation is not to destroy the rights of the parties; the course is power to condone the delay where the party approaching court belatedly shows sufficient cause for not availing remedy. The meaning to be assigned to the expression 'sufficient cause' occurring in Section 5 of 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.

**9.** Now the question of limitation stands settled by the aforesaid judgment of Supreme Court wherein the following principles have been laid down:-

*(i) The delay of course is fatal; however, it could be condoned for sufficient reasons.*

*(ii) Some amount of relaxation could be granted while condoning the minor delays however, long delays could be condoned only if there are sufficient grounds which prevents the appellant from filing the appeal. However, the stricter proof regarding sufficient grounds is required in the second case.*

**10.** In the present case from the affidavit, the medical evidence and the fact that the appellant has already deposited the amount of tax accruing against him it is apparent that there are sufficient grounds to condone the delay. Had the appellant been in the knowledge of the judgment and copy of the order has been produced before him, he would have immediately directed his staff to file the appeal. He having deposited the amount of tax in time, he only wants to get his rights established by way of appeal.

**11.** In these circumstances, this Tribunal is of the opinion that the First Appellate Authority did not take note of the aforesaid facts and the view taken by him is without taking into consideration the medical evidence of Tilak Raj.

**12.** Resultantiy, I accept the appeal, set-aside the impugned order and condone the delay of 155 days in filing the appeal, consequently, the appeal is remitted back to the appellate authority, Patiala for deciding the same on merits in accordance with law. The appellant is directed to appear before the appellate authority on 22.2.2016.

**13.** Pronounced in the open court.

———

# PUNJAB VAT TRIBUNAL

Go to Index Page

**APPEAL NO. 508, 575, 708 OF 2013**

**WORLD WINDOW IMPEX INDIA PVT. LTD.**
**Vs**
**STATE OF PUNJAB**

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

27th November, 2015

**HF ▶ Department**

*Appeals cannot be entertained without pre-deposit on the ground of limitation in view of subsequent amendment dated 15.11.2013 extending the period of limitation to 6 years.*

**ASSESSMENT – LIMITATION – COMMISSIONER – APPEAL – PRE-DEPOSIT – ASSESSMENT ORDER FOR 2006-07 PASSED ON 5.5.2011 – PENALTY ALSO IMPOSED – COMMISSIONER GRANTING EXTENSION OF LIMITATION BY 2 YEARS – APPEALS FILED AGAINST THE ASSESSMENT ORDER AND PENALTY ORDER ARE DISMISSED FOR WANT OF PRE-DEPOSIT – APPEALS FILED BEFORE TRIBUNAL AGAINST THE ORDERS IN APPEAL AND THE ORDER OF COMMISSIONER GRANTING EXTENSION – IN VIEW OF SUBSEQUENT AMENDMENT DATED 15.11.2013 CHALLENGE CANNOT BE MADE TO THE ASSESSMENT ORDER OR EXTENSION ORDER ON THE GROUND OF LIMITATION – PROVISIONS OF PRE-DEPOSIT ARE MANDATORY AND CANNOT BE WAIVED – APPEALS DISMISSED GRANTING TWO MONTHS TIME TO DO THE NEEDFUL.** *SECTION 29(4), 62(5) OF THE PUNJAB VAT ACT, 2005*

*The assessment of the dealer for the year 2006-07 was framed on 5.5.2011. The appeal was filed before the 1st appellate authority on the ground of the assessment being time barred under Section 29(4). The appeal was dismissed for non-compliance of the pre-deposit of 25% as per Section 62(5) of the Punjab VAT Act.*

*In the meanwhile, a penalty under Section 56 was also imposed against which the appeal was filed which had also failed on account of non-deposit of 25% amount as per Section 62(5).*

*Appeals were filed before the Tribunal against the orders of appellate authority refusing to entertain the appeals without pre-deposit as well as against the order of Excise and Taxation Commissioner, Punjab extending the time by two more years exercising his powers under Section 29(4).*

*The Tribunal disposed of the three appeals together by observing that in view of amendment made in Punjab VAT Act w.e.f. 15.11.2013, the period of limitation has been increased to 6 years from 3 years. Reliance was placed upon the judgment of Amrit Banaspati Company Ltd. Vs State of Haryana (P&H) decided on 7.8.2015. It was also held that the plea with regard to non-signing of orders is also incorrect as the original order bears the signature of Designated Officer at all the requisite places. Moreover, while filing reply to the show cause notice for imposition of penalty, the appellant had not taken any such plea. The order cannot be held to be invalid for the technical defect even if the said defect was removed later on by signing the order at the place where it was left out. Moreover, the conditions with*

*regard to Section 62(5) are mandatory in nature and, therefore, no fault can be found in the order of 1st appellate authority in insisting upon the pre-deposit. The order of extension is quite valid and all the three appeals were dismissed being without any merit. However, a time of two months is granted to deposit the amount failing which the order passed by Assessing Authority would remain intact.*

Present: Mr. K.L..Goyal, Sr. Advocate alongwith
Mr. A.K. Babar, Advocate Counsel for the appellant.
Mr. Sukhdip Singh Brar, Addl. Advocate General for the State.

******

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

**1.** This order of mine shall dispose off three connected appeals No.508, 574 & 708 of 2013 filed by the appellant against the orders passed by the Deputy Excise and Taxation Commissioner(A), Ludhiana Division, Ludhiana(herein referred as the First Appellate Authority). Since all these cases relate to the assessment year 2006-07 and involve the common question of law, therefore, all the appeals are decided together.

Appeal No. 508 of 2013

**2.** This is an appeal against the order passed by the Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana dated 31.5.2013 relating to the assessment year 2006-07. The Assessing Authority vide order dated 5.5.2011 framed the assessment to the tune of Rs. 10,69,23,103/- under the Punjab Value Added Tax Act, 2005. Accordingly, tax demand notice (TDN) was issued on 5.5.2011 against the appellant. Aggrieved by the said order, the appellant filed the appeal against the said order before the First Appellate Authority, who dismissed the same on 31.5.2013 U/s 62 (5) of the Act.

Appeal No. 708 of 2013

**3.** This case also relates to the assessment to the penalty and interest on the amount of tax to the tune of Rs. 10,69,23,103/-. After framing of the assessment for the year 2006-07, the Excise and Taxation Officer-cum-Designated Officer, Mandi Gobindgarh issued notice U/s 32, 56 and 60 of the Punjab Value Added Tax Act. Flowever on receiving the reply to the notice and after providing due opportunity of being heard, the Assessing Authority imposed the penalty to the tune of Rs.21,38,46,206/- U/s 56,+ 3,61,40,009/- U/s 32 + 8,000/- U/s 60 of the Act, 2005. Consequently a TDN (Tax Demand Notice) for Rs.24,99,94,215/- was issued against the appellant. Aggrieved by the said order, the appellant filed the appeal which was dismissed by the Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana on 24.10.2013 for non compliance of Section 62 (5) of the Act of 2005.

**Appeal No. 574 of 2013**

**4.** This is an appeal against the order passed by the Excise and Taxation Commissioner Punjab, Patiala extending the time to two years more for framing the assessment for the year 2006-07. Meaning thereby, the assessment which was to be framed by 22.11.2010, the Excise and Taxation Commissioner Punjab, Patiala extended the time upto 22.11.2012. It has been pleaded by the appellant that the assessment for the year 2006-07 was framed on 5.5.2011. Copy of which was delivered to him on 11.10.2012 i.e. after the expiry of the period of 3 years. The appellant was also not served with any notice before extending the period of limitation therefore the extension order as well as the order of assessment are bad in the eye of law. The appellant had preferred the appeal before-the First Appellate Authority but the same was dismissed on 31.5.2013.

**5.** It is argued that since there were no extra ordinary circumstances for the extending the period of limitation viz; No notice notice before extension was served, the appellant was not heard, the order is non speaking and extension was granted after the expiry the period of

limitation, therefore the order of extension passed by the Excise and Taxation Commissioner, Punjab being illegal cannot be sustained.

**6.** Before I proceed to decide the issue involved in two appeals No. 508 and 708 of 2013 I set down to decide the challenge made by the appellant to the order of extension of two years passed by the Competent Authority after issuing the public notice. In this connection, it may be observed that earlier also the appellant had filed an appeal No. 509 of 2013 against the public notice and regarding extension of the period of limitation, which was dismissed by the Tribunal on 2.9.2013.

**7.** Since the two orders were passed by the assessing authority i.e. one on 5.9.013 and the other on 6.9.2013, therefore the appellant had challenged the extension order by filing two appeals No. 508 of 2013 and 574 of 2013 in the year 2013. Actually, the order dated 6.9.2013 was based on the order of assessment dated 5.5.2011 and both the appeals involve the same order of the extension. Any way, this order of extension was challenged by way of two appeals No. 508 and 574 of 2013. This Tribunal while approving the notice/order of extension passed by the Excise and Taxation Commissioner, Punjab of observed as under: -

> *"On reading of the language of the reproduced public notice, it transpires that as a matter of fact, by issuing the public notice, opportunity of being heard has been provided to the persons to be adversely affected by the extension order. In my view, this public notice being covered by the provisions of Section 67, clause (c) could not be challenged by filing this appeal. Sequelly this appeal being not maintainable stands dismissed."*

**8.** The Tribunal had also the opportunity to notice and observed as under:-

> *"A meticulous perusal of the order (being described as the extension order) would reveal that it is a public notice purportedly issued by the office of the Excise and Taxation Commissioner, Punjab, Patiala. In any case after public notice dated 21.10.2010, an order of extension dated 9.11.2011 was passed which reveals that an opportunity was given to the appellant by issuing the public notice but no body came forward to challenge, the said notice, therefore the period framing the assessment was extended for two years U/s 29 (4) of the Act."*

**9.** The assessment for the year 2006-07, in the ordinary course, was to be framed by 20.11.2010, but the notice for extension was issued by the Competent Authority, as indicated from the documents placed on the record (the public notice and the order), is dated 21.10.2010. Vide said order dated 21.10.2010, it was ordered that the public notice be published in the news paper dated 22.10.2010. Accordingly, it was published in the three news papers, ultimately, the order was passed before the expiry of period of limitation i.e. 20.11.2010. The service of notice was only sine-qua for passing the order whereas it does not matter if public notice was not given individually, but this is merely an irregularity and does not invalidate the notice or render it bad. As regards service, the appellant cannot deny that the notice was not served as he had challenged the said notice before the Tribunal. As such since the order dated 9.11.2010 was passed after the service of notice, therefore, notice extending the period would be treated as quite valid. Even otherwise when once the Tribunal had dismissed the appeal regarding extending the period of limitation, then it did not lie in his mouth to press the same order of extension again by the way of this second appeal.

**10.** Section 29 (4) as amended w.e.f. 15.11.2013 contains a proviso to the effect that the amendments for the year 2006-07 would be made till 20th November, 2014.The proviso to Section 29 (4) reads as under:-

> *PROVIDED THAT the assessment under sub-section (2) or sub-section (3) in*

*respect of which annual statement for the assessment year 2006-07 has already been filed, can be made till the 20th day of November, 2014.*

**11.** This amendment has been held to have retrospective effect. This was specifically held in the judgment titled as Amrit Banaspati Company Ltd. Versus State of Punjab and others (2015) 52 PHT 46 (P & H). Wherein it was observed as under:-

Rejecting the challenge the court held:

1) *The contention of the petitioners that the amendment Act is prospective is misconceived as the commencement of the Act is different from the operation of the Act. Even though in the present case, the amendment is applicable from 15/11/2013 but the same is operational even for the periods prior thereto. A combined reading of the amendment in explanations clearly indicates that the legislature was very clear in its intentions to make the amendment effective with retrospective effect. The explanation-1 provides for the applicability of extended period even to those cases where the aforesaid period of six years had not expired. Moreover, for the year 2006-07 a special proviso has been added to allow the framing of the assessment upto 20/11/2014. The amendment, therefore, has the retrospective effect and all the contentions are examined in the light of this presumption.*

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

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

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

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

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

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

**12.** Thus, the assessment for the year 2006-07 could be framed upto 20 November, 2014 whereas in the present case the assessment having been framed on 5.5.2012 is quite valid. Consequently, the order of extension even if it was not valid would not effect the assessment.

**13.** Now coming to the other two appeals No. 508 and 708 of 2013, which were dismissed for non compliance of Section 62 (5) of the Act, the counsel for the appellant has urged that the order dated 6.9.2013 (regarding penalty and interest) is based on the order of dated 5.5.2011 which is the basic order for imposition of the tax on the appellant.

**14.** Regarding the order dated 5.5.2011, he has argued that the order dated 5.5.2011 is unsigned, therefore, the same being void abinitio is nonest in the eye of law, therefore, the compliance of the provisions of Section 62 (5) of the Act could be relaxed in his favour and the appeal could be heard without deposit of 25% of the additional demand. With regard to the signing of the order, it has been submitted that Section 29 (6) and Rule 48 refer to the signing of the order. In order to buttress his contentions, he has placed reliance on the judgment delivered by income tax appellate Tribunal Bench in case of Vijay Corporation Vs. UO 12(2) (1) Mumbai where court while relying on Supreme Court judgment of Kilashu Devi Burman Vs. CIT (1996) 219 UR 214/15 Taxman 346 (SC) observed that in absence of signed order of assessment, the assessment is invalid.

**15.** Having given my thoughtful consideration to the aforesaid contentions, the same do not weigh with mind of the Tribunal. Before I proceed to decide this legal issue involved in the case, I need to mention the fact situation of the order dated 5.5.2011 passed by the Excise and Taxation Officer -cum- Designated officer, Mandi Gobindgarh. It is about seventeen page order bearing the signatures of the Assessing Authority at the end (as per certified copy of the order) but it bears signatures of the officer at two places at the end (as per the original order). A consolidated order has been passed under Punjab VAT Act, 2005 as well as the Central Sales Tax Act, 1956. In the operative part of the order, the assessment was computed in two parts. The assessment for a some of Rs. 10,69,23,103/- was framed under Punjab Vat Act whereas no assessment was framed under the Central Sales Tax Act. It would be pertinent to mention here that both the assessments are shown under the head part 'B'. The second part of the part 'B' has been duly signed by the Designated Officer whereas the first part 'B' is not signed (as per certified copy). The department has pleaded that the first portion of part 'B' as well as the

assessment order is also signed as per the original order. The appellant in one way or the other succeeded to manipulate to copy of the order which bears the signature on the second part "B" only.

**16.** The Additional Advocate General has shown me the original order dated 5.5.2011 which bears the signatures of the Designated Officer at both the places at the end of the order. The appellant has also not urged if there is any change, amendment, variation tempering or alteration in the body of the order. The date of passing of the order has also not been challenged. It is also not disputed that the assessment was framed vide order dated 5.5.2011.1 have seen the original file, the order sheet has revealed that the Designated officer released the order on 5.5.2011. It is also not disputed that as per order sheet TDN was issued on 5.5.2011 itself against the appellant on the basis of the order of even date. It is also not in dispute that a notice U/s 32, 60 and 56 was issued by another Excise and Taxation Officer Sh. Paramjit Singh for imposing penalty and interest on the basis of the said order dated 5.5.2011 and ultimately, vide order dated 6.9.2013, after giving the full hearing to the appellant, the Appellate Authority imposed the penalty and interest to the tune of Rs.24,99,94,215/-. I have also gone through the copy of the reply to the show cause notice filed by the appellant dated 3.9.2013 but it does not indicate if the appellant had raised any objection regarding the unsigned order. The appellant has also not pleaded if:-

*(a) The order is nonest for reason that it has not been signed, or*

*(b) The order is invalid and it was not passed on the day as it is alleged;*

*(c) No such order was ever passed.*

**17.** I have also given my thoughtful consideration to the oral as well as the written contentions as raised before me regarding non signing of the order, but I do not find myself in agreement to the submissions. The order was duly passed on 5.5.2011 in the open Court by the assessing officer which was followed by a detailed order. A common order was passed for framing the assessment under Punjab VAT Act as well as CST Act. The order was duly acted upon by issuing TDN as well as notice for imposing penalty and interest. Section 29 (6) of the Act as well as Rule 48 of the Rules do not speak of signing of the order. Section 29 (6) of the Act reads as under:-

***Section 29 OF PVAT Act, 2005***

*1 to 5* *XXXXXXXX*

*29(6) The designated officer, after taking into account all relevant material, which the officer has gathered, shall on the day specified in the notice issued under sub-section (5) or as soon afterwards as may be, after hearing such evidence, as the assessee may produce, by an order in writing, make an assessment determining the sum payable or refund of any sum due to him on the basis of such assessment.*

***RULE 48 PVAT RULES, 2005 reads as under:-***

***" Assessment of tax liability:-***

(1) *The designated officer, after considering the objections and documentary evidence, if any, filed by the person, shall pass an order of assessment in writing, determining the tax liability of such a person.*

(2) *The assessment order shall clearly state the reasons for assessment.*

(3) *A certified copy of the assessment order alongwith Tax Demand Notice, shall be supplied free of cost."*

**18.** On strength of the aforesaid provisions of law the counsel has contended that:-

> *The above section and corresponding Rule 48 clearly mandate for passing of assessment order which must be in writing and signed by the Assessing Authority as it determines the tax liability of a person.*
>
> *It is further argued that the alleged assessment order delivered to the assessee creates huge demand of Rs. 10.69,23,103/- under the PVAT Act, 2005 and it is unsigned at one place and the signature do not appear under the place whereby the demand under PVAT Act, 2005 was created.*
>
> *The signatures of the officer do not appear on the certified copy of assessment order obtained from department on 16.8.2013 therefore, in the absence of valid and legal assessment order, as such the alleged assessment order for the year 2006-07 under PVAT Act, 2005 is illegal and void and no demand could be made on the basis of such order.*

**19.** It was also argued that since both the Acts i.e. Punjab Value Added Tax Act and Central Sales Tax Act are separate and independent legislations therefore in the absence of signatures on the order passed under the PVAT Act the order can't be held valid merely on the ground that that signatures of the officer appear on the order under the Central Sales Tax Act.

**20.** Having gone through the aforesaid contertions the same do not weigh with the mind of the Tribunal. Section 29 (6) as well as Rule 48 do not require the order to be writing and signed by the officer. The requirement as indicated in these two provisions is that the order should be in writing. In the present case, the order was passed in writing. The main order (zimni order) was pronounced by the officer under his own signatures which was followed by the judgment containing reasons in writing which bears the signatures of the officer at the end. The objection as raised by the appellant, even if it is found to be correct, is curable one as there was no intention on part of the officer to alter, change vary or temper his own order. Actually the basic order is followed by the detailed order which the officer wanted to convey to the appellant. No doubt, a common consolidated order was passed by the Designated Officer for framing the assessment under two Acts, but this common order contains the common reasons for framing the assessment, therefore, if the order was signed at the end under the part "B" (CST) cannot be said to be unsigned, for the reasons recorded for imposing / tax under PVAT Act. Since the judgment was acted upon by issuing the TDN (Tax Demand Notice) as well as the notice for imposing penalty and interest on the basis of the said order and the appellant did not raise any such objection at the time of imposition of the penalty and interest, therefore, now such order cannot be said to be nonest merely for the reason that it was not signed at a particular place. The original order has been signed at both the places. If it was signed at a particular place later on for curing the defect, even then the defect being curable, could be removed at any later stage, however, the order can't be held to be invalid for this technical defect. There is no allegation that the judgment was varied, altered, changed or tempered before making the signatures at the second place.

**21.** A Division Bench of Punjab and Haryana High Court in Krishan Kumar v. Financial Commissioner, Taxation Punjab ( 1984) (2) RC3 521), has held that decision having been announced after hearing the parties and in open Court will be an operative Judgment, though the judgment recorded in pursuance thereof is not signed by the Presiding Officer concerned.

**22.** Similar is the view of the Bombay High Court in Darayas Cawasji Balsara v. Shenaz Darayas Balsara, AIR 1992 Bombay 175 and in Hakikullah Haji Rahimutullah v. The Maharashtra Housing and Area Development Authority, AIR 1997 Bombay 239. The Bombay High Court has gone to the extent of holding that the defect is curable such judgment can be

signed by the successor in office.

**23.** In Surendra Singh v.s State of Uttar Pradesh AIR 1954 SC 194 the Hon'ble Supreme Court was dealing with the effect of an impugned judgment in a criminal case. In the said case a Division Bench of Lucknow Bench of the Allahabad High Court consisting of kidwai and Bhargava, J J------ criminal appeal on 11.12.1952 and reserved the judgment. Before the judgment could be delivered Bhargava. J. was shifted to Allahabad from Lucknow. While at Allahabad Bhargava J. dictated a judgment signed every page thereof as well as at the end and sent it to kidwai, J. at Lucknow. On 24.12.1952 before the judgment was delivered Bhargava, J died. The judgment was delivered by Kidwai, J. at Lucknow on 5.1.1953, signed it and put the date as well. A question a rose—" Whether the judgment was valid since by the time it was delivered Bhargava, J. had died?" It was not a case where the judgment was pronounced in open court. While considering the question, the Hon'ble Supreme Court held.

> *"In our opinion, a judgment within the meaning of these sections is the final decision of the court intimated to the parties and to the world at large by formal " pronouncement" or " delivery" in open Court. It is a judicial act which must be performed in a judicial way. Small irregularities in the manner of pronouncement or the mode of delivery do not matter but the substance of the thing must be there: that can neither be blurred nor left to inference and conjecture nor can it be vague. All the rest the manner in which it is to be recorded, the way in which it is to be authenticated, the signing and the sealing, all the rules designed to secure certainty about its content, the matter can be cured; but not the hard core, namely, the formal intimation of the decision and its contents formally declared in a judicial way in open Court. The exact way in which this is done does not matter. In some Courts the Judgment is delivered orally or read out., in some only the operative portion is pronounced, in some the judgment is merely signed after giving notice to the parties and laying the draft on the table for a given number of days for inspection.*

**24.** An important point therefore arises. It is evident that the decision which is so pronounced or intimated must be a declaration of the mind of the Court as it is at the time of pronouncement. We lay no stress on the mode or manner of delivery, as that is not of the essence, except to say that it must be done in a judicial way in open Court. But however, it is done it must be an expression of the mind of the court at the time of delivery. We say this because that is the first judicial act touching the judgment which the court performs after the hearing. Everything else up till then is done out of Court and is not intended to be the operative act which sets all the consequences which follow on the judgment in / motion. Judges may, and often do, discuss the matter among themselves and reach a tentative conclusion. That is not their judgment. They may write and exchange drafts. Those are not the judgments either, however, heavily and often they may have been signed. The final operative act is that which is formally declared in open Court with the intention of making it the operative decision of the Court. That is what constitutes the "judgment".

**25.** The controversy has now been set at rest by the Hon'ble Supreme Court in case of Vinod Kumar Singh V. Banaras Hindu University, AIR 1988 SC 371. In the said case, a writ petition pertaining to admission to the Master's Course in law for the academic year 1983-84 was heard by a Division Bench of the Allahabad High Court. After the conclusion of the hearing, the learned Judges constituting the Bench, dictated a judgment in the open Court allowing the writ petition directing the University to admit the writ petitioner. The writ petitioner, thereafter applied for a copy of the judgment. He was informed that the matter had again been posted for hearing and would be heard afresh. Though initially the case was listed

for rehearing before the same Bench which rendered the judgment, however, by an order of the same Division Bench, before, it was posted for hearing before another Division Bench. The other Division Bench, before which the matter came up for hearing dismissed the writ petition. In the appeal before the Hon'ble Supreme Court, the writ petitioner questioned the judgment of the second Division Bench on the ground that judgment once pronounced in open Court by the first Division Bench became operative even without signature of the learned Judges and cannot be altered thereafter and the judgment of the second Division Bench was unsustainable. The Hon'ble Supreme Court allowed the appeal, set aside the judgment of the second Division Bench and held that judgment of the first Division Bench, which was dictated in open Court to the Court Master, though not signed, was a valid and affective judgment Referring exhaustively to the observations made in Surendra Singh v. State of Uttar Pradesh, AIR 1954 SC, 194: (1954 Cri L J 475), it was held:-

> *"When a judgment is pronounced in open court parties on the basis that it is the judgment of the court and that signing is a formality to follow."*

**26.** It was further observed that judgment to be operative does not await signing thereof by the court and observed as under:-

> *"We have extensively extracted from what Bose J.Spoke in this judgment to impress upon everyone that pronouncement of a judgment in court whether immediately after the hearing or after reserving the same to be delivered later should ordinarily be considered as the final act of the court with reference to the case. Bose J. emphasised the feature that as soon as the judgment is delivered that becomes the operative pronouncement of the court. That would mean that the judgment to be operative does await signing thereof by the court. There may be exceptions to the rule, for instance, soon after the judgment is dictated in open court, a feature which had not been placed for consideration of the court is brought to its notice by counsel or any of the parties or the court discovers some new facts from the record. In such a case the court may give direction that the judgment which has just been delivered would not be effective and the case shall be further heard. There may also be cases-though their number would be few and far between-where when the judgment is placed for signature the court notices a feature which should have been taken into account. In such a situation the matter may be placed for further consideration upon notice to the parties. If the judgment delivered is intended no to be operative, good reasons should be given.*
>
> *Ordinarily, judgment is not delivered till the hearing is complete by listening to submissions of counsel and perusal of records and a definite view is reached by the court in regard to the conclusion. Once that stage is reached and the court pronounces the judgment, the same should not be reopened unless there be some exceptional circumstance or a review is asked for and is granted. When the judgment is pronounced, parties present in the court know the conclusion in the matter and often on the basis of such pronouncement, they proceed to conduct their affairs. If what is pronounced in court is not acted upon, certainly litigants would be prejudiced. Confidence of the litigants in the judicial process would be shaken. A judgment pronounced in open court should be acted upon unless there be some exceptional feature and if there be any such, the same should appear from the record of the case. In the instant matter, we find that there is no material at all to show as to what let the Division Bench which had pronounced the judgment in open court not to authenticate the same by signing it. In such a situation, the judgment delivered has to be taken as final and the writ petition should not have been placed for fresh hearing. The*

*subsequent order dismissing the writ petition was not available to be made once it is held that the writ petitions stood disposed of judgment of the Division Bench on 28.7.1986.*

**27.** Now coming to the question regarding the validity of Section 62 (5) of the Act of 2005, it is observed that Section 62 (5) of the Act of 2005 as well as Rule 71 (3) of the Rules mandate the appellate Authority to entertain the appeal only on production of the proof of deposit of 25% of the additional demand created by the Assessing Authority. The order at the face of it is neither bad nor void so as to relax these provisions in favour of the appellant. It is settled by now in case of State of Haryana Vs Maruti Udyog Ltd. and others (2001) 124 STC 285 (SC) that the mandatory provisions of law entertaining the appeal cannot be dispensed with even on the ground that there is some defect and illegality in the order. The illegality of the order has to be seen at the time it is decided on merits, but the appellant has to comply with the conditions as envisaged in the Act before the appeal is entertained. In Maruti Udyog's case (Supra) while up holding the view given by the Full Bench of Punjab and Haryana High Court in case of Emerald International Ltd. observed as under:-

*12. In the instant case the prayer was made to grant stay on the ground that "the petitioner has not collected any additional tax from the customers and is unable to deposit the amount of additional demand created by patently illegal order." The respondent-company nowhere mentioned to or referred to its inability to pay the amount on account of its alleged financial difficulties or incapacity to make the requisite payment. The legality of the additional demand created could not be made the basis for insisting to entertain the appeal without prior payment, as that would have required the determination on the merits of the appeal. Relying upon the Full Bench judgment of the jurisdictional court in Emerald International Ltd/s case (2001) 122 STC 382; STI (1997) P&H 113 the Tribunal was competent in passing the order (annexure P8) which was impugned in the High Court. The Division Bench of the High Court was not justified in ignoring the Full Bench judgment and the judgment of another Bench of co-ordinate jurisdiction while allowing the writ petition of the company. The Division Bench even failed to mention the circumstances which justified the passing of the order for allowing the writ petition with direction to the Tribunal for disposal of the appeal on furnishing of the bank guarantee by the company. Merely because the Tribunal had insisted upon the payment of the amount in terms of proviso to subsection (5) of section 39 of the Act, should not have annoyed the court while granting the relief in exercise of its powers under article 226 of the Constitution. The impugned order being contrary to settled principles of law cannot be sustained and is accordingly set-aside.*

**28.** In the light of these observations no iota doubt is left to in my mind to compliance of Section 62 (5) of the Act. The appellant can't be said to be a poor man, unable to deposit the 25% of the additional demand. The appellant has shown gross turn over Rs.3,26,21,93,498/- and he has also not claimed any other crisis to claim such relief. The plea appears to have been setup in order to avoid the obligation.

**29.** As regards the validity of the order of extension, I have already held that the order of extension is quite valid.

**30.** Resultantly, all the three appeals being devoid any merits are dismissed. However, the appellant is provided two months more time from today to deposit the aforesaid amount. On doing so appeal shall be entertained and decided on merits, otherwise the order passed by the Assessing authority would remain intact. Copy of the judgment be placed in each file.

**31.** Pronounced in the open court.

# PUBLIC NOTICE (Punjab)

Go to Index Page

## THE LAST DATE OF E-FILING OF VAT-15 EXTENDED

GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE & TAXATION
PUBLIC NOTICE

**KIND ATTENTION: DEALERS / CHARTERED ACCOUNTANT SAAWYERS / OTHER STAKEHOLDERS**

This is to inform all the concerned that the last date of e-filing of VAT-15 for the 3rd Quarter of 2015-16 has been extended till 4th February, 2016.

Dated: 30th January, 2016 Excise & Taxation Commissioner, Punjab

# PUBLIC NOTICE (Punjab)

Go to Index Page

## THE LAST DATE OF E-FILING OF VAT-15 EXTENDED

GOVERNMENT OF PUNJAB
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 2015-16 has been extended till 5th February, 2016.

Excise & Taxation Commissioner, Punjab Dated: 30th January, 2016

# PUBLIC NOTICE (Punjab)

Go to Index Page

**DEPARTMENT OF EXCISE AND TAXATION, PUNJAB**

**Public Notice**

**LAUNCHING OF PILOT PROJECT FOR ONLINE ISSUANCE OF 'C' FORMS IN SAS NAGAR, MOHALI.**

**Kind Attention:** **Dealers / Lawyers / Chartered Accountants / Other Stakeholders of S.A.S Nagar Mohali**

1. You will be pleased to know that for the convenience of the dealers, the Department has launched a pilot project for online issuance of 'C' forms for dealers of District Mohali.
2. Under this pilot project, a dealer can apply for and get 'C' forms online for Quarter-1 and Quarter-2 of financial year 2015-16.
3. Now onwards, to get these 'C; forms, the dealer will not be required to visit the AETC office. He can simply enter his login ID and click on the link "Apply for Statutory Forms" to apply for 'C' forms.
4. Once the dealer clicks on the link, the system will request/prompt him to enter his e-mail ID/mobile number. The email id/mobile number given by the dealer will be treated the registered e-mail id/mobile number for all communications with the dealer by the Department.
5. Thereafter, the dealer will be required to select the Quarter concerned. Once the dealer selects the relevant Quarter, the names and TINs of all the outside dealers along with amount of 'C' Forms will be displayed as a list. This list would be generated on the basis of VAT-19 filed by the Punjab dealer himself.
6. For the convenience of the dealers, a facility has also been provided whereby TIN No., Name and State of the outside dealer can be corrected. They can also correct the amount of 'C' Form to be issued.
7. Normally, within 30 days of the online application, the 'C' forms will be sent in the login of the dealer. A communication in this regard will also be sent to his e-mail ID. In case the Designated Officer is of the opinion that 'C' forms should not be issued, the dealer will get a communication on the registered e-mail ID within 30 days. All the e-mails to the dealer will be followed by a message at his registered mobile number.
8. The dealer will be able to take out the print out of the 'C' Forms and use them. He will be required to sign them and affix his stamp before sending them to the outside dealer. These 'C' Forms will bear a unique number. Anyone desirous of checking the genuineness of these 'C' Forms, can go to the website of the Department and click on the link "Verification of Statutory Forms" and feed the form number. On feeding the number, the details of the 'C' Form will be displayed on the screen.

9. The dealers and Advocates of Mohali are requested to make maximum use of this module. In case, they face any problem, they should mail it to e-mail ID- etovatho@gmail.com. In the e-mail ID, they should mention their contact details. This will help in making further improvements in the module, which will ultimately help in making the module more dealer friendly.

15th January, 2016 Excise & Taxation Commissioner, Punjab

# NOTIFICATION (Chandigarh)

Go to Index Page

## AMENDMENT IN SCHEDULE A AFTER SERIAL NO. 66

**Chandigarh Administration**
**Office of Excise & Taxation**
**1st & 2nd Floor, Additional Town Hall Building,**
**Sector 17, Chandigarh**
**Phone No. 0172-2703934**

**Notification**

No. E&T-ETO (Ref.)-2016/ 166 The 27th January, 2016

With reference to the Chandigarh Administration, Excise & Taxation Department's Notification bearing No. E&T/ETO(Ref.)-2015/3713 dated 23rd December, 2015 and in exercise of the powers conferred by sub-section (3) of the Section 8 of the Punjab Value Added Tax Act, 2005 (Punjab Act No. 8 of 2005), as extended to the Union Territory, Chandigarh and all other powers enabling him in this behalf, the Administrator, Union Territory, Chandigarh, hereby makes the following amendments in Schedule 'A' appended to the said Act with immediate effect, namely:-

**AMENDMENT**

1. In the said Schedule 'A', after Serial No. 66 and the entries relating thereto, the following Serial number and item shall be added, namely;

   "67. Battery Operated Vehicles"

Sarvjit Singh, IAS,
Secretary Excise & Taxation,
Chandigarh Administration.

SGA
LAW OFFICES

## NEWS OF YOUR INTEREST

Go to Index Page

### SERVICE CHARGE: UT TO WITHDRAW ORDER

**CHANDIGARH:** The Department of Excise and Taxation has decided to withdraw the order issued two years ago to hotels/restaurants not to levy service charge on customers.

The decision was taken after it came to light that the then Excise and Taxation Commissioner, Mohammad Shayin, had "erred" while issuing the order as it was not in the domain of the Excise Department to issue such an order. The matter falls under the preview of the Department of Consumer Affairs, which was the only authority to issue the order.

Sources said the decision to withdraw the order was taken at a meeting of senior officers of the department in which the legality of the order was discussed. It was decided that the existing order would be withdrawn and the issue would be examined afresh in view of the development.

The sources said a formal direction for the withdrawal of the order would be issued soon.

Jitender Yadav, Excise and Taxation Commissioner, confirmed that it had been decided to withdraw the earlier order on service charge and a formal order in this regard would be issued soon.

Mohammad Shayin, former Deputy Commissioner, had issued two orders — one on October 31, 2014, asking hotels/restaurants not to levy service charge on customers failing which necessary legal action would be taken against them, and the other in 2015 asking them why they should not pay tax on the total amount, including service charge, if they were collecting it from customers.

***Courtesy: The Tribune***
***29th January, 2016***

SGA
LAW OFFICES

# NEWS OF YOUR INTEREST

Go to Index Page

## GST WILL BE CLEARED IN 15 MINUTES IF GOVT AGREES TO OUR TERMS, SAYS RAHUL

**At the core of the dispute between the ruling party and the principal Opposition party is not just the demand for a constitutional cap on the GST median rate, as it is called, but also two other conditions put forward by the Congress.**

Congress vice-president Rahul Gandhi said on Saturday that the GST Bill will be passed in Parliament in 'in just 15 minutes' with Congress support if the Narendra Modi government accepted conditions laid down by his party.

He was speaking to students of NMIMS, a Mumbai-based management institute. In reply to a student's question, he said: "We don't want a GST Bill where there is no cap on taxes. We want a limitation on the maximum tax people can be charged with."

At the core of the dispute between the ruling party and the principal Opposition party is not just the demand for a constitutional cap on the GST median rate, as it is called, but also two other conditions put forward by the Congress.

The Congress has demanded withdrawal of an additional one per cent tax on inter-state movement of goods, which has been proposed to provide comfort to manufacturing states that fear a loss of revenue. The party has also demanded a dispute resolution panel headed by a Supreme Court judge.

The GST Bill has been approved by Lok Sabha, but is stuck in Rajya Sabha, where the ruling BJP does not have a majority.

Stating that the GST legislation was conceptualised by his party, Rahul said: "For seven years, Jaitley didn't allow it to pass. The current Prime Minister, when he was chief minister, too, didn't allow it to pass. The BJP blocked everything. It has never been the strategy of the Congress to block Parliament."

Referring to media reports that said Jaitley had a discussion with the him on the Bill, Rahul said the Finance Minister had come to invite him for his daughter's wedding. 'When he came to see me, he told me that GST is good. Jaitley doesn't have to tell me that. I know it is good," he said.

"This government doesn't believe in a conversation", he said, adding that a compromise on GST was possible. "It is sitting on the table. But the government is not taking it,' he said. He said that work is yet to begin on the necessary infrastructure that can make GST work.

A few days ago, Finance Minister Arun Jaitley had said at a function in Mumbai that the stalling GST was providing sadistic pleasure to some people. Some of the issues being raised by the Congress were clearly an afterthought, he had said, while indicating that the government would try and secure the support of regional parties to get the bill approved in Parliament.The Congress has hit back, pointing out that some of its concerns were reflected in the report of Chief Economic Advisor Arvind Subramanian on GST.

The Congress has hit back, pointing out that some of its concerns were reflected in the report of Chief Economic Advisor Arvind Subramanian on GST.

***Courtesy: The Indian Express***

***16th January, 2016***

SGA
LAW OFFICES

## NEWS OF YOUR INTEREST

Go to Index Page

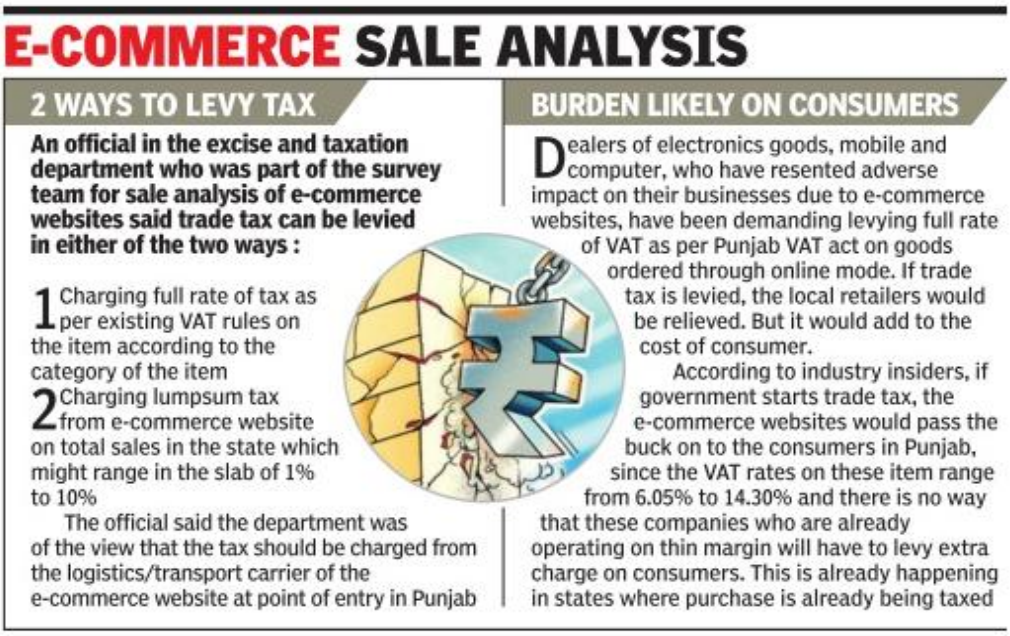
### GOVT MULLS LEVYING TRADE TAX ON ONLINE SHOPPING IN STATE

LUDHIANA: Avid online shoppers from Punjab may have to shell out more in the coming days with the Punjab government contemplating to levy tax on e-commerce websites.

Sources said a decision on what rate the tax is to be charged and which items are to be exempted is likely to be taken soon.

The recommendations have been made following a survey of online sales in Punjab.

Sources within the excise and taxation department confirmed to TOI that the department had conducted a survey on market size of e-commerce business in Punjab and found out that two websites Flipkart and Amazon alone had sold good worth Rs. 400 crore in 2013-14 and 2014-15. Going by this the market size of online shopping is in the range of Rs 500 to Rs 1,000 crore.




Outgoing financial commissioner taxation Anurag Aggarwal said a proposal in this regard was under consideration. "The matter of levying trade tax on e-commerce websites is certainly under considera tion, but the final picture would be clear in coming days," he said.

Though the proceeds of this tax which is to be called "Trade Tax" will go to the state industries department, it would be collected by excise and taxation department on behalf of the industries department.

Incidentally, Himachal Pradesh government is also contemplating levying tax on online purchases.Besides, states like Uttarakhand, Kerala, Karnataka and Tamil Nadu among others are already charging the tax on online purchases from 1% to 10% which eventually is paid up by the end user.

***Courtesy: The Times of India***
***22nd January, 2015***

SGA
LAW OFFICES

## NEWS OF YOUR INTEREST

Go to Index Page

### PUNJAB-VAT REVENUE OFF TARGET, BADAL SHIFTS KEY BABUS

**CHANDIGARH:** Amid a low collection of Value Added Tax (VAT), one of the biggest revenue generators for the cashstrapped Punjab government, chief minister Parkash Singh Badal on Thursday shifted its key IAS officer holding the taxation portfolio.

Punjab is facing one of its worst financial crisis with a debt of Rs 1.25 lakh crore, that has become one of the key issues in the run up to 2017 polls.

At the beginning of last financial year, that is 2015-16, the government had announced VAT collection to be Rs 17,851 crore. However, barely Rs 7,674 crore was collected from VAT till October 2015, with a growth rate of 15% much behind Gujarat at 19% and Haryana at 18%.

The government shifted incumbent taxation financial commissioner Anurag Agarwal, a 1990-batch IAS officer to social security department.Agarwal's portfolio was given to principal secretary (finance) D P Reddy .

It was not clear if the Badal government also changed Agarwal's immediate junior and excise and taxation commissioner (ETC) Anurag Verma, a 1993-batch IAS.

The government orders barely said Verma will take care of education department as secretary .

Asenior officer with the personnel department, however, said that Verma will retain the ETC portfolio as additional charge.

The fall in revenue is largely from foodgrains, automobiles, cement, rice though experts and opposition parties are blaming it on closure of iron and steel industry and poor investment climate in Punjab.

“What purpose will replacement of babus solve if the Badal government is more keen on establishing their own businesses while state is being depleted of coffers on their chopper, petrol and sangat darshan bills?“ asked former Punjab Congress president Partap Bajwa.

The government also changed another finance department official by shifting special secretary (finance) and treasuries director Shruti Singh, a 2004-batch IAS to home department.

This is the second time that treasuries director has been changed in last one month. Earlier, a 2006-batch IAS Gurneet Tej was shifted from the same department.

***Courtesy: The Times of India***

***22nd January, 2016***

SGA
LAW OFFICES

## NEWS OF YOUR INTEREST

Go to Index Page

### TUSSLE BETWEEN PIDB, EXCISE DEPT THREATENS TO DERAIL' 300-CR PROJECT

**CHANDIGARH:** The mantra of the Punjab Infrastructure Development Board (PIDB) is to accelerate economic growth by developing infrastructure. But, development and modernisation of 39 tax-leaking interstate check posts is struggling to take off even a year after the task was given to PIDB.

Now, the PIDB and the excise and taxation department are shooting letters to each other to execute the ambitious 300 crore project.

While the PIDB 1ms taken a stand that the excise department is “well versed v.lth the logistics" of the project, the latter has taken the plea that the PIDB has huge experience in this field", according to official documents.

Responding to a series of PIDB communications, the office of the excise and taxation commissioner on January 13 wrote to the PIDB managing director that the project involved multiple departments and that "it will be more appropriate if it is taken up by PIDB".

In another communication, B Srinivasan, additional excise and taxation commissioner, said, The department of excise and taxation does not have the requisite expertise to conduct bidding for a project of this magnitude and complexity.”

“An agency like PIDB," the officer took the plea, “with huge experience in this field alone can structure the process in a manner to elicit adequate response". LACK OF RESPONSE At the root of the tussle is the lack of adequate response in the two bid-dings. The project will be given to a private agency under design, built, finance, operate and transfer (DBFOT) mode. In this connection, PIDB and the excise and taxation department have been exchanging letters since May last year.

About eight months ago, a single bid was received for the project. It was not awarded to the single bidder. 'During re-bidding processes, on both the occasions, single bids were received, which were rejected for consideration and opening by the department of excise and taxation," general manager of PIDB stated in his December 29, 2015 letter to the excise and taxation commissioner.

PIDB’s stand has been that rebidding process of the project was carried out twice in consultation and v.lth full participation of the department of excise and taxation, the administrative department, and other stakeholder departments through the sectoral sub-committee.

“Since the department is well versed with the logistics of the project...it is suggested that the excise and taxation department may take up the project in the interest of its speedy implementation," is the fresh plea of PIDB, saying it is currently “fully involved" with the activities related to the funding of urban and rural infrastructure development projects.

PIDB was created to give fillip to industrial and economic growth through development of world-class infrastructure. While chief minister Parkash Singh Badal is the chairman of PIDB, deputy CM Sukhbir Singh Badal is the co-chairman. As this inter-departmental tussle over “you execute this project" is threatening to derail the project, the matter will be placed before the deputy CM, sources said.

***Courtesy: The Hindustan Times***