SGA
LAW OFFICES

Issue 8
16th April 2017

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

— Chris Rock

NOMINAL INDEX

NEWS OF YOUR INTEREST

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News From Court Rooms

CESTAT, NEW DELHI : CENVAT Credit : Denial of Cenvat credit without finding out actual usage of various iron and steel materials used in fabrication of plant and machinery in premises of appellant was not valid.

Cenvat credit legitimately available on capital goods would not be denied just because it was entered in assessee's book of account as no utilization of said credit was possible without commencement of production.

Where there was specific inclusion of input services for construction of factory, assessee-manufacturer would be eligible to avail credit of service tax paid on such input services. (***Dalmia Cements Ltd. – February 13, 2017***)

CESTAT, MUMBAI : Central Excise : A physical verification of the factory stock of the assessee was made and MS scrap were found short. Duty liability on such shortage was made good by debiting PLA and through the CENVAT credit account as such shortage was estimated not by any scientific method but on 'eye estimate'. Duty demanded and penalties imposed were upheld. (***Ashok Dhanuka – 30-11-2016***).

CESTAT, AHMADABAD : Service Tax - Assessee laid down pipelines in furtherance of a contract with a municipal body. Whether said activity could be classified under heading "Commercial or Industrial Construction" service, and would be dutiable? It must first be determined whether the pipeline was laid for commercial purposes. In the present case, the sale/purchase of water is incidental, but the primary objective is to supply water to needy members of the public. No service tax. (***BMS Projects P Ltd. – January 30, 2017***)

BOMBAY HC : Central Excise : Recovery of dues of sole proprietary concern. Both proprietress as well as power of attorney holder of concern died. The heirs of such deceased sole proprietor/proprietress cannot be proceeded against in the absence of a clear legal stipulation. (***Gaurav Agarwal – March 30, 2017***).

CESTAT, HYDERABAD : CENVAT Credit : The assessee is a company engaged in the fabrication of boilers. SCN was issued on assessee alleging that steel fabricated items are not used as components, spares and accessories to boilers, but were merely used as support structures to boilers and the assessee with the intention to avail wrong credit classified them as parts of boilers falling under chapter 84. issue stands covered by recent judgment of Apex court laid in the case of Swetha Engineering Ltd. Following the ratio laid down by Apex court, impugned order is unsustainable and the same is set aside. (***Cethar Vessels P Ltd. – September 19, 2016***).

ALLAHABAD HC : Service Tax : Refund of CENVAT credit for the period prior to registration of Assessee should not be denied on technical grounds as requirement of registration is not a condition or eligibility to claim refund. Revenue's appeal dismissed. (***Atrenta India P Ltd. – August 30, 2016***).

T & AP HC : AP VAT : The equipment and technical personnel provided by the petitioner to the main contractor are on charter hire where the complete control was retained by the petitioner. All responsibilities were placed only upon the petitioner by the main contractor himself. Hence transfer of the right to use not taking place. VAT not liable. (***Transocean Offshore – April 6, 2017***).

HIGH COURT OF DELHI: Section 9, read with section 81 of the Delhi Value Added Tax Act, 2004 - Tax, imposition of - Tax credit - Period 2007-08 - Assessee-registered dealer claimed input tax credit (ITC) on purchases made against tax invoices issued by two selling dealers RE and ST - Lower Authorities rejected ITC on sole ground that Registration Certificate of selling dealer RE had been cancelled, observed that department had lodged an FIR against selling dealer and investigation was under process - Crime Branch had informed that business transactions in instant case were not normal business affairs of selling dealer RE - However, Tribunal held that purchasing dealer could not be denied benefit on ground that certain transactions of selling dealer with other parties were found doubtful unless purchasing dealer was found in collusion with these dealers - Division Bench of High Court, in Shanti Kiran India (P.) Ltd. v. Commissioner Trade and Tax Department [2013] 57 VST 405 (Delhi) had held that there was no provision or methodology by which purchasing dealer could monitor selling agent's behaviour vis-a-vis latter's VAT returns - Whether in view of above enunciation of law, Revenue's appeal was to be dismissed - Held, yes [Para 4] [In favour of assessee] (***Commissioner Department of Trade & Taxes, Government of NCT v. S.K. Steel Traders)***

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PUNJAB & HARYANA HIGH COURT

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CWP NO. 20311 OF 2015

RELIANCE RETAIL LTD.
Vs
STATE OF PUNJAB AND ANOTHER

S.J. VAZIFDAR, C.J. AND ANUPINDER SINGH GREWAL, J.

5th April, 2017

HF ▶ Assessee/Revenue

Prescription of time under Rule 20 of Punjab VAT Rules is not ultravires Punjab VAT Act but the period of 90 days is directory in nature and can be extended

INPUT TAX CREDIT – JOB WORK – REVERSAL OF ITC – RULE 20 REQUIRING RETURN OF GOODS WITHIN 90 DAYS TO RECLAIM ITC – NO SPECIFIC POWER UNDER SECTION 13 TO PRESCRIBE PERIOD OF 90 DAYS – HOWEVER, SECTION 70 OF THE ACT AUTHORISES STATE TO PRESCRIBE RULES – PERIOD PRESCRIBED FOR ENSURING THAT SAME GOODS ARE RECEIVED BACK AFTER JOB WORK – PROVISION NOT ULTRAVIRES SECTION 13(3) OR OTHERWISE INVALID - *SECTION 13(1), 13(3), 70 OF PUNJAB VAT ACT, 2005 AND RULE 20 OF PUNJAB VAT RULES, 2005*

ITC – JOB WORK – REVERSAL OF ITC – GOODS NOT RECEIVED BACK WITHIN 90 DAYS AFTER JOB WORK – RULE PRESCRIBING THE PERIOD OF 90 DAYS ONLY DIRECTORY AND NOT MANDATORY – AUTHORITIES NOT BOUND BY ANY RIGID TIMEFRAME OR SPECIFIC PERIOD – PERIOD OF 90 DAYS NOT CONFINED TO SAME ASSESSMENT YEAR – APPROACH OF TRIBUNAL IN THIS REGARD NOT CORRECT – ORDER SET ASIDE AND MATTER REMANDED BACK TO CONSIDER THE CLAIM AFRESH ON THE BASIS OF REASONABLE TIME - *SECTION 13(1) & 13(3) OF PUNJAB VAT ACT AND RULE 20 OF PUNJAB VAT RULES, 2005*

The Petitioner-Assessee had sent certain goods i.e. bullion on job work to other States. As per Rules, the ITC availed on purchase of the goods was reversed The goods after job work returned back after 90 days on which the ITC reversed earlier was sought to be reclaimed. The appeal filed against the said order was dismissed upto Tribunal who held that even though provision is directory but this relaxation can be given only in case the goods are returned within few days after 90 days and within the same Assessment Year.

Before the High Court, the assessee challenged the vires of Rule 20 on the ground that it is ultravires the provisions of the Act as there is no authority with the State Govt. to prescribe the period for return of goods:-

Held:

Insofar as validity of rule prescribing period of 90 days is concerned, the same does not find support from Section 13(1) or Section 13(3). Similarly, Rule 13(3) does not prescribe for prescription of any time and therefore there is no specific power given in this behalf. However, Section 70 of the Act which entitles the State Govt. to make Rules or carrying out the purpose of the Act takes care of the prescription of 90 days time in such a situation. Section 13(3) does not bar the prescription of any time and therefore there is no reason to hold that Rule 20 is ultravires Section 13(3).

Having said that, however, it must be held that period of 90 days prescribed in Rule 20 is only directory and not mandatory. Even the ETC while passing order under Section 85 has held so. Even the Tribunal has held the provision to be directory. Once it is held that period of 90 days is only directory, the authorities must not consider themselves bound by any rigid timeframe or any specific period. There is no warrant for holding that goods sent must be returned by the job workers during the same assessment year as it is not contemplated by Rule 20. Period of 90 days is also not confined to the same assessment year. It is also not required that goods must be returned within a few days so long as the same are returned within reasonable period.

What would be the reasonable period must depend upon the facts of each case. The reasonable time must not be assessed in vacuum, but keeping in mind the scheme and purpose of Act itself. It must be determined considering the possibility of ascertaining whether the goods returned by the job worker are the very goods that were sent by the taxable person to the job worker. The clear language of Section 13(3) is that debit is liable to be reversed only if those very goods are returned by the job worker after processing. The time of receipt is not essential but receiving back of the same goods is absolute necessity. The importance of time is only to facilitate the enquiry by the Department as to whether the ingredients of section 13(3) are satisfied or not. If the Department is not prejudiced in determining these issues, delay beyond 90 days cannot be a ground for questioning the restoration of the ITC debited by the taxable person on receipt of goods from the job worker after processing.

In the circumstances, the challenge to Rule 20 insofar as it prescribes the time limit of 90 days is rejected but the said period is held to be directory and not mandatory. The Tribunal has applied the wrong test in determining whether the goods were returned in a reasonable time or not. The impugned order is, therefore, quashed and remanded back to Tribunal for determination of the appeal afresh. All the contentions on merits are kept open.

Present: Mr. Sandeep Goyal, Advocate and Mr. Rishab Singla, Advocate,
for the petitioner.
Mr. Rajinder Goyal, Additional Advocate General, Punjab for the respondents.

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S.J. VAZIFDAR, CHIEF JUSTICE

1. The petitioner seeks a declaration that Rule 20 of the Punjab Value Added Tax Rules, 2005 (hereinafter referred to as 'the rules') is ultra-vires Section 13(3) of the Punjab Value Added Tax Act, 2005 (hereinafter referred to as 'the Act') in so far as it prescribes the time limit of 90 days for claiming back the Input Tax Credit (ITC) reversed for the goods which have been sent on job work. The petitioner also seeks a writ of certiorari to quash the order dated 06.07.2015 passed by the Punjab Value Added Tax Tribunal dismissing its appeal for the assessment year 2008-09 upholding the levy of tax, interest and penalty.

2. The petitioner is a dealer duly registered under the provisions of the Act as well as under the provisions of the Central Sales Tax Act, 1956 at Mohali (Punjab). The petitioner was amalgamated with M/s Reliance Fresh Ltd. with effect from 01.07.2013 and with effect from 30.07.2013 it changed its name to M/s Reliance Retail Ltd. The petitioner carries on its business of the manufacturer and sale of jewellery. It is admittedly entitled to Input Tax Credit (ITC) of the tax paid on purchase of gold used in the manufacture of jewellery. The petitioner filed returns for the assessment year 2008-09 in which it claimed ITC in respect of the gold purchased during that year and adjusted the admissible tax credit against its output tax liability and carried forward the balance tax credit to the next year.

3. The respondents by a notice dated 29.08.2012 called upon the petitioner to show cause why penalty and interest be not imposed upon it under sections 56 and 32 of the Act. The notice stated that ITC on purchases amounting to about Rs. 8.23 crores was liable to be rejected as it was not in accordance with Rule 20 read with Section 13(3) of the Act. The petitioner responded to this show cause notice in writing and at the personal hearing. By an assessment order dated 15.11.2012 the respondents imposed tax, penalty and interest aggregating to Rs. 25,80,541/-upon the petitioner. The First Appellate Authority-Deputy Excise and Taxation Commissioner (Appeals) dismissed the appeal by an order dated 14.06.2013. The Value Added Tax Tribunal, Punjab dismissed the appeal by an order dated 06.07.2015. The Tribunal noted that during the assessment year 2008-09, the petitioner claimed ITC on purchase of bullion of the value amounting to Rs. 24,57,78,897/-. However, bullion worth Rs. 8,23,326.38 was not received back by the petitioner from the job workers after it was processed and reconditioned within the period of 90 days stipulated in Rule 20 of the said Rules.

4. The Tribunal noted the contentions on behalf of the petitioner that Rule 20 was merely directory and not mandatory and that the assessment order was time barred. The Tribunal noted that although the bullion was not received within 90 days of it having been sent to the job workers, it was received in the subsequent year. It was also contended on behalf of the petitioner that penalty in any event ought not to be charged inter-alia as the petitioner had no intention to evade or avoid the tax and had also disclosed all the facts. The Tribunal held:-

> *"..... From the record produced by the appellants as well as the admissions made by them, it is apparent that the appellant had made the purchases and claimed ITC on the value of the bullion and the ornaments amounting to Rs.24,57,78,897/-. It is also a fact that the goods were sent by the appellant for job work in the year 2008-09 outside the State of Punjab. The goods worth Rs.8,23,326.38/- were neither received back within the stipulated period of 90 days nor the same were received during the tax period i.e. year 2008-09. It is not a case where the goods were received after job work within the margin of few days as prescribed in Rule 20 of the Rules. Had the bullion as well as the ornaments been received, after job work within the said financial year and not within 90 days the authorities would have considered the case of the appellant for condoning the delay, but in the present case, the appellant has submitted that the goods were received back in subsequent years and it is not definite when these goods were received back. Every year is an independent year and is to be assessed separately. Therefore, the goods which have not been counted for the year 2008-09, certainly, input tax credit was bound to be reversed.*
>
> *.....Irrespective of the fact and without commenting deep over the matter as to whether Rule 20 is directory or mandatory, it would be suffice to say that the delay in receiving the goods after job work for a few days, under special*

extra ordinary circumstances could be condoned, but in the present case goods were not received during the said financial year. Therefore, the ITC so claimed was bound to be reversed....."

The Tribunal also held that the appellant had not led cogent evidence evidencing that the same goods have been received back after the job work. This aspect need not detain us for evidently the petitioner had infact led evidence in this regard even before the Assessing Authority. As Mr. Goyal, the learned counsel appearing for the petitioner rightly pointed out neither the Assessing Authority nor the First Appellate Authority held that the petitioner had not led cogent evidence that the same goods had been received back after the job work. As we are inclined to accept Mr. Goyal's submission regarding the interpretation of Rule 20 read with Section 13(3), we will be remanding the matter to the Tribunal for a fresh decision on- merits. At the hearing on remand this aspect would have to be considered afresh.

5. This brings us back to Mr.Goyal's challenge to Rule 20.

6. The relevant provisions of the Punjab Value Added Tax Act, 2005 read as under:-

*"**Section 2 (O)** : - "input tax" in relation to a*

taxable person means value added tax (VAT), paid or payable under this Act by a person on the purchase of taxable goods for resale or for use by him in the manufacture or processing or packing of taxable goods in the State;

***2(p)** "input tax credit" means credit of input tax (in short referred to as ITC) available to a taxable person under this Act;*

***2 (v)** "prescribed" means prescribed by rules made under this Act;*

Section 13

***13 (1)** A taxable person shall be entitled to the input tax credit, in such manner and subject to such conditions, as may be prescribed, in respect of input tax on taxable goods, including capital goods, purchased by him from a taxable person within the State during the tax period:*

Provided that such goods are for sale in the State or in the course of inter-State trade or commerce or in the course of export or for use in the manufacture, processing or packing of taxable goods for sale within the State or in the course of inter-State trade or commerce or in the course of export:

Provided further that a taxable person shall be entitled to partial input tax credit in any other event, as may be provided in this section in such manner and subject to such conditions as may be prescribed:

Provided further that if, purchases are used partially for the purposes specified in this sub-section and the taxable person is unable to identify the goods used for such purposes, then the input tax credit shall be allowed proportionate to the extent, these are used for such purposes, in the prescribed manner:

Provided further that input tax credit in respect of purchase tax paid or payable by a taxable person under section 19, shall be allowed subject to the conditions laid therein.

***13(2)** Input tax credit shall be allowed only to the extent by which the amount of tax paid in the State exceeds four percent on purchase of goods -*

(a) sent outside the State other than by way of sale in the course of inter-State trade or commerce or in the course of export out of territory of India; and

(b) used in manufacturing or in packing of taxable goods sent outside the State other than by way of sale in the course of inter-State trade or commerce or in the course of export out of the territory of India.

***13(3)** Where a taxable person sends any goods as such or after being partially processed for further processing on job work basis, he shall debit the ITC by four percent of the value of such goods. If such goods after processing are received back by such person, the ITC debited at the time of dispatch, shall be restored. Such person shall, however, be required to produce proper evidence in the shape of records, challans or memos or any other document evidencing receipt of such goods, whenever asked for.*

Section 26

***26(1)** Every taxable person shall make self assessment of tax and shall file return fora period, within such time and in such form as may be prescribed.*

***(2)** Every registered person shall make self assessment of tax and shall file return for a period, within such time and in such form as may be prescribed.*

***(8)** A taxable person or a registered person, whose registration is cancelled under section 24, shall file such final return, as may be prescribed, within thirty days from the date of cancellation by the Commissioner or the designated officer, as the case may be.*

Section 31

***31(6)** A casual trader, shall make the payment of tax in such manner, as may be prescribed, and shall immediately on completion of such business event or the period for which the permission was granted by the designated officer, whichever is earlier, report to the designated officer, about the total amount of sales or purchases, the tax payable thereon and the tax paid and shall deposit the amount of balance tax, if any, in the Government treasury within such time and in such manner, as may be prescribed."*

The first proviso was amended w.e.f. 01.04.2016. We are, however, concerned with the unamended proviso which is what we have quoted earlier.

7. Rule 20 reads as under:-

*"**20. Eligibility of input tax credit on job work.**--Input tax credit shall be allowed, if any taxable goods as such or after being partially processed, are sent by a manufacturer, registered under the Act to a job worker for further processing, testing, repair, reconditioning or any other purpose, and it is established from the challan or relevant documents produced by the taxable person concerned that the goods in question have been received back by him within a period of ninety days from the date of dispatch to the job worker."*

8. Mr. Goyal, the learned counsel appearing on behalf of the petitioner, submitted that Rule 20 insofar as it provides that ITC shall be allowed, if any, taxable goods are sent by the manufacturer to a job worker for further processing etc. and it is established that the goods have been received back within a period of 90 days from the date of dispatch to the job worker is illegal and contrary to Section 13(3) of the Act. It is only the prescription of the time limit of 90 days in Rule 20 that is challenged. Section 13(3) provides that a taxable person who sends any goods for further processing on job work basis, shall debit the ITC by 5% of the value of such goods. Section 13(3) further provides that if such goods after processing are received back by the taxable persons, the ITC debited at the time of dispatch shall be restored. Mr. Goyal

submitted that sub section (3) does not prescribe a time limit for restoring the debit and, therefore, Rule 20 insofar as it prescribes the time limit is bad in law.

9. Mr. Rajinder Goyal, the learned counsel appearing on behalf of the respondents on the other hand contended that under sub section (1) a taxable person shall be entitled to ITC "in such manner and subject to such conditions as may be prescribed ....." and that, therefore, the legislature was entitled to prescribe the time limit within which the goods sent for job work must be received back.

10. Section 13(1) deals with a taxable person's entitlement to ITC. It provides that a taxable person would be entitled to ITC subject to such conditions as may be prescribed. The legislature is, therefore, entitled to prescribe the conditions subject to which the taxable person shall be entitled to ITC. When a party fulfills the conditions, as may be prescribed, his entitlement to ITC is crystallized and vested in him. Sub section (3) of Section 13 does not curtail this entitlement to a taxable person to ITC. As far as the entitlement to ITC is concerned, the matter ends there. Sub section (3) deals with a different situation. It deals with a situation where the taxable person sends such goods for further processing on job work basis. In such a case the taxable person is bound to debit the ITC by 5% of the value of such goods. The ITC so debited is liable to be restored only if such goods after processing are received back by the taxable person. That the two situations are different is also evident from the fact that if for instance the taxable goods are not sent for further processing on job work basis, the taxable person would not be liable to debit the ITC claim in respect thereof. Further the provisions of sub section (3) are not subject to such conditions as may be prescribed. The words in sub section (1) of Section 13 "subject to such conditions, as may be prescribed" are absent in sub section (3) .

11. Section 70 of the Act, however, entitles the State Government, by notification in the official gazette, to make rules for carrying out the purposes of the Act. One of the purposes of the Act is obviously to ensure that an assessee avails ITC in accordance with law. If one of the important purposes of the Act is to grant a taxable person the ITC, it would be an equally important purpose of the Act to ensure that this benefit is availed of in accordance with law. Rule 20, therefore, can be supported on the basis of Section 70 of the Act.

12. The reason for prescribing a time limit albeit directory as we will shortly indicate is evident. It is to ensure that the goods returned by the job workers after processing are the same as the goods that were sent by the taxable person for further processing on job work basis. The importance of the identity of the goods is obvious for the ITC was claimed in respect of those goods. If the goods returned by the job workers after processing are different from and less in value, than the goods sent for processing on job work basis, the taxable person would in effect be availing the ITC of a higher value than it was entitled to. Prescribing a time limit only makes it easier for the Department to ascertain whether the goods returned by the job workers after processing are the same as the goods that were sent by the taxable persons to the job workers for processing/further processing. Rule 20 is, therefore, not ultra-vires Section 13(3) or otherwise invalid.

13. Having said that, however, it must be held that the period of 90 days prescribed in Rule 20 is only directory and not mandatory. We need go no further in this regard than referring to an order under section 85 of the Act passed by the Excise and Taxation Commissioner, Punjab. Another assessee raised inter-alia the following question to be determined under section 85 of the act:-

> *"1. Whether Input Tax Credit debited on transfer of goods for job work can be restored if the goods are received back after a period of ninety days which is against the rule 20 of PVAT Act, 2005."*

The order in so far as it is relevant reads as under:-

"Rule 20 regulates the provision of section 13(3) of the PVAT Act, 2005. This rule is directory in nature. No tax is evaded if the goods are received after 90 days of sending the same for job work and are accompanied by relevant documents i.e. challan, invoice or any such documents as may show the same goods are being received after job work by the taxable person. Therefore at the most it can be considered as violation of rule which can be penalized under section 60 of the PVAT Act, 2005. Therefore, orders may please be passed in such a way that the taxable person had not to forego the input tax credit available to him without selling the goods or converting same into tax free goods."

..... I have heard the arguments of the counsel and perused the relevant provision of the Act and rules. If the taxable person is able to establish that the goods which were sent for job work and for which input tax credit was debited are received back after a period of 90 days the ITC debited can be reversed provided the relevant documents which irrefutably prove that the goods which were sent for job work are being received back and are also submitted by the taxable person. Rule 20 is in the nature of regulatory provision for section 13(3) of the PVAT Act. Refer to the decision of Punjab and Haryana High Court in the case of M/s Stelco Strips Ltd. v. State of Punjab reported as 2009-33 PHT page 31 (Punjab and Haryana High Court) wherein it was held that the time period of 14 days prescribed under section 51(7) of the PVAT Act, 2005 is directory in nature; therefore, following this decision; rule 20 is also directory in nature. The designated officer can levy penalty under section 60 of the PVAT Act, 2005. Therefore, the questions raised are answered as below:-

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

(2) If the taxable goods after job work are received back after a period of 90 days the provision of Section 60 of PVAT Act are to be revoked."

14. The Tribunal has also proceeded on the basis that the period of 90 days in Rule 20 is directory and not mandatory. This is evident from the observation of the Tribunal that the petitioner did not receive the goods from the job workers within just a few days or within a reasonable time or during the course of the assessment year in question.

15. Once it is held that the period of 90 days is only directory, the authorities must not consider themselves bound by any rigid time-frame or any specific period. There is no warrant for holding that the goods sent must be returned by the job workers during the same assessment year. That is not contemplated by Rule 20. The period of 90 days is not confined to the same assessment year. Indeed it cannot be. If for instance the goods are sent during the last few days of the assessment year or even on the last date of the assessment year, they cannot be expected to be returned by the job workers during the same assessment year. That is not even contemplated by the Rule.

16. The Tribunal also observed that the goods were not returned within a few days. We see no reason to restrict the right to claim a reversal of the debit under sub section 3 only if the goods are returned within a few days. They must be returned within a reasonable time.

17. This brings us to an important aspect as to what is a reasonable time for the purpose of reversing the debit under sub section (3) of Section 13. Although what is reasonable time must depend on the facts of each case, in our view, the reasonable time must be assessed not in vacuum but keeping in mind the scheme and purpose of the Act itself. Keeping in view the purpose and the scheme of the Act, we are inclined to hold that it must be determined considering the possibility of ascertaining whether the goods returned by the job workers are the very goods that were sent by the taxable persons to the job workers. The ITC is availed of in respect of particular goods. The debit under section 13(3) is in respect of the goods that are sent to the job workers for further processing. The clear language of section 13(3) is that the debit is liable to be reversed only if those very goods are returned by the job workers after processing. This is clear from second sentence of section 13(3) that "if such goods after processing are received back by such person, the ITC debited at the time of dispatch, shall be restored..... " (emphasis supplied). The words "if such goods" in this sentence refer to the words "any goods" in the first sentence to section 13(3). Thus it is the goods sent by the taxable persons for further processing on job work basis that must be returned by the job workers to the taxable persons who sent them in order to entitle the taxable persons to have the ITC debited at the time of dispatch restored. What entitles the restoration of the ITC debited is the receipt of the goods from the job workers which were sent to the job workers by the taxable persons after processing. The time of receipt is not essential, for as we mentioned earlier, if the goods had not been sent to the job workers, the ITC credit would have remained with the taxable persons in any event. The importance of the time is only to facilitate the enquiry by the department as to whether the ingredients of section 13(3)are satisfied or not, namely, that it is the goods sent by the taxable persons that are returned by the job workers after processing. Whether the delay in return of goods beyond the period of 90 days is reasonable or not would depend upon whether the department's ability to ascertain these facts was jeopardized or prejudiced or not on account of the delay. If the department is not prejudiced in determining these issues, the delay beyond 90 days cannot be a ground for questioning the restoration of the ITC debited by the taxable persons on receipt of the goods from the job workers after processing.

18. In the circumstances, the challenge to Rule 20 insofar as it prescribes the time limit of 90 days is rejected. It is, however, held that the same is directory and not mandatory. The Tribunal, therefore, applied the wrong test in determining whether the goods were returned in a reasonable time or not. It would be necessary, therefore, for the Tribunal to decide the question afresh in accordance with this judgment.

19. The petition is, therefore, disposed of by quashing the impugned order and remanding the matter to the Tribunal for determination of the appeal afresh. All the contentions on-merits are kept open.

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PUNJAB & HARYANA HIGH COURT

CEA 18 OF 2016

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PRINCIPAL COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX
Vs
RAJA DYEING

S.J. VAZIFDAR, C.J. AND ANUPINDER SINGH GREWAL, J.

14th March, 2017

HF ▶ Assessee

Appeal against the order of CESTAT will lie to Supreme Court if the order deals with questions related to rate of duty or value of goods along with other questions.

APPEAL – MAINTAINABILITY OF – SCOPE OF SECTION 35G AND 35L – ORDER PASSED BY DEPARTMENT RAISING A DEMAND ON ACCOUNT OF CLANDESTINE REMOVAL OF GOODS - ALSO, BENEFIT OF EXCISE DUTY DENIED AS PER THE ORDER TO APPELLANT FIRM FOR UNDERVALUATION OF GOODS – ORDER PASSED BY TRIBUNAL DEALT WITH QUESTIONS THAT RELATE TO DUTY AND OTHER ISSUES – APPEAL FILED BEFORE HIGH COURT AGAINST THE ORDER OF TRIBUNAL WHEREBY THE IMPUGNED ORDER IS SET ASIDE TO THE EXTENT OF CLANDESTINE REMOVAL OF GOODS – CHALLENGE AGAINST THE MAINTAINABILITY OF APPEAL CONTENDING THAT SUCH APPEAL WOULD LIE TO SUPREME COURT IN VIEW OF SECTION 35LOF THE ACT – HELD: NATURE OF ORDER OF APPELLATE AUTHORITY DETERMINES MAINTAINABILITY OF APPEAL – MERE FACT THAT THE PARTY CHOOSES TO CHALLENGE ONLY THAT PART OF ORDER WHICH DOES NOT DEAL WITH VALUE OF GOODS IS IMMATERIAL – APPEAL UNDER SECTION 35G IS MAINTAINABLE BEFORE HIGH COURT ONLY IF IT DEALS WITH QUESTIONS OTHER THAN RELATING TO VALUE OF GOODS – THUS, ORDER OF TRIBUNAL IN PRESENT CASE OUGHT TO BE CHALLENGED BEFORE SUPREME COURT U/S 35L OF CENTRAL EXCISE ACT- APPEAL DISMISSED – *SECTIONS 35G AND 35 L OF CENTRAL EXCISE ACT, 1944*

Facts

In this case, the Respondent had availed an exemption with respect to concessional rate of duty for the dyed acrylic yarn as per the notification. The department had concluded that since the goods in question were purchased from a firm at an undervaluation and since that firm had not paid appropriate excise duty , the respondent was also not entitled to the benefit .Thus, a demand was raised on the respondent firm by the appellant revenue. Also, it was alleged that the respondent firm has used the purchased goods for manufacturing of unaccounted goods and has clandestinely cleared the same without payment of duty. A demand has been raised on this account too. Therefore, the Tribunal has dealt with questions that relate to duty and those that do not relate to duty in respect of the respondent firm.

An appeal is filed before Supreme Court by department against the setting aside of order by Tribunal to the extent of clandestine removal of goods. The respondent has contended the appeal is not maintainable as the order passed by Tribunal among other things relates to the rate of duty and ought to be filed u/s 35L before Supreme court while the appellant contends that it only relates to clandestine removal of goods. The question that has arisen is as to whether an appeal is maintainable u/s 35G to High court where the order of Tribunal deals with questions having a relation to rate of duty of excise as well as other questions.

Held:

The appeal u/s 35G will lie only from the order of Appellate Tribunal and not against the order of Adjudicating Authority. Whether appeal is maintainable depends on the order passed by Tribunal. The words 'the other things' in Section 35G indicate that the appeal is maintainable u/s 35G to the High court only if the order passed in appeal by Tribunal is one not relating to determination of any questions relating to rate of excise duty or value of goods. In that case, it would lie to Supreme Court u/s 35L. It is the nature of order of Tribunal that determines maintainability of appeal.

The purpose for this provision is to consolidate all appeals from order of Tribunal in one court and to avoid bifurcation of proceedings before Supreme Court and High Court.

Once it is held that the order of tribunal which deals with questions that fall within the ambit of 35L as well as other questions appeal against such order would lie to the Supreme Court u/s 35L. Mere fact that the party chooses to challenge only that part of the order that falls within the ambit 35G would make no difference. Thus, it cannot be said that the party chooses to challenge the order of the Tribunal only so far as it relates to the determination of questions falling within the ambit of 35G must file appeal before High court even though the order also deals with questions that fall within ambit of 35L.

Therefore, the appeal is dismissed on the ground that it is not maintainable u/s 35G of Central excise Act, 1944.

Cases referred:.

- *Commissioner of S.T., Bengalore Versus Scot Wilson Kirkpatrick (I) Pvt Ltd., 2011 (23) S.T.R. 321 (Kar.)*
- *Commissioner of Service Tax, Delhi Versus Bharti Airtel Ltd., 2013 (30) S.T.R. 451 (Del.)*
- *Commissioner of Service Tax Versus Ernst & Young Pvt Ltd, 2014 (34) S.T.R, 3 (Del)*
- *Commr. of Cus. & C. Ex., Meerut-II Versus Honda Siel Power Products Ltd., 2016 (332) E.L.T. 222 (ALL)*
- *Commr. Of C. Ex., Cus. & S.T., Bharuch Versus Shree Krishna Industries, 2016 (338) E.L.T. 535 (Guj.)*

Present: Mr. Sharan Sethi, Senior Standing counsel for the appellant.
Mr. Amrinder Singh, Advocate for the respondent.

******

S.J. VAZIFDAR, C.J.

1. This is an appeal under Section 35 G of the Central Excise Act, 1944 (hereinafter referred to as 'the Act') against the order of the Central Excise and Service Tax Appellate Tribunal (hereinafter referred to as the 'Tribunal'), insofar as the Tribunal held that the duty demand of Rs. 36,78,122/- is not sustainable and set the same aside.

2. The appellant contends that the appeal raises the following substantial question of law:-

> *"Whether the impugned order made by the Hon 'ble Tribunal can be said to be an order made in accordance with Law, when the Tribunal has set aside the order to the extent of clandestine removal without giving any reasoning and*

ignoring the submissions of the Department with regard to facts and evidences on record?"

3. Mr. Amrinder Singh, the learned counsel appearing on behalf of the respondents has raised a preliminary objection as to the maintainability of this appeal under Section 35 of the Act. He contends that the appeal is not maintainable as the order passed by the Appellate Tribunal relates among other things to the determination of questions having a relation to the rate of duty of excise and/or to the value of goods for the purposes of assessment. Mr. Sharan Sethi, learned senior standing counsel appearing on behalf of the appellant, on the other hand, contends that the appeal only raises the issue of clandestine removal of goods and this issue is not related either to the rate of duty of excise or to the value of goods for the purposes of assessment.

4. The appellant, on the one hand, admits that the impugned order of the Tribunal deals with issues relating to the rate of duty of excise and/or to the value of goods for the purposes of assessment in addition to the issue of clandestine removal which is challenged in this appeal. On the other hand, Mr.Amrinder Singh admits that the issue of clandestine removal of goods simpliciter is not related to the rate of duty of excise or to the value of goods for the purposes of assessment. In other words it is common ground that the impugned order of the Tribunal even in so far as it concerns the respondent alone deals with the issues relating to the rate of excise duty and/or to the value of goods for the purposes of assessment as well as with other issues. The question that arises is whether an appeal is maintainable under Section 35 G to the High Court where the order of the Tribunal deals with questions having a relation to the rate of duty of excise or to the value of goods for the purposes of assessment as well as with other questions. In our view, the question must be answered in the negative. An appeal against such an order lies only to the Supreme Court under Section 35 L of the Act.

5. Sections 35 G and 35 L of the Act reads as under:-

> ***"35G. Appeal to High Court -*** *(1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after the 1st day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for the purposes of assessment), if the High Court is satisfied that the case involves a substantial question of law.*
>
> *(2) The Principal Commissioner of Central Excise or Commissioner of Central Excise or the other party aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this Sub-Section shall be -*
>
> *(a) filed within one hundred and eighty days from the date on which the order appealed against is received by the (Principal Commissioner of Central Excise or Commissioner of Central Excise) or the other party;*
>
> *(b) accompanied by a fee of two hundred rupees where such appeal is filed by the other party;*
>
> *(c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.*
>
> *(2A) The High Court may admit an appeal after the expiry of the period of one hundred and eighty days referred to in clause (a) of sub-Section (2), if it is satisfied that there was sufficient cause for not filing the same within that period.*

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(4) The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question :

Provided *that nothing in this sub-Section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.*

(5) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(6) The High Court may determine any issue which -

(a) has not been determined by the Appellate Tribunal; or

(b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-Section (1).

(7) When an appeal has been filed before the High Court, it shall be heard by a bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.

(8) Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

(9) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this Section. "

"35L. Appeal to the Supreme Court *-(1) An appeal shall lie to the Supreme Court from -*

(a) any judgment of the High Court delivered-

(i) in an appeal made under Section 35G; or

(ii) on a reference made under Section 35G by the Appellate Tribunal before the 1st day of July, 2003;

(iii) on a reference made under section 35H, in any case which, on its own motion or on an oral application made by or on behalf of the partly aggrieved, immediately after passing of the judgment, the High Court certifies to be a fit one for appeal to the Supreme Court; or

(b) any order passed before the establishment of the National Tax Tribunal by the Appellate Tribunal relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment. "

(2) For the purpose of this Chapter, the determination of any question having a relation to the rate of duty shall include the determination of taxability or excisability of goods for the purpose of assessment. "

6. As we have upheld the objection as to the maintainability of this appeal it is necessary to refer to the facts only briefly.

7. The matter relates to the relationship between three assessees M/s SBM Woolen Mills, M/s Raja Dyeing i.e. the respondent and M/s Rosy Woolen Mills. M/s SBM Woolen Mills is a partnership firm consisting of two partners, one Satnam Singh and his brother one Mohinder Singh. It manufactures grey acrylic spun yarn. The respondent, Raja Dyeing is a partnership firm whose partners are one Bhupinder Singh and the wife of Satnam Singh. It manufactures dyed acrylic yam. Rosy Woolen Mills sells the dyed yam purchased by it, inter alia, from the respondent.

The matter relates to the period 01.04.1999 to 14.11.2000. The appellant's case is that SBM evaded duty by under-valuing the goods namely grey acrylic yam clearing them to the respondent and RWM at prices far less than even the cost of production. The price was lower than that of similar goods sold to other buyers. Other circumstances are indicated to show the close relationship between the three assessees SBM, the respondent and RWM. The Commissioner, therefore, adopted the average price at which the respondent, during the same period, bought similar goods from other vendors. Having done so, he demanded a duty of Rs. 5,19,100/- against SBM Woolen Mills.

The respondent availed an exemption under Notification No.5/99/CE and 6/2000 which prescribes a concessional rate of duty for the dyed acrylic spun yam subject to the condition that the same had been manufactured out of the goods on which the appropriate duty of excise, under the schedule thereto, had been paid and no credit of Central Excise Duty paid on the goods, had been taken. Having come to the conclusion that the goods were purchased by the respondent from SBM at an under valuation, the Commissioner inferred that SBM had not paid the appropriate duty of excise and accordingly held that even the respondent was not entitled to the benefit of the said circular. Rs. 19,86,648/- was, therefore, demanded by the appellant from the respondent. This, it has been held, is a question that relates to the rate of duty. Had this been the only question before the Tribunal, an appeal against the decision of the Tribunal would not have been maintainable under Section 35 L to the Supreme Court. Before the Tribunal, however, there were other questions as well.

SBM sold the goods to a number of buyers as well as to RWM. The Department alleged that the goods sold in cash to persons other than the respondent had actually been cleared to the respondent who used the same for the manufacture of unaccounted goods and the same had been cleared clandestinely without payment of duty. A demand for duty of Rs.32,64,160/- has, therefore, been made against the respondent in this regard. Thus, against this respondent alone, the Tribunal dealt with questions relating to the rate of duty as well as to questions that do not relate to the rate of duty or to the value of the goods for the purposes of assessment.

The Commissioner by the order-in-original adjudicated the matter. He confirmed the demand of Rs. 5,19,100/- against SBM, imposed a penalty of the like amount on SBM and a further penalty of Rs. 50,000/-. The Commissioner also confirmed the duty of Rs. 15,14,161/- against the respondent on account of the respondent having wrongly availed the exemption under the said notification and also confirmed the demand of Rs. 36,78,122/- towards duty on account of clandestine removal together with interest thereon and penalty in respect thereof. Penalties were also imposed on the said Satnam Singh and Mohinder Singh.

8. It is not even necessary to consider whether the findings of the Tribunal as regards the other assessees namely SBM and RWM ought to be taken into consideration in deciding

whether the appeal is maintainable or not. The decision of the Tribunal in respect of the respondent itself related to questions that fall within the ambit of Section 32 G as well as in respect of questions that fall outside the ambit of Section 32 G. This is evident inter alia from paragraphs 7 and 8 of the impugned order. In paragraph 7, the Tribunal dealt with the dispute regarding the demand of Rs. 15,14,161/- towards duty against the respondent on the basis of the incorrect availment of the exemption notification. In paragraph 8, the Tribunal upheld the payment of Rs. 36,78,122/- towards duty. The Tribunal held as under:-

> *"Coming to the duty demand of Rs.36,78,122/- against RD, this is based on the allegation that all the clearances of grey acrylic spun yarn by SBM to RWM and to other buyers who have purchased in cash have actually been diverted to RD who have used the same for unaccounted manufacture of dyed yarn which had been cleared clandestinely without payment of duty. On going through the records, we find that this allegation is based only on the presumption and there is absolutely no evidence to substantiate the same. Even if there is mutuality of interest between SBM and RD one hand and SBM and RWM on the other hand, it cannot be presumed that the yarn sold by SBM to RWM had actually be diverted to RD who had used it for unaccounted manufacture of died yarn. In view of this, we hold that duty demand of Rs.36,78,122/- is not sustainable and is to be set aside. "*

The position, therefore, is that even as regards the respondent alone the Tribunal by the impugned order decided questions that fall within the ambit of Section 35 G as well as with questions that fall outside the ambit of Section 35 G and within the ambit of Section 35 L of the Act.

9. We reiterate that we are not concerned here with the merits of the findings. While deciding the maintainability of the appeal, the merits are not relevant. It is necessary only to note the questions that were determined by the Appellate Tribunal.

10. Section 35 G provides for an appeal to the High Court from every order passed in appeal by the Appellate Tribunal on or after 01.07.2003 (not being an order, relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for the purposes of assessment). Thus, an appeal under Section 35 G is against the order passed in appeal by the Appellate Tribunal and not against the order of the Adjudicating Authority. An appeal does not lie to this Court from the order of the adjudicating authority/Commissioner. The issue as to whether an appeal is maintainable or not must, therefore, be decided on the basis of and taking into consideration the order passed in appeal by the appellate authority and not by the order passed by the adjudicating authority. In any event, the order of the adjudicating authority would stand merged in the order of the appellate authority. In other words, while determining whether an appeal is maintainable under Section 35 G or not, it is necessary to see whether the order passed in appeal by the Appellate Tribunal and not the order passed by the adjudicating authority determines any question having any relation to the rate of duty of excise or to the value of goods for purposes of assessment. We must, therefore, ascertain what the appellate authority decided in the impugned order.

11. The words "among other things" in Section 35 G are of singular importance in determining the ambit of Section 35 G. These words indicate that an appeal is maintainable under Section 35 G to the High Court only if the order passed in appeal by the Tribunal is not one relating to the determination of any question having a relation to the rate of duty of excise or to the value of goods for the purposes of assessment, an appeal against that order would lie only to the Supreme Court under Section 35 L and not to the High Court under Section 35 G. This would be so even if the appeal is only in respect of questions other than the rate of duty or the value of the goods for the purpose of assessment. It is the nature of the order of the Tribunal

and not the scope of the appeal that determines the maintainability of the appeal under Section 35 G.

12. It is not necessary to look far for the reason for this provision. The intention is to consolidate all appeals from the order of the Tribunal in one Court - either in the High Court or in the Supreme Court. A contrary view would result in multiple appeals being filed before both the Courts where the order of the Tribunal relates to the determination of questions having a relation to the rate of duty of excise or value of goods as well as to other questions. In such cases the party which desires challenging the order of the Tribunal relating to both types of questions would have to file one appeal in the High Court and another in the Supreme Court. The party which desires challenging one type of issue would have to file an appeal before the Supreme Court and the other party that intends challenging the other type of issue would have to file an appeal before the High Court. There could potentially be four appeals against the same order of the Tribunal- two in the High Court and two in the Supreme Court. It was precisely to avoid these situations that Section 32 G was enacted. It was to avoid the bifurcation of proceedings before the Supreme Court and the High Court.

13. This would also avoid conflicting findings. A view to the contrary would lead to the possibility of an appeal against the order of the Tribunal being maintainable in certain respects before the High Court and in other respects before the Supreme Court. This could lead to considerable confusion and complication. For instance, it may well be necessary in a given case for the Supreme Court to refer to, analyse and adjudicate upon the facts in relation to an order relating to the determination of any question having a relation to the rate of duty of excise or to the value of goods for the purposes of assessment. It may equally be necessary for the High Court in an appeal against the same order to consider, analyse and adjudicate upon the same facts but in relation to the other questions. Although theoretically, it would be possible to bring the matter to a conclusion with consistent findings the process would be considerably cumbersome and in many cases impractical. For instance, in a given case, a party may not challenge the order of the High Court. Against the same order in the appeal before the Supreme Court, it would be possible to come to different conclusions on the facts. The party, against whom the facts have been determined, would be faced with the findings of fact by the High Court. Both the judgments would have attained finality but with inconsistent findings. This could not have been the intention of the Legislature.

14. Whether an appeal lies to the High Court under Section 35 G or to the Supreme Court under Section 35 L cannot possibly depend upon the nature or scope of the appeal that the party intends filing. A party may seek to challenge only that part of the order of the Tribunal which relates to questions other than those relating to the rate of duty of excise or the value of the goods for the purposes of assessment. Such an appeal would, absent any other questions, lie to the High Court. Once it is held that an appeal against the order of the Tribunal which deals with questions that fall within the ambit of Section 35 L as well as other questions lies to the Supreme Court under Section 35 L the mere fact that the party chooses to challenge only that part of the order that falls within the ambit of Section 32 G would make no difference. In other words, it cannot be said that the party that chooses to challenge the order of the Tribunal only so far as it relates to the determination of questions falling within the ambit of 35 G must file the appeal before the High Court even though the order also deals with questions that fall within the ambit of Section 32 L. In that event, if the other party files an appeal against the order of the Tribunal on issues that fall within the ambit of Section 32 L in the Supreme Court, the very purpose of Section 32 G of bringing the appeals either before the Supreme Court or before the High Court would be defeated. It can hardly be suggested that in that case, the appeal filed under Section 32 G before the High Court ought to stand transferred to the Supreme Court. The scheme of the Act in general and Sections 32 G and 32 L in particular do not indicate such a mechanism.

15. Our view is supported by the following judgments of the Delhi High Court and of the Karnataka High Court.

The Division Bench in ***Commissioner of S.T., Bengalore Versus Scot Wilson Kirkpatrick (I) Pvt Ltd., 2011 (23) S.T.R. 321 (Kar.)***, held:-

> *"13. In order to appreciate this contention, we have to carefully see the wordings employed by the legislature. The relevant words are as under: -*
>
> > *"Not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of Service for the purposes of assessment".*
>
> *The key word in the said provision is "for the purpose of assessment". That means the order referred to therein is an order passed in the course of assessment. Therefore, all orders passed in the course of assessment involving the determination of any question having a relation to the rate of duty of service or to the value of Service, cannot be the subject matter of appeal before the High Court. By the use of the word 'among other things' it is made clear, even order which may not be directly related to the rate of duty of service or the value of Service, however which are intermingled with those matters are also excluded. In other words those are not the only orders contemplated by the legislation. In order to understand the width and depth of the orders covered under these words, it is necessary to know the meaning of "assessment". "*

16. In ***Commissioner of Service Tax, Delhi Versus Bharti Airtel Ltd., 2013 (30) S.T.R. 451 (Del.)***, the Delhi High Court held:-

> *"5. In the present case, we find that the impugned order deals not only with the question of limitation but also with the question of valuation. It so happens that in the present case, the issue with regard to the valuation of the taxable services was decided in favour of the revenue but, because the extended period of limitation was not invokable, as per the Tribunal, the respondent-assessee did not prefer any appeal against the said order. But, the order which is impugned before us deals with both the issues, that is, the issue of valuation of taxable services as also the issue of limitation. The mere fact that the appellant is only aggrieved by the decision on the point of limitation would not make an appeal from the impugned order maintainable before this Court because it is not the issues raised in the appeal which are material but the nature of the order which is appealed against is relevant for the purpose of determining whether an appeal would lie in this Court or not. "*

17. In ***Commissioner of Service Tax Versus Ernst & Young Pvt Ltd,, 2014 (34) S.T.R, 3 (Del)***, the Division Bench of Delhi High Court held:-

> *"9. Before we examine other judgments, it is important to examine the language of Section 35G in the bracketed portion which relates to matters in which appeal is to be filed before the Supreme Court. Section 35L of the F. Act is specific. The words/expression used is "determination of any question in relation to rate of duty or value for the purpose of assessment The word 'any ' and expression 'in relation to' gives appropriately wide and broad expanse to the appellate jurisdiction of the Supreme Court in respect of question relating to rate of tax or value for the purpose of assessment. Further, if the order relates to several issues or questions but when one of the questions raised relates to "rate of tax" or valuation in the order in the original, the appeal is maintainable before the Supreme Court and no appeal lies before the High Court under Section 35G of*

the CE Act. Referring to the expression "other things " in Section 35G of the CE Act in the case of Bharti Airtel Limited - 2013 (30) S.T.R. 451 (Del.), a Division Bench of this Court has stated:

> *"3. On a plain reading of Section 35G of the Central Excise Act, 1944 it is clear that no appeal would lie to the High Court from an order passed by CESTAT if such an order relates to, among other things, the determination of any question having a relation to the rate of duty or to the valuation of the taxable service. It has nothing to do with the issues sought to be raised in the appeal but it has everything to do with the nature of the order passed by the CESTAT. It may be very well for the appellant to say that it is only raising an issue pertaining to limitation but the provision does not speak about the issues raised in the appeal, on the other hand, it speaks about the nature of the order passed by the Tribunal. If the order passed by the Tribunal which is impugned before the High Court relates to the determination of value of the taxable service, then an appeal from such an order would not lie to the High Court.*
>
> *4. However, we feel that although those decisions do support the contention of the learned counsel for the respondent, the approach that we have taken is a more direct. We reiterate, it is not the content of the appeal that is determinative of whether the appeal would be maintainable before the High Court or not but rather the nature of the order which is impugned in the appeal which determines the issue. "*

18. In ***Commissioner of Central Excise Versus Vimla Roling Mills, 2015 (317) E.L.T. 702 (Del)***, the following order was passed:-

> ***"[Order].*** *- In these appeals by the Revenue, substantial question of law were framed on 24th February, 2014 and 25th February, 2014. However, the High Court does not have jurisdiction to entertain the present appeals under Section 35G of the Central Excise Act, 1944. In the order-in-original, several issues were decided including the question whether the activity undertaken by the respondent-assessee amounts to manufacture. The said question or dispute pertains to levy of duty, which is a question relating to rate of duty as held in CEAC No. 12/2013, Commissioner of Service Tax v. Ernst and Young Pvt. Ltd. and other connected cases decided on 25th February, 2014 [2014 (34) S. T.R. 3 (Del.)]. In this decision, it has been observed that the issues and contentions decided in the order-in-original would determine whether an appeal would lie before the High Court under Section 35G of the Central Excise Act, 1944 or before the Supreme Court under Section 35L of the aforesaid Act. The issue decided by the Tribunal and raised before the appellate court would not be relevant on the question of jurisdiction of the Supreme Court or the High Court under Section 35L or 35G of the aforesaid Act. This was apparent from the language and words of the two provisions and a contrary interpretation would lead to unacceptable results with one party filing appeal under Section 35G and the other party under Section 35L of the said Act. Further, the respondent may be denied right to file cross objections. It is noticeable that in the first round also, against the order of the Tribunal, an appeal was preferred before the Supreme Court by the assessee.*
>
> *2. In these circumstances, the appeals are returned as they are not maintainable before the High Court. It is open to the appellant-Revenue to fde an appeal*

under Section 35L of the Central Excise Act, 1944, if so advised, and in accordance with the law. "

We, however, must express a reservation regarding the observation that the issues and contentions decided in the order-in-original would determine whether an appeal would lie in the High Court under Section 35 G or in the Supreme Court under Section 35 L. In our view it is not the order-in-original i.e. the order of the adjudicating authority but the order of the Tribunal that would determine the issue as to whether the appeal lies to the High Court under Section 35 G or to the Supreme Court under Section 35 L. Section 35 G provides for an appeal to the High Court from every order passed in appeal by the appellate Tribunal. It is, therefore, the order of the Appellate Tribunal that must determine the issue. Moreover Section 35 G restricts the ambit of the appeal to orders of the Tribunal "not being an order relating, among other things, to the determination ". The words "an order" relate to the order passed in appeal by the Appellate Tribunal.

19. We are in respectful agreement with the above judgments except to the extent indicated above.

20. Mr. Sethi, on the other hand, relied upon the following observations of the judgment of the Allahabad High Court in the ***Commr. of Cus. & C. Ex., Meerut-II Versus Honda Siel Power Products Ltd., 2016 (332) E.L.T. 222 (ALL)***:-

"10. Section 35G of the Act provides that an appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after 1st day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of Excise or to the value of goods for the purposes of assessment), if the High Court is satisfied that the case involves a substantial question of law. Section 35L provides that an appeal shall lie to the Supreme Court from any judgment of the High Court delivered in an appeal under Section 35G or on a reference made under Section 35G by the Appellate Tribunal before 1st day of July, 2003 or on a reference made under Section 35H. Clause (b) of Section 35L provides that an appeal shall lie to the Supreme Court from any order passed by the Tribunal relating among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for the purposes of assessment. Thus, the exclusion of power of the High Court to entertain an appeal under Section 35G of the Act is limited to an order of the Tribunal relating, among other things to the determination of any question having a relation to the rate of duty of Excise or to the value of goods for the purposes of assessment. Thus Section 35G of the Act does not exclude the power of the High Court to entertain an appeal against an order passed by the Appellate Tribunal on the question of manufacture. The basic question involved in the present appeal as also contested by the parties from the initial stage is whether the activity of the assessee with respect to the goods in question cleared by them is manufacture? Thus, we do not find any substance in the first preliminary objection raised by the respondent assessee as the maintainability of the appeal before the High Court under Section 35 G of the Act and accordingly, the said preliminary objection is rejected. We hold that the appeal is maintainable under Section 35G of the Act. "

Mr. Sethi submitted that other questions that fall within the ambit of Section 35 L were also determined by the Tribunal in that case but as the appeal involved only the question of manufacture, it was held that it was maintainable under Section 35 G. If that is so, we are with respect, unable to agree with the judgment of the Allahabad High Court for the reasons we have

already stated. The scope of the appeal does not determine the question as to whether an appeal is maintainable under Section 35 G or Section 35 L.

21. Mr. Sethi then relied upon the following observations in ***Commr. Of C. Ex., Cus. & S.T., Bharuch Versus Shree Krishna Industries, 2016 (338) E.L.T. 535 (Guj.)***:-

> ***"12.*** *From the principles propounded in the above decision what emerges is that for the purpose of falling within the ambit of the phrase "relation to" the controversy involved must have a direct and proximate relationship to the rate of duty and to the value of goods for the purpose of assessment and that the controversy must be such that the decision rendered thereon would have a wide application. The facts of the present case are required to be examined in the light of the above principles.*
>
> ***13.*** *In the opinion of this Court, from the facts as appearing from the record, the controversy before the Tribunal did not relate to the determination of any question having a relation to the rate of duty or value of goods for the purposes of assessment. Under the relevant exemption notification, an SSI unit is not entitled to the benefit thereof for the clearances exceeding rupees one crore. The respondent being an SSI unit, its entitlement to the benefit of the exemption notification is not otherwise in dispute. The only question involved in this case is a pure question of fact as to whether the clearances made by the respondent for the period under consideration, in fact, exceeded the limit stipulated under the exemption notification or were within such limit. "*

These observations do not deal with the question before us. In fact Mr. Amrinder Singh pointed out that they support the view that the determination of the question as to whether Section 32 G applies or whether Section 32 L applies requires the consideration of the order of the Tribunal.

22. The appeal is, therefore, dismissed on the ground that it is not maintainable under Section 32 G of the Central Excise Act, 1944.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 22428 OF 2016

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ABHITEX INTERNATIONAL
Vs
STATE OF HARYANA AND OTHERS

S.J. VAZIFDAR, C.J. AND ANUPINDER SINGH GREWAL, J.

23rd January, 2017

HF ▶ Assessee

Refund amount be curtailed after finding it admissible by Assessing Authority on the ground of Revenue interest.

REFUND – PROVISIONAL – REVISED RETURN – INITIAL CLAIM AS PER RETURNS FILED BY ASSESSEE RS 4 LACS – REVISED RETURN FILED AFTER NOTICING MISTAKE – APPLICATION FILED FOR PROVISIONAL REFUND – PROVISIONAL REFUND CALCULATION **BY DEPARTMENT AMOUNTED TO RS 85 LACS – AMOUNT REFUNDED MUCH LESSER BASED ON CLAIM MADE BY ASSESSEE IN VAT-4 - WRIT FILED AGAINST THE ORDER GRANTING LESSER REFUND – PETITION ALLOWED HOLDING THAT LIMITING AMOUNT OF REFUND IN INTEREST OF REVENUE IS UNREASONABLE – MERE FACT THAT RETURN AND REVISED RETURN ARE ERRONEOUS IS NO GROUND OF REJECTING THE SAME –** *SECTION 20 OF HVAT ACT, 2003*

Facts

The Assessee – Appellant has filed a petition against the order of Assessing Authority whereby the provisional refund has been allowed amounting to Rs 39 lacs instead of Rs 83 lacs.

It is stated that initially the assessee had filed returns for the first quarter of year 2015 claiming refund of Rs 4 lacs. Subsequently, it noticed a mistake in the returns and filed a revised return in November 2015 and applied for correcting returns. In April 2016, it applied for Provisional refund. The department assessed the provisional refund amounting to Rs 85 lacs. However, the amount actually refunded was Rs 39 lacs based on claim made in VAT -4 by assessee.

Held:

The impugned order does not state that the rectification in return sought is not sustainable on facts or legally.

Limiting the amount of refund in the interest of revenue is arbitrary and unreasonable.

Mere fact that the return and revised return are erroneous, is no ground for rejecting the same.

Present: Mr. Avneesh Jhingan, Advocate for the petitioner
Ms. Mamta Singla Talwar, Deputy Advocate General,
Haryana for the respondents.

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S.J. VAZIFDAR, C.J.

1. The petitioner has challenged the order of the Excise & Taxation Officer-cum-Assessing Authority, Panipat dated 16.08.2016 allowing the provisional refund of only Rs. 39 lacs against the claim of about Rs. 83 lacs.

2. The matter pertains to the period 01.04.2015 to 30.06.2015. The petitioner had filed a return initially claiming a refund of only Rs. 4 lacs. Claiming that this was due to calculation errors on its part, the petitioner on 03.11.2015 filed a revised return. The petitioner contends that it committed an error even in the revised return by considering the output liability to be taxable at 12.5% instead of at 4%. The petitioner, therefore, on 06.11.2015 filed an application pointing out this mistake and seeking a correction in respect thereof.

The application was initially forwarded to the Excise and Taxation Officer-cum-Assessing Authority-respondent No.2, who in turn forwarded it to the Deputy Excise & Taxation Commissioner, Panipat. It was further forwarded to the Excise & Taxation Commissioner-respondent No.3. The Deputy Excise & Taxation Commissioner, Panipat by a communication dated 20.11.2015 addressed to the Excise & Taxation Commissioner stated that it was not possible to resolve the issue by him and therefore, requested the Excise & Taxation Commissioner to take necessary action at his own level.

3. The regular assessment orders have not been passed. On 04.04.2016 the petitioner made an application for provisional refund under section 20(3) of the Haryana Value Added Tax Act, 2003 which reads as under:-

> ***"Section 20-Refund***
>
> *……(3) A VAT dealer may seek refund by making an application containing the prescribed particulars accompanied with the prescribed documents in the prescribed manner to the assessing authority who shall, after examination of the application, allow provisionally refund to the dealer."*

This application was disposed of by the impugned order dated 16.08.2016 passed by the Excise & Taxation Officer respondent No.2. The order accepts the petitioner's output liability to be Rs. 18,37,270/- under the Haryana Value Added Tax Act and Rs. 5,02,193/- under the Central Sales Tax Act, 1956 aggregating to Rs. 23,39,463/-. The order also finds the output tax available to the petitioner to be Rs.1,08,96,010/-. The refund due to the petitioner is provisionally assessed in the impugned order itself at Rs. 85,56,547/-.

4. Absent any other circumstances including the adjustments contemplated under section 20 itself, respondent No.2 would have been entitled to be considered for a provisional refund of Rs. 85,56,547/-. However, the amount of provisional refund was limited to Rs. 39 lacs, apparently only on the basis of the claim allegedly made in VAT-A4. The impugned order states:-

> *"(-) Rolled over in the interest of revenue &*
> *not to exceed claim made in VAT A-4 & Returns 4656547-00*
> *Excess 3900000-00*
> *Rs. 39,000,00 to be refunded provisionally."*

5. Even assuming the grant of provisional refund is not mandatory, an assessee is entitled to have his application for provisional refund under section 20(3) of the Haryana Value Added Tax Act, 2003 decided on a consideration of relevant facts and on a reasonable and fair basis. Section 20(2) does not preclude an assessee's application being considered after the return is corrected, modified or amended. It does not require the authorities to consider the

application under section 20(2) only on the basis of the original return even though it is found to be incorrect and the authority comes to the conclusion that the assessee has rightly corrected it. It is for the authority to assess prima-facie the correctness of a return and any modification thereof even for the purpose of deciding an application for provisional refund.

6. Respondent No.2 does not state that the application for provisional refund cannot be decided on the basis of the actual refund due and that it must necessarily be assessed only on the basis of the refund originally filed or even rectified once, although that may be found to be incorrect. The impugned order does not state that the rectification sought is not sustainable either on facts or due to any legal impediment. The computation of the refund as sought to be corrected is, although provisional, not only accepted by respondent No.2 but infact accepted in excess what was claimed by the petitioner.

7. In these circumstances, limiting the amount of refund under sub section (3) of Section 20 of the Haryana Value Added Tax Act, 2003, allegedly "in interest of revenue" would be arbitrary and not reasonable. There are no reasons for this ground "in interest of revenue".

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

i) Respondent No.2 shall pass a fresh order pursuant to the petitioner's application dated 04.04.2016 for a provisional refund after taking into consideration the application for refund dated 06.11.2015 which is in the sum of Rs. 83,04,021/-.

Although the impugned order computes the refund at Rs.85,56,547/-, we have refrained from passing a mandatory order directing the respondents to refund the balance amount also at the provisional stage in the event of there being any other circumstances which prevents the petitioner from being paid the entire amount towards provisional refund. It is clarified that the mere fact that the return and the revised return contain the alleged error would not be a ground for rejecting the same.

ii) The second respondent is requested to pass a fresh order by 28.02.2017.

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PUNJAB VAT TRIBUNAL

APPEAL NO. 17 OF 2016

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KHIDRANA ENTERPRISES
Vs
STATE OF PUNJAB

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

3rd February, 2017

HF ▶ Assessee

ITC claim cannot be rejected u/s 29(1) without issuing notice for assessment u/s 29(2) of PVAT Act.

ASSESSMENT – INPUT TAX CREDIT – NOTICE U/S 29(2) - ABSENCE OF – RETURN FILED – NOTICE ISSUED U/S 29(1) OF THE ACT TO EXPLAIN CLAIM OF ITC MADE – NON APPEARANCE BY ASSESSEE – ENQUIRY MADE BY ASSESSING AUTHORITY ITSELF WITHOUT ISSUING NOTICE U/S 29(2) TO CONCLUDE ITC CLAIM MADE WRONGLY- APPEAL BEFORE TRIBUNAL CHALLENGING THE AUTHORITY TO MAKE SUCH ASSESSMENT U/S29(1) – ABSENCE OF NOTICE REQUIRED TO BE ISSUED FOR INVESTIGATION U/S 29(2) OF THE ACT – SECTION 29(1) PERMITS PROCEEDINGS ONLY FROM DOCUMENTS PLACED BEFORE OFFICER – IMPUGNED ORDER HELD TO BE INVALID – NON COMPLIANCE OF PROVISIONS BY DEPARTMENT - CASE REMITTED TO ASSESSING AUTHORITY TO DECIDE IN ACCORDANCE WITH LAW – APPEAL ACCEPTED – *SECTION 29(1) & 29(2) OF PVAT ACT, 2005*

Facts

In this case, the Annual Statement was filed for the year 2013 -14. The Assessing Authority issued notice u/s 29(1) r/w Rule 43 to explain as to why ITC claimed on basis of purchases made from firm A be not disallowed. Since no one appeared, the Assessing Authority itself proceeded to make enquiry and concluded that no sales were made by from A and thus disallowed ITC. On appeal before DETC, the order of designated officer was upheld.

Aggrieved by the order, an appeal is filed before Tribunal challenging the power of Assessing authority to frame such type of assessment u/s 29(1) of the Act.

Held:

The officer could not proceed u/s 29(2) without issuing notice there under. The allowing or disallowing of ITC is subject to an enquiry as envisaged under S. 29(2). The proceedings regarding notice u/s 29(1) could be made only from the documents placed before the officer and not by an enquiry u/s 29(2) in absence of any notice.

The contention raised that since the appellant did not appear, the assessment authority was justified in issuing demand notice and make assessment.

At the stage of notice u/s 29(1), only examination from said assessment could be done. If some investigation was to be done regarding the claim of assessee, then the officer needed to proceed u/s 29(2) of the Act.

The non compliance of provisions renders the orders invalid and illegal. The matter is remitted back to assessing authority to proceed in accordance with law.

Present: Mr. K.L. Goyal, Sr. Advocate alongwith
Mr. Rohit Gupta, Advocate Counsel for the appellant.
Mr. N.K. Verma, Sr. Dy. Advocate General for the State.

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

1. This appeal has arisen out of the order dated 7.10.2015 passed by the Deputy Excise and Taxation Commissioner (A), Ferozepur Division, Headquarter at Bathinda dismissing the appeal of the appellant against order dated 27.7.2015 passed by the Designated Officer-cum-Excise and Taxation Officer, Sri Mukatsar Sahib.

2. The case relates to the assessment year 2013-14. The annual statement for the said year was filed on time, where after, the Assessing Authority issued notice U/s 29 (1) read with Rule 43 of the Punjab Value Added Tax Rules, 2005 to explain as to why the ITC claimed on the basis of purchases made from M/s Surinder Gram Udyog be not disallowed. Since none appeared on behalf of the firm, therefore, the Assessing Authority proceeded itself and after making enquiry reached the conclusion that Surinder Gram Udyog had not made any sales during the year 2013-14 but the appellant had claimed ITC, therefore, disallowed the ITC and issued tax demand notice for Rs.2,69,503/- on 27.7.2015. The appellant preferred the appeal against the said order. Whereupon, the Appellate Authority vide order dated 7.10.2015 observed as under:-

> *"The appellant had availed an inadmissible ITC of Rs.1,73,725/-the purchases of Rs.29,03,600/- as the selling dealer had not reflected the sales in the relevant return and VAT-23 furnished for the relevant quarter. Despite affording proper opportunities, no documentary evidence produced rather the appellant had avoided his presence intentionally after attending single proceeding. The arguments raised by the Ld. Counsel are not based on facts. The judgments cited by the Ld. Counsel are also not applicable in the present case as the taxable person has intentionally availed an inadmissible ITC. The interest and penalty have also been levied by the Designated Officer as per provisions of the Act ibid, in the circumstances when the appellant had availed an inadmissible ITC. Keeping in view the facts and circumstances of the case, the arguments raised by the Ld. Counsel do not carry any weight. In view of the facts narrated in the foregoing paragraphs of the order, I am of the considered opinion that the assessment has rightly been framed by the Designated Officer vide order dated 27.7.2015 which is hereby upheld and the appeal filed by the appellant is dismissed."*

4. Still aggrieved, the appellant has come up in appeal.

3.The Counsel for the appellant, while assailing the impugned orders, has observed that the assessment was framed on the basis of notice U/s 29 (1) of the Punjab Value Added Tax Act which is not inconsonance with the said provisions and also does not empower the authority to frame such type of assessment. The dealers are the agents of the State Government on whose behalf they collect tax and deposit the same with the State Government. The seller is mainly responsible for deposit of tax as he collected tax from the purchaser. Evidence of

movement of goods i.e. e-trip was generated which was duly recorded in the government record so how it can be said that there was no sale transaction. If the seller had not reflected the sales in his returns then purchaser can't be held responsible for the sale. The appellant had performed his obligation by producing the sale bill, GR, e-trip, mode of payment i.e cheques and bank account as well as confirmation of his supplier, therefore, he should not have disallowed the ITC on the other hand the state counsel has urged that since none appeared on behalf of the respondents in response to the notice U/s 29 (1) of the Act, therefore, the Assessing Authority deemed it to be an admission of the discrepancy and consequently, the tax as well as penalty were imposed. The notice U/s 29 (1) is quite valid; therefore, demand created was justified.

5. Arguments heard. Record perused.

6. Before, I set to interpret Section 29 (1) and (2) read with 43 (1) and Rule 43 (4) of the Rules as incorporated under the Punjab Value Added Tax Act, I would like to reproduce Section 29 (1) and (2) of the Act as under:-

SECTION 29. ASSESSMENT OF TAX:

(1) Where a return has been filed under sub-section (1) or sub-section (2) of section 26 or in response to a notice under sub-section (6) of Section 26, if any tax or interest is found due on the basis of such return, after adjustment of any tax paid on self-assessment and any amount paid otherwise by way of tax or interest, then, without prejudice to the provisions of sub-section (2), an intimation shall be sent to the person specifying the sum so payable, and such intimation shall be deemed to be a notice of demand issued under sub-section (11) and all the provisions of this Act shall apply accordingly:

PROVIDED THAT except as otherwise provided in this sub-section, J the acknowledgement of the return shall be deemed to be an intimation under this sub-section, in case, either no sum is payable by the person or no refund is due to him:-

PROVIDED FURTHER THAT no intimation under this sub-section shall be sent after the expiry of [two years]' from the end of financial year in which the return is filed.

(2) Notwithstanding anything contained is sub-section (1), the Commissioner or the designated officer, as the case may be, may on his own motion or on the basis of information received by him, order or make an assessment of the tax, payable by a person to the best of his judgment and determine the tax payable by him where:-

(a) a person fails to file a return under section 26; or

(b) there are definite reasons to believe that a return filed by a person is not correct and complete; or

(c) there are reasonable grounds to believe that a person is liable to pay tax, but has failed to pay the amount due; or

(d) a person has availed input tax credit for which he is not eligible;

Or

(e) provisional assessment is framed.

Rule 43 (1) to (4) are reproduced as under:-

RULE 43. SCURITY OF RETURNS (Section 26, 29 and 32)

(1) The designated officer shall scrutinize every return filed under section 26 of the Act. If on scrutiny of the return, it is found that a less tax has been paid than the tax actually payable as per the return, the designated officer, shall serve a notice upon the person concerned directing him to rectify the same and to pay the amount of tax less paid, alongwith the interest payable under section 32 of the Act and produce the Treasury Receipt (s) before the designated officer, within the time specified in the said notice.

(2) If, it is found that the tax or interest under section 32 of the Act has been paid in, excess of the amount, actually payable according to the return, the designated officer, shall inform the same to the person by sending a notice within one month of completion of such scrutiny.

(3) If, upon receipt of the notice referred to in sub-rule (1), the person complies with the directions (s) made in the said notice and furnishes proof of compliance, the Designated Officer shall make a record of the same and close the scrutiny.

(4) If, the person does not comply with such directions or expresses his disagreement in writing, adducing reasons for such disagreement with the directions made in such notice, the designated office, unless he accepts such reasons as correct and justified, shall refer the matter within a period of fifteen days for audit under section 28 of the Act.

7. Section 26 provides for self assessment of tax and filing of return by every person. According to Section 29 (1), the Designated Officer is obliged to verify every return filed as per procedure detailed in Rule 43 and Section 29 (1) if after scrutiny, he observes that some over or under payment of tax has been made, then he would intimate the assessee which would be deemed to be a demand notice. If upon receipt of the notice, a person complies with the directions and places the proof of compliance, then the officer would make record of same and close the scrutiny. However, Section further provides that no such notice U/s 29 (1) would be issued after the expiry of two years from the end of the financial year in which the return is filed. Rule 43 (1) of the Rules further reiterates that the assessee should scrutinize every return and if the return reflects that some less or over payment has been made, then he would make aware of it to the assessee by issuing notice U/s 29 (1) of the Act. The words "as per return" as envisaged in Rule 43 (1) refer to the return itself and not invite further enquiry beyond that. Rule 43 (4) provides that if the person does not comply with the direction U/s 29 (1) of the Act or expresses his disagreement in writing, adducing reasons, the Assessing Officer, unless he accepts such reasons as correct and justified, shall refer the matter within a period of fifteen days for audit U/s 28 or make assessment U/s 29 (2) or make provisional assessment or may require the assessee for production of the evidence before making assessment.

8. The question with regard to allowing or disallowing of the ITC is the subject to an enquiry as envisaged U/s 29 (2) of the Act, therefore, the proceedings regarding notice U/s 29 (1) could be made only from the documents placed before the officer and he could not proceed further to hold enquiry U/s 29 (2) of the Act without issuing the required notice thereunder. Section 29 (2) does not leave any ambiguity for issuing of the notice under this sub-section if the assessee has claimed input tax credit for which he is not eligible. Thus, in the light of sub-section 29 (2) sub-clause (d) it appears that the Assessing Authority had no knowledge of law regarding assessment orders or that he did not take pains to go into bare provisions of law before issuing the notice. Had he taken little pains then he would not have committed this mistake due to which the whole process had to be rolled back and it will again take years for its disposal. The officers, before issuing notice, should be prone to the bare provisions, lost such

difficulties may arise in future. I do not find myself in agreement with the contention raised by the counsel for the respondent that since the assessee did not appear before the Assessing Authority, therefore, he was justified in issuing the demand notice and make assessment. Be that it may, law has to take its on course as provided under the statue and the authority is obliged to proceed according to the law, after the assessment under VAT-20 as provided under Section 26 is filed. At the stage of notice U/s 29 (1) of the Act the Assessing Officer was only to examine if from the said assessment, the appellant had deposited the required tax and if he finds that more tax was required to be paid then he was required to issue demand notice or if it required some investigation qua incorrect claim then have proceeded to issue U/s 29 (2) of the Act.

9. The non compliance of the provisions by the Assessing Authority has rendered the orders passed by him as invalid and illegal. Similarly, the First Appellate Authority has also not taken note of the bare provisions before deciding the appeal and the order under appeal appears to have been passed without application of mind, therefore, the order deserves to be set-aside.

10. Resultantly, I accept the appeal, set-aside impugned order and remit the case back to the Assessing Officer to proceed in accordance with law.

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PUNJAB VAT TRIBUNAL

APPEAL NO. 289 OF 2016

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KATYAL AND CO.
Vs
STATE OF PUNJAB

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

17th March, 2017

HF ▶ Assessee

Non generation of e-ICC due to non-working of server cannot be the ground of penalty where all other compliances have been made.

PENALTY – CHECK POST/ ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – NON GENERATION OF E-ICC – GOODS IN TRANSIT – DOCUMENTS PRODUCED – NO E-ICC GENERATED QUA TRANSACTION IN QUESTION – CONTENTION RAISED THAT E-ICC COULD NOT BE PRODUCED AS SERVER WAS NOT WORKING – PENALTY IMPOSED – APPEAL FILED – HELD: DOCUMENTS REQUIRED U/S 51 PRODUCED - VOLUNTARY REPORTING – EXCISE DUTY, CST AND EDUCATION CESS DULY CHARGED – E-ICC OF OTHER TRANSACTIONS TAKEN IN SAME TRUCK GENERATED A DAY EARLIER - PLEA THAT E-ICC FOR FOLLOWING DAY'S TRANSACTION COULD NOT BE GENERATED THE NEXT DAY DUE TO FAULT OF SERVER CANNOT BE DISBELIEVED IN GIVEN CIRCUMSTANCES – NO POSSIBILITY OF KEEPING TRANSACTION OUT OF BOOKS – NO PUNJAB TAX INVOLVED - APPEAL ALLOWED – *SECTION 51 OF PVAT ACT, 2005.*

Facts

The vehicle loaded with goods was intercepted. The documents were produced. Believing that the invoice was not covered by e-ICC, the goods were detained. The designated officer observed that the requisite information was not submitted online and no help from department was taken in dealing with the problem. Penalty u/s 51 was imposed. An appeal is filed before Tribunal contending that the e-ICC could not be generated due to fault of server.

Held:

The goods were voluntarily reported. Excise duty and CST were charged. It being an interstate transaction, Punjab tax was not involved. The documents prescribed u/s 51 were produced.

E-ICC of other transactions which were being carried in the same truck , has been generated one day earlier to the transaction. This establishes bonafides of the appellant and proves some justification in the plea setup of appellant that the e-ICC could not be generated due to fault of server. One transaction was generated on 28/8/2014 and the other transaction is dated 29/8/2014. It is believable that when information qua second transaction was disclosed, it

could not be generated on server. Since goods were sold under C forms, education cess, excise duty and CST was charged it is not possible to keep transaction out of books.

Therefore, the appeal is accepted and impugned order is set aside.

Case referred:

- *Parabolic Drugs Limited, Dera Bassi Vs State of Punjab (2015) 51 PHT 282 (PVT)*

Present: Mr. Varun Chadha, Advocate Counsel for the appellant.
Mr. B.S. Chahal, Deputy Advocate General for the State.

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

1. The Assistant Excise and Taxation Commissioner, Mobile Wing, Fazilka vide his order dated 29.9.2014 imposed a penalty to the tune of Rs.2,56,400/- against the appellant U/s 51 (7) (c) of the Punjab Value Added Tax Act, 2005. The appeal Filed by the appellant was dismissed by the Deputy Excise and Taxation Commissioner (A), Ferozepur Division, Headquarter at Bathinda on 20.1.2016.

2. The appellant is a manufacturer of Casting Goods, Forging and Steel Parts and is registered under the Punjab Value Added Tax Act, 2005 as well as the Central Sales Tax Act, 1956.

3. On 31.8.2014, the driver, while carrying the iron goods in vehicle bearing No. PB-04L-9849, was intercepted by the Excise and Taxation Officer, Mobile Wing, Fazilka. On demand, he produced the following documents:-

a) Invoice No.162 dated 29.8.2014 issued by M/s Katyal and company, Jalandhar in favour of M/s Standard Blex (I) Pvt. Ltd., Vadodara (Gujrat) for Rs.5,12,639/- (incl. Taxes) for commodity 'Iron & Steel' goods.

b) GR No.10182 of M/s Batala Bombay Roadlines for consignment listed at (a) above

c) Retail Invoice No.0001547 dated 28.8.2014 issued by M/s Jagatjit Inds Ltd., Kapurthala for Rs.5,56,990/- for commodity 'Barley Malt'

d) GR No.551 of M/s Hamira Road Carriers covering consignment listed at (c) above.

e) VAT-XXXVI/e-ICC form NO.ICC14ST010756 U8 for commodity 'Barley Malt'

4. Having reasons to believe that the consignment of invoice No. 162 pertaining to Katyal and company, Jalandhar was not covered by e-ICC form, therefore, he forwarded the case to the Designated Officer who also issued notice U/s 51 (6) (b) of the Act to the owner of the goods. Ultimately, the Designated Officer while observing that the consignor adopted the abnormal approach while sending the goods without requisite information submitted on line and he also did not seek any help of the department if there was any problem in sending the information, therefore, tie was liable to pay the penalty, and accordingly he was imposed penalty to the tune of Rs.2,56,400/- U/s 51 (7) (c) of the Act. The appeal filed by the appellant was dismissed.

5. The counsel for the appellant, in order to assail the findings returned by the authorities below, has argued that there was no concealment of goods and the goods-were covered by the proper and genuine documents. The Excise duty and the tax under Central Sales Tax Act, 1956 were duly charged on the bill and as such, in no circumstances, the transaction

could have been kept out of the books of account. The appellant being a manufacturer was bound to declare the goods i.e. "Iron and Steel" as he was entitled to refund of the tax paid on the purchase of raw material, made within the State of Punjab in case of its sale in the course of interstate trade and commerce as per Section 15 of the Central sales Tax Act, 1956, therefore, the appellant was entitled to refund of tax paid within the State on the purchase of declared goods. In case he makes any interstate sale, then, there was no reason to keep the transaction out of the account books. It has been next contended that the sine-qua non for imposition of penalty was the proof of mensera to evade the tax. In this case, the goods were excise and Central Sales Tax paid and he was to receive the MODVAT therefore, there was no intention to avoid generation of e-'ICC, but it could not be generated only for the fault of the server. Eventually, he prayed for acceptance of appeal.

6. To the contrary, the State Counsel has submitted that since the appellant did not generate the information through e-ICC, therefore, die violation of Rule 64-B of the Act certainly attracts the penalty provisions.

7. Having heard the rival contentions and having gone through the record of the case, it is revealed that the goods under transaction were being taken out of the State under the VAT invoices. The goods were voluntarily reported at the ICC. The excise duty @ 12%, education cess @ 2%, S & H Edu. Cess @ 1% and CST @ 2% had been duly charged. The sale being interstate, in no manner, the element of Punjab Tax was involved. Further more, the goods under transactions were accompanying the documents as prescribed U/s 51 of the Act, 2005. The e-ICC regarding the other transactions, which was being carried in the same truck has been generated one day earlier to the transaction in question, establishes the bonafides of the appellant and also proves some justification in the plea setup by the appellant that the e-ICC qua this transaction could not be generated due to the fault of the server. When the appellant had generated the e-ICC for one transaction, then in the normal circumstances, there was no difficulty for him to generate the e-ICC qua the second transaction. The first transaction is dated 28.8.2014 for which information was generated and the second transaction is dated 29.8.2014, for which information could not be generated. Had the transactions taken place on the same day, then the information regarding both the transactions would have been generated in the normal course of events. In these circumstances, it is difficult to disbelieve the appellant when he disclosed that the information qua the second transaction could not be generated due to the fault in the server. Even otherwise, since no the Punjab tax was involved therefore, there was no occasion to conclude that the appellant wanted to evade the tax, secondly, since the goods were being sold under "C" forms after duly charging the excise duty, education cess and Central Sales Tax, therefore, there was no reason to keep the goods out of account books. Consequently, the plea setup by the appellant that Information could not be generated due to fault in the server would have to be accepted.

8. Similar view was taken in case of ***Parabolic Drugs Limited, Dera Bassi Vs State of Punjab (2015) 51 PHT 282 (PVT)***, wherein it was observed as under:-

> *"The case of the department is that the e-information regarding bill No.31 dated 29.9.2011 was intentionally not given with a view to evade the tax. There is no gain saying the fact that the consignment sale in question was transferred otherwise by way of sale by means of form "F". If it is so, in no manner, the element of Punjab Tax was involved. Furthermore, the goods under transaction were accompanying the documents as prescribed U/s 51 of the Act, 2005. It is an admitted case that e-ICC Information regarding invoice No.32 had been furnished. If, there would have been malafide intention, the information in relation to the last bill No.32 would have been avoided for the obvious reason that once the information in respect of invoice No.32 was given then by no*

stretch of imagination, invoice No.31 could be kept out of books of account. In view of the verification report submitted by the Excise and Taxation officer, ICC Jharmari also the Penalizing Officer was not justified in imposing the penalty in question."

9. The authorities below have not taken into consideration the aforesaid facts and circumstances of the case, therefore, the orders passed by them need interference.

10. Resultantly, this appeal is accepted, impugned order is set-aside and the order of penalty is quashed.

11. Pronounced in the open court.

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HARYANA TAX TRIBUNAL

STA NO. 158 OF 2015 -16

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GANNON DRUNKER & CO. LTD.
Vs
STATE OF HARYANA

JUSTICE L.N. MITTAL (RETD.), CHAIRMAN

SUKHPAL SINGH KANG, MEMBER

SACHIN JAIN, MEMBER

24th March, 2017

HF ▶ Assessee

Deductions on account of depreciation of machinery which is used in execution of works contract is admissible.

WORKS CONTRACT – DEDUCTIONS – DEPRECIATION - MACHINERY – WHETHER DEDUCTION WOULD INCLUDE DEPRECIATION OF MACHINERY WHICH IS USED IN WORKS CONTRACT – FOLLOWING AN EARLIER CASE OF SUPREME COURT IT IS EVIDENT THAT DEDUCTIONS INCLUDE LABOUR AND SERVICE CHARGES WHICH INCLUDES DEPRECIATION OF MACHINERY USED IN WORKS CONTRACT EITHER TAKEN ON HIRE OR OTHERWISE- THUS, IT INCLUDES THE MACHINERY OF WORKS CONTRACTOR HIMSELF – APPEAL ALLOWED – *RULE 25(3) OF HVAT RULES, 2003*

Facts

The Appellant is a works contractor engaged in execution of civil works .The Assessing Authority had allowed deduction on account of depreciation of machineries which was subsequently disallowed by Revisional Authorities thereby resulting in levying of tax on the same. Thus an appeal is filed by assessee.

Held:

In an earlier case, the Supreme Court has held that the deductions would include charges for obtaining on hire or otherwise machinery and tools used in execution of works contract. This machinery could be on hire or otherwise; meaning that the charges would cover charges of obtaining machinery otherwise than by hiring, including depreciation of machinery of works contractor himself.

Even HVAT Act was amended after the aforesaid judgment. Head (V) of sub-rule 25(3) provides for exclusion of other similar expenses relatable to supply of labour and services. Depreciation of machinery of contractor which is used in execution shall be included under the said head.

Therefore, the claim of assessee was rightly allowed by Assessing Authority. The appeal is allowed and order of Revisional Authority is set aside.

Cases referred:

- *Gannon Drunkerley & Co. and others V/s State of Rajasthan and others (1993) 88 STC 204*
- *Larsen & Toubro Limited V/s State of Karnataka (2010) 34 VST 53 (Karnataka)*
- *VEEAAR Constructions vs. State of Andhra Pradesh, (2011) 45 VST 352(AP)*

Present: Mr. Ramesh Batra, Advocate Counsel for the appellant.
Sh. S.K. Saini J.D. (L) for the State

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JUSTICE L.N. MITTAL, (RETD.) CHAIRMAN

1. This is appeal by assessee M/s Gannon Drunkerley & Co. Ltd., Gurgaon challenging order dated 10.06.2015 of Revisional Authority, Gurgaon thereby levying additional tax of Rs. 18,50,000/- under the Haryana Value Added Tax Act, 2003 (in short, the HVAT Act) for assessment year 2010-11.

2. The assessee-appellant is a works contractor engaged in execution of civil works etc. on contract basis. Assessing Authority, Gurgaon (West) vide order dated 06.03.2014 inter-alia allowed deduction on account of depreciation of machineries. Revisional Authority has disallowed the said deduction and levied tax on the same. Hence this appeal by the assessee.

3. We have heard counsel for the appellant and State Representative and perused the case file.

4. Counsel for the appellant contended that Hon'ble Supreme Court in the case of the present appellant itself reported as ***(1993) 88 STC 204 Gannon Drunkerley & Co. and others V/s State of Rajasthan and others*** held that deductions on account of labour and services charges etc. including charges for obtaining on hire or otherwise machinery and tools used for execution of the works contract have to be allowed. In the instant case, deduction of depreciation charges of machineries used by the assessee-appellant in execution of the works contracts was rightly allowed by the Assessing Authority and the same has been wrongly subjected to tax by the Revisional Authority. In support of this contention, counsel for the appellant cited judgment of Karnataka High Court in ***Larsen & Toubro Limited V/s State of Karnataka (2010) 34 VST 53 (Karnataka)*** and judgment of Andhra Pradesh High Court in ***VEEAAR Constructions vs. State of Andhra Pradesh, (2011) 45 VST 352(AP)***.

5. State Representative contended that deductions on account of labour and services charges etc. to be allowed in the execution of works contract have been exhaustively listed by Hon'ble Supreme Court in the case of ***Gannon Drunkerley & Co.*** (supra) and deduction on account of depreciation of machineries used in the works contract does not fall in the said list and has, therefore, been rightly disallowed by the Revisional Authority. It was submitted that the cases of ***Larsen & Toubro Limited*** (supra) and ***VEEAAR Constructions*** (supra) are distinguishable on facts.

6. We have carefully considered the matter. It has been settled by Hon'ble Supreme Court in the case of ***Gannon Drunkerley & Co.*** (supra) that in the case of works contract; charges towards labour and services have to be excluded from the value of the entire works contract. The said deductions would inter-alia cover 'charges for obtaining on hire or otherwise machinery and tools used in the execution of the works contract'. It is correct that depreciation of machineries of the contractor himself used in the execution of the works contract is not directly and specifically covered by the said clause of deduction. However, depredation of machinery of the contractor himself is also relatable to the said clause of deduction. The word 'otherwise' used in the said clause of deduction is very significant. It would cover not only charges for obtaining on hire the machinery and tools used in the execution of the works contract but would also cover charges of obtaining the machinery otherwise than by hiring

(including depreciation in the case of machinery of the contactor himself). In this context, it is significant to notice that rule 25(2) of the Value Added Tax Rules, 2003 (in short, the HVAT Rules), as amended on the basis of aforesaid judgment of Hon'ble Supreme Court, provides for exclusion of the charges towards labour, services and other like charges from the turnover of the works contractor. Rule 25(3) of the HVAT Rules provides that for this purpose, the charges shall include charges under six heads mentioned in the said sub-rule. Head (v) of the said sub-rule provides for exclusion of other similar expenses relatable to supply of labour and services'. Depreciation of machinery of the contractor himself used in execution of the works contract shall be covered under the said head also. Consequently we conclude that claim on account of depreciation of machineries made by the assessee-appellant was rightly allowed by the Assessing Authority and has been wrongly disallowed by the Revisional Authority.

7. In the aforesaid view, we are supported by direct judgments on the issue in the cases of ***Larsen & Toubro Limited*** (supra) and ***VEEAAR Constructions*** (supra).

8. Resultantly this appeal is allowed and impugned order dated 10.06.2015 of the Revisional Authority is set-aside.

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HARYANA TAX TRIBUNAL

STA NO. 690 OF 2010-11

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C.D. GARG & SONS
Vs
STATE OF HARYANA

JUSTICE L.N. MITTAL (RETD.), CHAIRMAN

SUKHPAL SINGH KANG, MEMBER

SACHIN JAIN, MEMBER

8th March, 2017

HF ▶ Assessee

Time period taken in obtaining the certified copy of order, initially misplaced after receiving, is excluded for purpose of calculating limitation period for filing of appeal.

APPEAL – CONDONATION OF DELAY – COPY OF ORDER SERVED ON AUGUST 30, 2010 – COPY MISPLACED BY APPELLANT – NEW COPY APPLIED FOR ON SEPTEMBER 28 OF SAME YEAR – COPY RECEIVED ON DECEMBER 10 OF THAT YEAR – APPEAL FILED ON JANUARY 5, 2011 – APPEAL HELD TO BE WITHIN LIMITATION PERIOD AS TIME TAKEN IN OBTAINING NEW COPY IF EXCLUDED, APPEAL FILED IS WITHIN 60 DAYS – APPEAL ACCEPTED – *SECTION 33 OF HVAT ACT, 2003*

INPUT TAX CREDIT – BOGUS PURCHASES – ITC DISALLOWED PARTIALLY TO THE EXTENT OF PURCHASES MADE FROM ONE SELLING DEALER – APPEAL FILED – HELD: NO FINDING BY AUTHORITY REGARDING ANY CONNIVANCE, COLLUSION OR FRAUD BY BUYING AND SELLING DEALERS IN QUESTION TO JUSTIFY DISALLOWANCE – MATTER REMANDED BACK TO ASSESSING AUTHORITY TO DECIDED THE QUESTION OF ITC WITH RESPECT TO SELLING DEALER IN QUESTION - APPEAL ALLOWED - *SECTION 8 OF HVAT ACT, 2003.*

Facts

In the present case ITC to the extent of purchases made from one selling dealer were disallowed alleging it to be a bogus firm. An appeal is filed in this regard. The department has raised an objection contending that the appeal is time barred.

Held:

The copy of order of first appellate authority was received on 30/8/2010. It got misplaced and the appellant had filed for new copy on 28/9/2010 i.e. within the limitation period which was then received on 10/12/2010.If time spent in obtaining the lost copy is excluded, then the present appeal filed on 5/1/2011 is within the limitation period of 60 days. Therefore, the objection raised by department is overruled.

Also, regarding disallowance of ITC, there is no finding by authority that there was any collusion between appellant and seller dealer.

Therefore, the appeal is allowed. Matter is remanded to Assessing Authority for fresh decision to the extent of deciding ITC claim of assessee qua the selling dealer in question in view of law laid down in case of Gheru Lal Bal Chand.

Cases referred:

- *Commissioner Sales Tax, U.P. V/s Madan Lal Das & Sons Bareilly (1976) 38 STC 543*
- *Gheru Lal Bal Chand Vs. The State of Haryana and another (2011) 40 PHT 145*

Present: Mr. Avneesh Jhingan, Advocate Counsel for the Appellant.
Sh. N.K. Gupta, J.D.(L) Counsel for the State.

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JUSTICE L.N. MITTAL, (RETD.) CHAIRMAN

1. This is second appeal by assessee M/s C.D. Garg & Sons, Kundli, Sonepat because Input Tax Credit (ITC) claim of the assessee- appellant have been partly disallowed by the Authorities below qua purchases made from one Seller-Dealer alleged to be a bogus firm.

2. We have heard counsel for the appellant and State Representative and perused the case file.

3. State Representative raised preliminary objection that the present appeal is barred by limitation. Counsel for the appellant, however, submitted that copy of order dated 18-08-2010 of first Appellate Authority, Rohtak was served on the assessee-appellant on 30-08-2010 and it was misplaced and the appellant within limitation period for filing appeal before this Tribunal, applied for certified copy of the first Appellate order on 28-09-2010 and received it on 10.12.2010 and if the said period spent in obtaining the certified copy of first appellate order is excluded, then the present appeal which was filed on 05.01.2011, was filed within limitation period of 60 days. For excluding the time spent in obtaining certified copy of first appellate order, reliance has been placed or judgment of Hon'ble Supreme Court in ***Commissioner Sales Tax, U.P. V/s Madan Lal Das & Sons Bareilly (1976) 38 STC 543***. We have carefully considered the matter. Judgment of Hon'ble Supreme Court in the case of Madan Lal Das Sons (Supra) is fully applicable to the facts of the case in hand. Consequently, time spent by the assessee in obtaining certified copy of first appellate order, due to misplacement of copy of the said order served on the assessee, has to be excluded for computing the limitation period. If the said time is so excluded, this appeal was filed within limitation period. It is held accordingly and preliminary objection raised by State Representative is over-ruled.

4. On merits, counsel for the appellant submitted that ITC claim of the appellant could be disallowed only on the limited grounds of fraud, collusion with Seller-Dealers etc., as laid down by Hon'ble High Court of Punjab and Haryana in the case of ***M/s Gheru Lal Bal Chand Vs. The State of Haryana and another (2011) 40 PHT 145***.

5. We have carefully considered the matter. There is no finding by the Authorities below that there was any collusion between the assessee-appellant and the Seller-Dealers or there was any fraud etc. In these circumstances, the case has to be remanded to the Assessing Authority for fresh decision.

6. Resultantly, this appeal is allowed. Impugned orders of both the Authorities below are set aside and the case is remanded to the Assessing Authority, Sonepat for fresh decision in accordance with law to the limited extent only of deciding the ITC claim of the assessee qua the Seller-Dealers in question keeping in view the law laid down in the case of ***M/s Gheru Lal Bal Chand*** (supra).

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HARYANA TAX TRIBUNAL

STA NO. 1104 OF 2014-15

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MAHAVIR RICE MILLS
Vs
STATE OF HARYANA

JUSTICE L.N. MITTAL (RETD.), CHAIRMAN

SUKHPAL SINGH KANG, MEMBER

SACHIN JAIN, MEMBER

27th March, 2017

HF ▶ Assessee

Non-consideration of plea of raised by assessee would render the Revisional order unsustainable.

REVISION – NON-CONSIDERATION OF CONTENTION RAISED – ASSESSEE CLAIMING YIELD OF 64.88% - REVISIONAL AUTHORITY MADE ADDITION PRESUMING HIGHER YIELD – ASSESSEE CONTENDED DIFFERENCE DUE TO LOSS OF MOISTURE IN PADDY – CONTENTION NOT DEALT BY REVISIONAL AUTHORITY – ORDER OF REVISIONAL AUTHORITY CANNOT BE SUSTAINED – IMPUGNED ORDER SET ASIDE, MATTER REMANDED. - *SECTION 34 OF HVAT ACT, 2003*

Assessee, a rice miller, milled paddy of Govt. Agency during Assessment Year 2007-08. The assessee had shown yield of rice as Rs. 64.88%, rice bran as 7.84% and paddy husk as 20.57%, which totalled as 93.29% only. Revisional Authority presumed balance of 6.71% as broken rice and nakku and taxed the same. On appeal before Tribunal, the assessee claimed that difference of 6.71% is due to loss of moisture because before milling, the paddy has to be dried by spreading it in the sun. On perusal of Revisional order, it was found that this plea of assessee has not been dealt with. In absence of finding on the crucial issue, the impugned order cannot be sustained and accordingly set aside. The matter is remanded back for decision in accordance with law.

Present: Mr. F.C. Garg, Advocate, counsel for the appellant.
Sh. N.K. Gupta, J.D.(L) for the State.

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JUSTICE L.N. MITTAL, (RETD.) CHAIRMAN

1. This is appeal by assessee M/s Mahavir Rice Mills, Narwana chellenging order dated 03-03-2014 of Revisional Authority, Rohtak.

2. The assessee, a rice sheller, milled paddy of Government Agency HAFED during the relevant assessment year 2007-08. The Revisional Authority has found that the assessee has shown rice as 64.88 % , rice bran as 7.84% and paddy husk as 20.57% of the milled paddy,

coming to 93.29% only. The Revisional Authority presumed that the balance 6.71% was in the form of broken rice 6% and nakku (smaller pieces of broken rice) as 0.7% and taxed the same, besides holding that husk was shown to be sold at less than market price and accordingly created additional demand of tax. Hence this appeal by the assessee.

3. We have heard counsel for the appellant and State Representative and perused the case file including written submissions given today in court by counsel for the appellant.

4. Counsel for the appellant reiterated, as was also pleaded before the Revisional Authority, that the difference of 6.71% in the quantity of milled paddy and the quantity of its products rice, rice bran and paddy husk was due to loss of moisture because before milling, the paddy has to be dried by spreading it in the sun. State Representative, however, contended that the Revisional Authority has taken the quantity of milled paddy i.e. weight of milled paddy after drying.

5. We have carefully considered the matter. The Revisional Authority has not at all dealt with the plea of the assessee regarding loss of moisture in the paddy leading to difference in the weight of the paddy and its products. In the absence of any finding on this crucial issue by the Revisional Authority, the impugned order cannot be sustained and the matter has to be remanded to the Revisional Authority.

6. Accordingly, this appeal is allowed. Impugned order dated 03-03-2014 of Revisional Authority, Rohtak is set-aside and the matter is remanded to the Revisional Authority for fresh decision in accordance with law.

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HARYANA TAX TRIBUNAL

STA NO. 28 OF 2015-16

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LUXMI OVERSEAS
Vs
STATE OF HARYANA

JUSTICE L.N. MITTAL (RETD.), CHAIRMAN

SUKHPAL SINGH KANG, MEMBER

SACHIN JAIN, MEMBER

22nd March, 2017

HF ▶ Revenue

Furnishing of Security under Section 33(5) of Haryana VAT act 2003 is mandatory for hearing of appeal.

ENTERTAINMENT OF APPEAL – FURNISHING OF SURETY BOND/BANK GUARANTEE – FIRST APPEAL DISMISSED FOR NON-FURNISHING OF REQUISITE BANK GUARANTEE OR SECURITY BOND – PROVISION OF SECTION 33(5) OF HARYANA VAT ACT 2003 REQUIRES FURNISHING OF BANK GUARANTEE OR SURETY BOND FOR ENTERTAINMENT OF APPEAL – MANDATORY – NO POWER WITH THE TRIBUNAL TO DISPENSE WITH THE SAME – APPEAL RIGHTLY DISMISSED BY FIRST APPELLATE AUTHORITY – SECOND APPEAL ALSO DISMISSED. - *SECTION 33(5) OF HVAT ACT, 2003.*

The first appeal filed by assessee before Appellate Authrity was dismissed due to non-compliance with Section 33(5) of Haryana VAT act 2003 as the appellant-assessee failed to furnish requisite Bank Guarantee or Security Bond in spite of number of opportunities. On appeal before Tribunal, it was contended that proprietor of appellant-assessee had died on 11.10.2016 and his heirs are unable to furnish Bank Guarantee or Surety Bond for dispute tax amount. On consideration, the Tribunal found that proprietor was alive till decision of first appeal and for almost 21 months after that. The proprietor had ample opportunity to furnish requisite Bank Guarantee or Surety Bond but he failed to do so. Provision of Section 33(5) of Haryana VAT Act 2003 requiring furnishing of Bank Guarantee or Surety Bond is mandatory and the Tribunal or the Appellate Authority does not have any discretion or power to dispense with the said mandatory requirement. Since the appellant-assessee had failed to comply with the conditions for entertainment of appeal, no fault can be found in the order of appellate authority and, therefore, second appeal before Tribunal is also dismissed.

Present: Mr. Kirti Karan Goel, Advocate, Counsel for the appellant.
Sh. S.K. Saini, JD (L) for the State

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JUSTICE L.N. MITTAL, (RETD.) CHAIRMAN

1. This is second appeal by assessee M/s Luxmi Overseas, Indri. First appeal preferred by the assessee against assessment year dated 30- 05-2013 of Assessing Authority, Karnal has been dismissed by the first Appellate Authority, Ambala vide order dated 15.01.2015 due to non , compliance with section 33 (5) of the Haryana Value Added Tax Act, 2003 (in \ short, the HVAT Act) because the assessee-appellant failed to furnish requisite bank guarantee or security bond inspite of number of opportunities.

2. We have heard counsel for appellant and State Representative and perused the case file.

3. Counsel for the appellant submitted that Mukesh proprietor of the assessee-appellant firm has since died on 11-10-2016 and his heirs are unable to furnish bank guarantee or surety bond for the disputed tax amount.

4. We have carefully considered the matter. Appellant's proprietor was alive till decision of the first appeal vide order dated 15-01-2015 and also for almost 21 months thereafter. Present appeal was filed on 27-04-2015 and proprietor of the appellant remained alive for almost 18 months even after filing of the present appeal. Thus proprietor of the appellant himself had ample opportunity to furnish requisite bank guarantee or surety bond as per mandatory requirement of section 33 (5) of the HVAT Act, during pendency of the first appeal as well as during pendency of the present appeal but he failed to do so. Even in the grounds of present appeal filed by proprietor of the appellant, he expressed his inability to furnish bank guarantee or surety bond due to his weak financial position.

5. Provision of section 33 (5) of the HVAT Act that for entertainment of any appeal the assessee-appellant has to furnish bank guarantee or surety bond to the satisfaction of the Assessing-Authority for the disputed amount, is mandatory. The Appellate Authority including this Tribunal has no discretion or power to dispense with the said mandatory requirement. In the instant case, the appellant admittedly failed to furnish requisite bank guarantee or surety bond for entertainment of the first appeal which has, therefore, been rightly dismissed by the first Appellate Authority on this short ground. There is no error in the impugned order of the first Appellate Authority to warrant our interference with the said order.

6. Resultantly, the instant appeal is dismissed.

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HARYANA TAX TRIBUNAL

STA NO. 452 OF 2013-14

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BAVER SUSPENSION PVT. LTD.
Vs
STATE OF HARYANA

JUSTICE L.N. MITTAL (RETD.), CHAIRMAN

SUKHPAL SINGH KANG, MEMBER

SACHIN JAIN, MEMBER

21st March, 2017

HF ▶ Assessee

Payment of disputed demand satisfies the mandatory requirement of Section 33(5) of Haryana VAT act, 2003 for entertainment of appeal.

ENTERTAINMENT OF APPEAL – DISMISSAL OF FIRST APPEAL FOR FAILURE TO FURNISH BANK GUARANTEE OR ADEQUATE SECURITY – ENTIRE DISPUTED TAX AMOUNT DEPOSITED BEFORE HEARING OF APPEAL BY TRIBUNAL – CONDITION OF SECTION 33(5) OF HARYANA VAT ACT 2003 STANDS COMPLIED WITH – APPELLATE ORDER SET ASIDE – MATTER REMANDED BACK TO APPELLATE AUTHORITY FOR FRESH DECISION ON MERITS. - *SECTION 33(5) OF HVAT ACT, 2003.*

Assessee appellant had filed first appeal but did not furnish the Bank Guarantee or adequate security as required under Section 33(5) of Haryana VAT Act 2003. On appeal before Tribunal, the entire amount was deposited by way of Bank Draft before hearing of appeal by Tribunal. Accordingly, the order of first appellate authority is set aside and matter is remanded back for consideration of matter on merits in accordance with law.

Present: Mr. V.B. Arya, Advocate Counsel for the appellant.
Sh. S.K. Saini, J.D. (L) for the State.

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JUSTICE L.N. MITTAL, (RETD.) CHAIRMAN

1. This is second appeal by assessee M/s Baver Suspension Private Limited/ Gurgaon relating to additional demand of tax of Rs. 1,09/695/- created under the Haryana Value Added Tax Act, 2003 (in short, the HVAT Act) for assessment year 2009-10. First appeal preferred by the assessee has been dismissed by first Appellate Authority, Faridabad alongwith first appeal under the Central Sales Tax Act, 1956, vide order dated 16.01.2014 because the assessee failed to furnish bank guarantee or adequate security to the satisfaction of the Assessing Authority for the disputed tax amount as per mandatory requirement of sanction 33(5) of the HVAT Act.

2. We have heard counsel for the appellant and State Representative and perused the case file.

3. Counsel for the appellant has also given written submissions alongwith documents. Counsel for appellant submitted that the disputed tax amount of Rs. 1,09,695/- has since been deposited by bank draft dated 15.03.2017 and E-Challan dated 16.03.2017 and thus section 33(5) of the HVAT Act has since been complied with by the assessee-appellant.

4. In view of the aforesaid, the instant appeal is allowed and impugned order dated 16.01.2014 of the first Appellate Authority in first appeal under the HVAT Act only is set-aside and the said first appeal no. GRW/75/VAT/26.07.2013(2009-10) is remanded to the first Appellate Authority, Faridabad for fresh decision on merits in accordance with law after verifying the deposit of the disputed tax amount mentioned above.

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HARYANA TAX TRIBUNAL

STA NO. 525 OF 2012-13

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PEE VEE TUBES PVT. LTD.
Vs
STATE OF HARYANA

JUSTICE L.N. MITTAL (RETD.), CHAIRMAN

SUKHPAL SINGH KANG, MEMBER

SACHIN JAIN, MEMBER

22nd March, 2017

HF ▶ Assessee

Period of limitation cannot be extended once it has expired.

LIMITATION – EXTENSION OF LIMITATION PERIOD – CONCLUSION OF PROCEEDINGS WITHIN ONE YEAR – EXTENSION OF LIMITATION PERIOD GRANTED AFTER EXPIRY OF ORIGINAL PERIOD – NOT PERMISSIBLE – ORDER OF ASSESSING AUTHORITY BARRED BY LIMITATION – IMPUGNED ORDER SET ASIDE – APPEAL ALLOWED - *SECTION 29 OF HVAT ACT, 2003.*

Business premises of the appellant-assessee were inspected on 26.05.2010 and a penalty order under Section 29(7) of Haryana VAT Act 2003 was passed on 18.05.2012. Section 29(4) requires that proceedings taken up as a result of examination of material seized on inspection have to be concluded within one year and the said period of limitation can be extended by another one year by Commissioner. The extension for limitation period was sought on 17.10.2011 and was granted on 18.01.2012. On appeal before Tribunal,

Held:

Limitation period can be extended only before the expiry of said period. Extension of period after expiry of limitation period would be of no avail and cannot revive the proceedings which have already become time barred. Matter in this regard is covered by judgment of Hon'ble Punjab and Haryana High court. Accordingly, impugned order of assessing authority is found to be barred by limitation and is, therefore, null and void. Appeal is allowed and impugned orders of both the authorities are set aside.

Cases referred:

- *State of Punjab Vs The Punjab State Electricity Board,Patiala and another (2013) 44 PHT 27 (P&H)*
- *State of Punjab and another Vs M/s Punjab Power Products (2011) 39 PHT 22 (P&H)*
- *State of Punjab and another Vs M/s Liberty Rice Mills, Raja Sansi, Amritsar-II (2012) 42 PHT 379 (P&H)*

Present: Mr. Avneesh Jhingan, Advocate counsel for the appellant.
Sh. S.K. Saini, JD(L) Counsel for the State.

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JUSTICE L.N. MITTAL, (RETD.) CHAIRMAN

1. This is second appeal by assessee M/s Pee Vee Tubes Pvt. Ltd., Hisar.

2. Premises of the assessee were inspected on 26-05-2010 by Officers of the Department. On the basis thereof, Assessing Authority, Hisar, vide order dated 18-05-2012 imposed tax and also penalty under section 29(7) of the Haryana Value Added Tax Act, 2003 (in short, the HVAT Act). First appeal filed by the assessee against the said order has been dismissed by first Appellate Authority, Rohtak vide order dated 8.2.2013. Hence this second appeal by the assessee.

3. We have heard counsel for the appellant and State Representative and perused the case file.

4. Counsel for the appellant contended that under the last proviso to section 29(4) of the HVAT Act, proceedings taken up as a result of examination of the material seized on inspection have to be concluded within one year from the date of seizure except that the proceedings may, with written permission of the Commissioner, continue for one more year. Counsel for the appellant submitted that permission of the Commissioner for extension of time by one year was granted vide letter dated 18.1.2012 i.e after the expiry of original limitation period of one year and, therefore, the said extension was of no avail, as held by Hon'ble Punjab and Haryana High Court in the cases of:-

1. ***(2013) 44 PHT 27 (P&H)***
   State of Punjab Vs The Punjab State Electricity Board, Patiala and another.
2. ***(2011) 39 PHT 22 (P&H)***
   State of Punjab and another Vs M/s Punjab Power Products.
3. ***(2012) 42 PHT 379 (P&H)***
   State of Punjab and another Vs M/s Liberty Rice Mills, Raja Sansi, Amritsar-II.

5. Assessing Authority passed the order after the expiry of limitation period and the said order is, therefore, null and void.

6. State Representative admitted that permission of the Commissioner for continuation of proceedings was granted vide letter dated 18-01-2012 pursuant to letter dated 17.10.2011 sent for seeking permission of the Commissioner for continuing the proceedings.

7. We have carefully considered the matter. Before proceeding further, last proviso to section 29 (4) of the HVAT Act is reproduced hereunder:-

> *"Provided further that any proceedings taken up as a result of examination of seized material shall be concluded before the expiry of one year from the date of seizure except that the proceedings may, with written permission of the Commissioner, continue for one more year".*

8. In the instant case, premises of the appellant were inspected on 26.05.2010. So, proceedings on the basis of material seized on said inspection had to be concluded within one year thereof i.e. upto 26.05.2011. There was no permission of the Commissioner before the expiry of the said limitation period, for continuation of the proceedings for one more year. Permission granted by the Commissioner vide letter dated 18.01.2012, long after the expiry of one year limitation period, is of no avail in view of the cases of ***The Punjab State Electricity Board*** (supra), ***M/s Punjab Power Products*** (supra) and ***M/s Liberty Rice Mills*** (supra). Even

reference for seeking permission of the Commissioner for continuing the proceedings was made vide letter dated 17.10.2011 i.e. long after the expiry of the original limitation period.

9. For the reasons aforesaid, we find that the impugned order of Assessing Authority is hit by the bar of limitation and is, therefore, null and void. Accordingly this appeal is allowed and impugned orders of both the Authorities below are set-aside.

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HARYANA TAX TRIBUNAL

STA NO. 766 OF 2008-09

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INDIAN OIL CORPORATION LTD.
Vs
STATE OF HARYANA

JUSTICE L.N. MITTAL (RETD.), CHAIRMAN

SUKHPAL SINGH KANG, MEMBER

SACHIN JAIN, MEMBER

28th March, 2017

HF ▶ Assessee

Concessional rate of tax for sale made to Govt. cannot be denied for SKO and HSD treating the same as Motor Spirit.

CONCESSIONAL RATE OF TAX – SALE MADE TO GOVT. – NOTIFICATION PROVIDING FOR CONCESSIONAL RATE OF TAX FOR SALE MADE TO GOVT. EXCEPT MOTOR SPIRIT – ASSESSING AUTHORITY LEVIED NORMAL TAX ON MOTOR SPIRIT, HSD AND SKO - HSD AND SKO CANNOT BE TREATED AS MOTOR SPIRIT I.E. PETROL – ELIGIBLE FOR CONCESSIONAL RATE OF TAX SUBJECT TO FULFILMENT OF CONDITIONS GIVEN IN ENTRY 29B – ORDER TO THAT EXTENT SET ASIDE – LEVY OF INTEREST AND PENALTY TO THAT EXTENT ALSO SET ASIDE – LEVY OF INTEREST AND PENALTY ON ADDITIONAL DEMAND OF MOTOR SPIRIT TO BE CONSIDERED BY ASSESSING AUTHORITY IN VIEW OF DIRECTIONS BY FIRST APPELLATE AUTHORITY – *ENTRY 29-B OF NOTIFICATION DATED 3.8.2000 UNDER HGST ACT, 1973.*

Appellate assessee had sold petroleum products i.e. HSD and SKO and Motor Spirit to army. In terms of Entry 29B of Notification dated 03.08.2000 issued under the HGST Act 1973, the goods exigible to tax exceeding 4% except Motor Spirit when sold to Govt.of Haryana or the Govt. of Haryana were leviable to tax @ 4% on furnishing of declaration in Form B. Assessing Authority rejected the concessional sale claimed qua Army on HSD and SKO and Motor Spirit. On appeal, the matter with regard to interest and penalty was remanded back. On appeal before Tribunal, it was held that HSD and SKO cannot be treated as Motor Spirit and therefore benefit of concessional rate of tax would be available qua HSD and SKO as well. The levy of interest and penalty in relation to such additional demand would also be deleted. However, for the levy of interest and penalty on the additional demand for Motor Spirit, the matter has already been remanded by the appellate authority to Assessing Authority. Accordingly, the appeal is allowed to the extent of levying tax, interest and penalty on HSD and SKO.

Present: Sh. Sandeep Goel and Rishab Singla, Advocates, Counsel for the appellant.
Sh. S.K. Saini, J.D. (L) for the State.

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JUSTICE L.N. MITTAL, (RETD.) CHAIRMAN

1. This is second appeal by M/s Indian Oil Corporation Ltd., Ambala Cantt.

2. The dispute in this appeal relates to rate of tax on the sales of High Speed Diesel (HSD) and Superior Kerosene Oil (SKO) made by the assessee-appellant to Army (Government of India). Claim of the assessee is that the said sales are taxable at concessional rate of 4% in view of entry 29-B vide notification No. S.O.89/H.A.20/73/S,15/2000 dated 03-08-2000 issued by Haryana Government in exercise of powers conferred by section 15 of Haryana General Sales Tax Act, 1973 (in short, the HGST Act). The Authorities have, however, levied tax at normal rates i.e. 12% on sales of HSD and 10% on sales of SKO.

3. We have heard counsel for the appellant and State Representative and perused the case file.

4. Counsel for the appellant contended that the appellant submitted requisite declarations in Form-B as per aforesaid entry-29 B and, therefore, the appellant is entitled to the benefit of concessional rate of tax of 4% as per aforesaid notification dated 03-08-2000. State Representative contended that tax at normal rates of 12% on HSD and 10% on SKO has been rightly levied by the Authorities below.

5. To appreciate the aforesaid contentions, it would be appropriate to re-produce entry 29-B of notification dated 03-8-2000 as under:-

> *"29 B. Goods exigible to tax exceeding four paise in a rupe except 4% motor spirit, when sold to Government of Haryana or the Government of India for use and consumption-by the purchaser subject to furnishing of a declaration in Form B".* *4%*

6. According to aforesaid entry, all goods exigible to tax exceeding 4% except motor spirit, when sold to Government of Haryana or Government of India for use and consumption by the purchaser are leviable with tax at the concessional rate of 4% subject to furnishing of declarations in Form-B. Language of this entry is very plain, simple and dear and admits of no two interpretations. Only motor spirit i.e. petrol is leviable to normal rate of tax as applicable to motor spirit whereas all other goods are entitled to concessional rate of tax of 4 % subject to fulfillment of conditions mentioned in entry-29B aforesaid. The appellant also sold motor spirit (petrol) to Army which has been subjected to tax @ 20% being the normal rate of tax for sale of motor spirit. However, HSD and SKO can not be said to be motor spirit i.e. petrol. Consequently, HSD and SKO are leviable with concessional tax rate of 4% subject to fulfillment of the conditions given in aforesaid entry 29-B which the assessee is said to have fulfilled. Consequently impugned orders of the Authorities below to the extent of levying tax @ 12% on sales of HSD and 10% on sales of SKO to Army (Government of India) against declarations in Form-B are not sustainable.

7. Consequently, there is also no question of levying of interest and penalty on the additional demand of tax created for the same if the assessee had paid the due tax @ 4% within time.

8. As regards interest and penalty on additional demand of tax qua sale of motor spirit, the first Appellate Authority has remanded the matter for that limited purpose to the Assessing Authority. Consequently, we are not expressing any opinion thereon. The appellant shall be at liberty, if aggrieved by any order that may be passed by the Assessing Authority in this regard, to avail of appropriate remedy under the law.

9. For the reasons aforesaid, this appeal is allowed and impugned orders of both the Authorities below are set-aside to the extent of levying tax @ 12% on FISD and 10% on SKO for sales made by the assessee to Army for which declarations in Form-B have been duly

submitted and tax @ 4% only thereon is leviable and impugned orders regarding interest and penalty to that extent only are also set-aside.

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HARYANA TAX TRIBUNAL

STR NO. 07 OF 2013-14

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EXCEL CROP CARE LTD.
Vs
STATE OF HARYANA

JUSTICE L.N. MITTAL (RETD.), CHAIRMAN

SUKHPAL SINGH KANG, MEMBER

SACHIN JAIN, MEMBER

31st January, 2017

HF ▶ Revenue

Unanimous order passed by 4 members of Tribunal in an appeal against the Clarification Order is legal even if the matter was heard by 5 members

REVIEW – APPEAL AGAINST ORDER OF CLARIFICATION U/S 56 – HEARING OF APPEAL BY FULL MEMBER TRIBUNAL CONSISTING OF 5 MEMBERS – RETIREMENT OF ONE MEMBER BEFORE PASSING OF ORDER – REMAINING 4 MEMBERS PASSED UNANIMOUS ORDER DISMISSING APPEAL – REVIEW FILED AGAINST ORDER OF TRIBUNAL –SECTION 56(5) REQUIRES HEARING AND DECISION OF APPEAL BY FULL MEMBER TRIBUNAL – MATTER WAS HEARD BY FULL MEMBER TRIBUNAL AS IT EXISTED AT THAT TIME – MATTER ALSO DECIDED BY FULL MEMBER TRIBUNAL AS IT EXISTED ON THE DATE OF DECISION – NO GROUND FOR REVIEWING THE EARLIER ORDER OF TRIBUNAL – REVIEW APPLICATION DISMISSED - *SECTIONS 35 AND 56 OF HVAT ACT, 2003.*

Assessee-appellant filed an appeal against a Clarification Order u/s 56(3). The said appeal was heard by Full Member Tribunal consisting of 5 members on 9.1.2013. One of the members had retired after that hearing but before the matter was decided by 4 members on 25.04.2013. The order was signed by 4 members only. By unanimous decision, the appeal was dismissed. Appellant filed a Review Application contending that proviso to Section 56(5) of Haryana VAT Act 2003 requires the matter to be heard and decided by Full Member Tribunal or a Larger Bench of three or other odd number of members of Tribunal. The Tribunal held that matter was heard by Full Member Tribunal as it existed on 9.1.2013 and was also decided by Full Member Tribunal as it existed on 25.4.2013 and therefore, requirements of proviso to Section 56(5) are duly fulfilled. Moreover, the decision of 4 members was unanimous and it could not have made any difference if the members who had retired would have taken a decision to the contrary. Finding no merit in the Review Application, the same is accordingly dismissed.

Cases referred:

- *Goel Spinning and Weaving Mills V/s State of Haryana and others (2006) 28 PHT 393 (P&H)*
- *Babu Verghese and others V/s Bar Council of Kerala and others (1999) 3 Supreme Court cases 422*

Present: Mr. Sandeep Goyal, Advocate counsel for the appellant.
Sh. N.K. Gupta, JD(L) for the State.

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JUSTICE L.N. MITTAL, (RETD.) CHAIRMAN

1. This application has been filed by dealer appellant for review of order dated 25-04-2013 of the Tribunal whereby appeal STA No. 283 of 2012-13 filed by the dealer has been dismissed. The said appeal was filed under section 56(5) of the Haryana Value Added Tax Act, 2003 (in short, the HVAT Act) against order of ciarification dated 3.09.2012 passed by the State Government under section 56(3) of the HVAT Act on an application filed by the appellant seeking clarification on the following issue: -

> *"Whether Aluminium Phosphide, known as Celphos in common and commercial parlance and used as insecticide(& pesticide) for protection of plants only, that Is to say, plants and its various part Including seeds. Is covered by entry No. 38-B appended to Schedule 'B' of the Act".*

2. We have heard counsel for the review applicant and State Representative and perused the case file.

3. Counsel for the review applicant contended that according to proviso to section 56(5) of the HVAT Act, the appeal was required to be heard and decided by the full-member Tribunal or by a larger bench of three or other odd number of members of the Tribunal. It was pointed out that although the appeal was heard on 9.01.2013 by full-member Tribunal comprising of all the five members including Chairman but order dated 25.04.2013 has been signed by only four members including the Chairman because the remaining 5th member had since retired. It was argued that the decision dated 25.04.2013 was. neither by the full-member Tribunal nor by larger bench of three or other odd number of members of the Tribunal and, therefore, it Is in violation of the proviso to section 56(5) of the HVAT Act. It was contended that in the said proviso, expression " heard and decided" has been used whereas in section 57 (3) of the HVAT Act, it is provided that if the members are equally divided in their decision, the case shall be heard by the full member Tribunal or by a larger bench of three or other odd number of members of the Tribunal and the points of deference shall be decided according to the decision of the majority and thus the words " heard" and "decided" have been used separately in the this provision. Reliance has been placed on judgment of Hon'ble High Court of Punjab and Haryana in the case of ***Goel Spinning and Weaving Mills V/s State of Haryana and others (2006) 28 PHT 393 (P&H)***

4. We have carefully considered the aforesaid contention but we find ourselves unable to accept the same. Facts in the case of ***Goel Spinning and Weaving Mills*** (supra) were completely different. In that case, two members of the Tribunal who heard the case differed in their opinion and the matter was referred under section 57(3) of the HVAT Act to third member who heard the case individually and gave his own decision and then the appeal was dismissed. Thus in that case, the appeal was not heard by all the three members jointly as required by section 57(3) of the HVAT Act. However, facts in the instant case are entirely different. In this case, the appeal was heard by full-member Tribunal comprising of five members. However, it was decided by four members because by the time of decision, one member had since retired. Thus the decision was also by full-member Tribunal. In the case of ***Goel Spinning and Weaving Mills*** (supra), Hon'ble High Court held that Member Tribunal necessarily means the total strength of the Tribunal at the relevant time. In this case, total strength of the Tribunal at the time of order dated 25.04.2013 was of four members and the appeal was decided by all of them. Consequently impugned order dated 25.04.2013 is of the full-member Tribunal. The

appeal was thus heard as well as decided by the full-member Tribunal. There was, therefore, no infraction of the proviso to section 56(5) of the HVAT Act.

5. The matter may also be examined from another angle. Order dated 25.04.2013 of the Tribunal is unanimous decision of all the four members. Consequently it would have made no difference if the fifth member, who had also heard the case but had since retired before the passing of the order, had given either concurrent or dissenting decision. In this view of the matter also, the impugned order does not warrant review on the basis of aforesaid contention of counsel for the review- applicant.

6. Counsel for the review-applicant also cited decision of Hon'ble Supreme Court in the case ***Babu Verghese and others V/s Bar Council of Kerala and others (1999) 3 Supreme Court cases 422***. In that case, term of office of members of State Bar Council was required to be extended by the Bar Council of India before completion of the term but was extended after completion of the term. The extension was held to be illegal. However, the said case has no applicability to the facts of the case in hand.

7. Counsel for the review-applicant also contended that the appeal was heard by five members of the Tribunal and impugned order was passed by four members whereas this review application is being heard by three members i.e. lesser number of members and, therefore, the review application cannot be legally heard and decided by lesser number of members. Reliance has been placed on judgement of Hon'ble Supreme Court in ***Elpro International Ltd. V/s Collector of Central Excise, Pune (1996) 4 Supreme Court Cases 199***. This contention is also untenable. In the cited case, bench of lesser number of members heard the application for rectification of mistakes in the final order than the number of members who passed that order. However, In that case, Bench of equal number of members to that who had passed the final order could be constituted as sufficient number of members was available. So the said case is not applicable to the facts of the instant case because here the Tribunal presently consists of three members only including the Chairman. In view of judgement in the case of ***Goel Spinning and Weaving Mills*** (supra), the present Bench being of total strength of the Tribunal as at present is bench of full-member Tribunal and, therefore, is competent to hear and decide this review application. Moreover, if aforesaid contention is accepted, it would lead to absurd situation. In that event, this review application cannot be heard at all. In this situation, doctrine of necessity also comes into play. In view of said doctrine also, this full-member Bench of the Tribunal is required to hear and decide this review application.

8. Counsel for the review-applicant on merits raised arguments which were in the nature of re-hearing of the appeal. The same is not permissible within the scope of review jurisdiction. We find no error or mistake apparent of the face of record in the impugned order so as to for exercise of review jurisdiction.

9. For the reasons aforesaid, we find no merit in this review application which is accordingly dismissed.

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HARYANA TAX TRIBUNAL

STA NO. 145-146 OF 2005-06

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GANPATI TRADERS DABWALI
Vs
STATE OF HARYANA

JUSTICE L.N. MITTAL (RETD.), CHAIRMAN

SUKHPAL SINGH KANG, MEMBER

SACHIN JAIN, MEMBER

14th March, 2017

HF ▶ Assessee

In absence of service of notice as per procedure laid down in the Rule, the assessment order cannot be sustained.

NOTICE – SERVICE OF NOTICE – SUBSTITUTED SERVICE - NOTICE REQUIRED TO BE SERVED BY PERSONAL DELIVERY OR REGISTERED POST – IF SERVICE BY THESE METHODS FAILS, THEN ONLY SUBSTITUTED SERVICE TO BE MADE – SUBSTITUTED SERVICE RESORTED TO BEFORE RECEIVING BACK UNDELIVERED REGISTERED POST – NO VALID SERVICE IN THE EYES OF LAW – NOTICE SHOULD HAVE BEEN SENT TO RESIDENTIAL ADDRESS WHICH WAS LAST KNOWN ADDRESS – ASSESSMENT PROCEEDINGS VITIATED – IMPUGNED ORDER SET ASIDE, CASE REMANDED TO ASSESSING AUTHORITY FOR FRESH DECISION IN ACCORDANCE WITH LAW - *SECTION 28 OF HGST ACT, 1973, RULE 69 OF HGST RULES, 1975*

Assessee-appellant applied for grant of Registration Certificate but before it was issued, the assessee filed another application for withdrawal of his earlier application contending that he was not interested to conduct the orders. The application was disposed of and information to this effect was sent to the appellant by Registered Post.

Thereafter assessment proceedings were carried out for which notice in Form ST-25 was issued through Registered Post and also by substituted service by affixing copy of the Notices on the last known business address of the appellant for 14.09.2001. On the said date, assessment order was passed creating additional demand imposing tax and penalty. Before Tribunal, it was contended by the assessee that notice in Form ST-25 was not valid service as it should have been sent to residential address since its business premises were lying closed which was duly informed to the Department. It was also contended that substituted service could be effected only after receiving back undelivered Registered Post and the assessee is evading the service.

Tribunal held that there was no valid service of notice in Form ST-25 as per Rule 69 of HGST Rules 1975. The said rule requires service of notice by personal delivery or by Registered Post and if both these services fail, only then substituted service of notice is to be done if there is

reasonable ground to believe that assessee is evading service. Service of notice in this case was not made as per procedure laid down in the said Rule and therefore assessment proceedings stand vitiated. Accordingly, assessment order is set aside and matter is remanded back to Assessing Authority for decision afresh in accordance with law.

Case referred:

- *Venus Hi-Tech Metal Power India (P) Ltd., Faridabad V/s State of Haryana (2000)16 PHT 165 (STT-HR)*

Present: Sh. Avneesh Jhingan, Advocate, Counsel for the appellant.
Sh. S.K. Saini, JD(L) for the State-respondent.

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JUSTICE L.N. MITTAL, (RETD.) CHAIRMAN

1. These are two second appeals by assessee M/s Ganpati Traders, Mandi Dabwali, Sirsa. State of Haryana has also filed cross-objections in the appeals. The cross-objections are also being disposed off by this order along with appeals.

2. The appellant vide application dated 17.5.2000 applied for grant of Registration Certificates (RCs) under the Haryana General Sales Tax Act, 1973 (in short, the HGST Act) and under the Central Sales Tax Act, 1956 (in short, the CST Act) on the basis of import bill no. 197 dated 11.05.2000. Before the grant of RCs, the appellant filed another application on 14.8.2000 for withdrawal of his first application for grant of RCs stating that he was not interested to conduct the business. The application was disposed of after issuing notice for 29.8.2001 and information to this effect was sent to the appellant by registered post.

3. Thereafter in order to frame assessment under section 29 of the HGST Act, Assessing Authority, Sirsa issued notice in form ST-25 along with notice containing details of sales made to the dealers of Ahmedabad and information collected from banks, through registered post and through substituted service by affixing copies of the notices at last known business address of the appellant for 14.9.2001. The Assessing Authority vide order dated 14-09-2001 created additional demand under the CST Act by imposing tax and penalty. The assessee filed two first appeals nos. SRS 28/STA and 29/CST of 2004-05. First Appellate Authority, Rohtak at Hisar vide common order dated 30.03.2005 set-aside the impugned order of the Assessing Authority and remanded the case to the Assessing Authority for fresh calculation of tax, with certain observations. Hence these appeals by the assessee and cross-objections by the State.

4. We have heard counsel for the a Representative and perused the case files.

5. Preliminary objection raised by assessee-appellant regarding maintainability of cross-objections by the State has been overruled by majority order dated 17.11.2011 of the Tribunal. Appeal against the said order filed by the assessee-appellant is said to be pending before Hon'ble High Court.

6. Counsel for the appellant contended that notice in form ST-25 was not validly served because the appellant in his second application filed on 14.08.2000 had given his residential address, but notice was not sent at the residential address but was sent to the business premises address mentioned in first application and the said premises were lying dosed and substituted service by affixing the notice at the said last known address was effected whereas notice sent by registered post was received undelivered by the Assessing Authority after passing of order dated 14.09.2001. It was submitted that substituted service could not be resorted to before receiving report on notice sent by registered post. Besides it, notice should have been sent at the residential address of the assessee as given in subsequent application filed on 14.08.2000. It was accordingly submitted that de novo assessment proceedings should be conducted by the Assessing Authority. Reference regarding valid service of notice has been made to rule 69 of

the Haryana General Sales Tax Rules, 1975 (in short, the HGST Rules). Reliance has been placed on decision of Sales Tax Tribunal, Haryana in the case of ***M/s Venus Hi-Tech Metal Power India (P) Ltd., Faridabad V/s State of Haryana (2000)16 PHT 165 (STT-HR)***.

7. On the other hand, State Representative contended that there was valid service of notice by the Assessing Authority by affixation at last known business address of the assessee. State Representative also argued in support of cross objections.

8. We have carefully considered the mater. We find that there was no valid service of notice in form ST-25. According to rule 69 of the HGST Rules, service of notice has to be done either by personal delivery or by registered post and if both these methods fail, only then substituted service of notice is to be done if there is reasonable ground to believe that the assessee is evading service. Service of notice in this case was not made as per procedure laid down in the said rule. Substituted service was resorted to even before notice sent by registered post was received back undelivered. Thus there was no valid service of notice on the assessee-appellant. This conclusion finds support from the case of ***M/s Venus Hi-Tech Metal Power India (P) Ltd., Faridabad*** (supra). Besides it, notice should have been sent to the assessee at his residential address given in subsequent application filed on 14.08.2000, but was not so sent. For this reason also, service of notice on the assessee by the Assessing Authority was not valid. Accordingly the assessment proceedings stand vitiated and have to be carried out de novo.

9. For the reasons aforesaid, impugned orders of both the Authorities below are set-aside and the case i.e. remanded to the Assessing Authority, Sirsa for fresh decision in accordance with law. The assessee-appellant is directed through its counsel to appear before the Assessing Authority, Sirsa on 15.05.2017. Fresh notice for appearance of the assessee before the Assessing Authority will not be required to be issued. The appeals and cross-objections stand disposed of accordingly.

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SGA
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EDUCATION, HEALTHCARE TO BE OUT OF GST

Education, healthcare and pilgrimages will continue to be out of service tax net even under the GST regime as the Centre is against giving any shock in the first year of the rollout by bringing in new services.

Besides making a strong case to the GST Council for not touching services that are out of tax net currently, the Centre will also pitch for keeping concessional rate for services like transport at the current level, Revenue Secretary Hasmukh Adhia told PTI in an interview.

The GST Council, headed by Union Finance Minister Arun Jaitley and comprising representatives of all states, is scheduled to meet in Srinagar on May 18-19 to decide on rates various good and services will be charged in the new indirect tax regime that is being targeted for rollout from July 1.

The Revenue Secretary said the endeavour would be to maintain the current tax incidence on a commodity or service at the same level in the new Goods and Services Tax (GST) regime.

Central levies

GST will subsume central levies like excise duty on manufactured products and service tax on rendering of services as well as state VAT on sale, to make for a national sales tax that will be levied at the time of consumption of a product or service.

Mr. Adhia said the approach for the GST rollout would be to avoid any shock in the first year and any review for inclusion of a service or change in rate could be done in the second or third year of the implementation based on revenue realisation.

“Our entire purpose will be that we don’t upset anything that is there now. We will try to do some smooth landing. So we will recommend to GST Council that whatever is the existing exemption list for service tax they should continue because we cannot do too many things at the same time,” he said.

Currently, there are 17 items in negative list of services on which service tax is not levied.

On top of that there are over 60 services, like religious pilgrimage, healthcare, education, skill development, journalistic activities which are exempt from service tax.

No levy on services rendered by govt

Rajat Mohan, Director at tax consultant Nangia & Co, said: “GST is the biggest change that our country would see in last 50 years. I see that it was imperative that the government should continue exemptions on the current list of services which are tax neutral under the service tax regime.”

“I am ecstatic that there would be no levy of GST on services rendered by Government, Reserve Bank of India, public conveniences, educational institution, services relating to

agriculture, transmission or distribution of electricity, renting of residential dwelling for use as a residence, burial, healthcare, specified schemes of general insurance etc," Mr. Mohan said.

Mr. Mohan, however, felt that this might lead to cascading effect of taxes, but by maintaining the status quo government has ensured that neither the consumer nor the small and medium-sized companies are in a state of shock.

Asked if these services would be kept exempt from GST, Mr. Adhia said: "We presume so... We will recommend to the GST Council that whatever is in the exemption list they should continue in the first year."

He said the main service tax rate will be standard rate of 18 per cent.

"But there may be items of services where abatement (concessional rate) is given for valid reasons. So those items, because there will be no provision for abatements (in GST), we will have to fit them in the rates closed to the present incidence," he said.

Tax structure

The GST Council has approved a four-rate tax structure of 5, 12, 18 and 28 per cent.

Mr. Adhia said transport sector, for example, currently gets abatement of 60 per cent and only 40 per cent of the present service tax rate of 15 per cent is being collected.

And so, the tax in the GST will be fixed in the closes bracket of 5 per cent, he said.

Asked if rates for certain services will go up because current tax rate is 15 per cent and the nearest bracket that would not upset the revenue collections is 18 per cent, he said, "some services may become a little more expensive."

The exact ones that become expensive or cheaper will be decided by the GST Council, he said.

On the issue of crude oil, petrol, diesel, aviation turbine fuel (ATF) and natural gas being kept out of GST net for the time being by continuing with existing taxes of excise and VAT, Mr. Adhia said the GST Council decided that to give states comfort of revenue collections.

"For them it is some kind of a risk insurer. That 30 per cent income is already assured. Now 70 per cent (of products and services) they are putting it into the common kitty," he said.

States, he said, want to wait and see how much revenue is generated in the GST regime.

"So, after a year or two if they find that the buoyancy (in tax revenues) is good, they could very well like to bring it (petroleum products) in GST," Mr. Adhia added.

Courtesy: The Hindu

2nd April, 2017

SGA
LAW OFFICES

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FITMENT IN GST SLABS: ANNOUNCEMENT OF DETAILS COULD GO BEYOND MAY, SAYS HASMUKH ADHIA

Declaring the rates in advance could provide an opportunity for arbitrage, the revenue secretary said.

The fine print of the item-wise rate structure under the proposed goods and services tax (GST) regime could extend beyond May, as the GST Council might not announce the details immediately after deciding the fitment of items in the multi-tier indirect tax framework. Revenue secretary Hasmukh Adhia told The Indian Express that announcing the rates in advance could provide an opportunity for arbitrage, especially for those items that might see a major change in their tax rates under the proposed indirect tax regime. "Rates aren't needed (for preparation of industry); we can give those on last day also. In indirect tax, we always declare rates on the last day. Rates are not essential for people to make their ERP (enterprise resource planning) system. Not a lot of preparation is needed for that. On the contrary, rates in advance may also create problems where there are major changes," Adhia said, when asked whether announcing rates in May will leave enough preparatory time for industry before the targeted rollout of GST from July 1.

He added that giving prior information about the taxation structure for items under GST will provide space for people to misuse it. "That's what happens. At the time of Budget, apart from lobbying, people misuse that information for arbitrage with respect to rates. Whether to stock or not and things like that…so, we will see. Council will decide at what stage to announce it (rate structure for various items)."

In the fitment exercise, Adhia said services having a combined tax incidence of more than 20 per cent or 28 per cent will attract a higher rate of taxation than 18 per cent, adding that activities such as betting and gambling could attract a higher taxation rate. "We'll see if there are any such services which are to be charged at higher than 18 per cent. We are yet to study the betting model and the gambling model. There are taxes on those also. We don't know what is the existing (total) entertainment tax and VAT on these activities."

The revenue secretary said the rates under GST will be closer to the existing combined tax incidence of goods and service. "…our basic purpose is that whatever is the existing rate of tax on a commodity or a service, the rate in GST will be similar. Won't be too much higher or lower than that. We'll try to fix it. If there's a service on which the combined entertainment tax and VAT is more than say 20 per cent or 28 per cent, so we may have to think about it…if there is some such service, where the incidence is already more, why should we give them the benefit of (tax) reduction," he said.

The service tax rate will also be modulated for those those sectors which will not be able to avail benefit of input tax credit because of not being included under the GST ambit, the revenue secretary said. "If there's any sector which is not getting input tax credit for their inputs, such as

petroleum, accordingly the service tax rate will be modulated. That will be taken care of in the fixation (of rates)," Adhia said.

In its next meeting on May 18-19, the GST Council is likely to give final approval to the four pending sets of rules pertaining to the GST along with taking up the rate structure in relation to individual commodities for consideration.

On the legal provision to have an anti-profiteering authority, Adhia said that action will be taken only when "absolutely necessary" even as Information dissemination under the GST regime will obviate the need for any action. "It (anti-profiteering authority) will take action only if absolutely necessary based on complaints. That will also happen only in oligopoly or monopoly situation. Anyway, most of the products in India are competitive. We need not ask every trader, whether you passed on (reduction in prices) or not. But, yes we need to have legal enabling provision because if some company takes us for a ride, we can set them right. Information will also take care of it. The moment we tell a consumer that this was your earlier incidence and now this is your new incidence, the consumer will face the dealer that how can you charge more, when GST has reduced (the tax incidence). So, information dissemination will obviate the need for any action. Consumer awareness is most important," he said.

Clause 171 of the CGST Bill provides that any reduction in rate of tax on any supply of goods or services, or the benefit of input tax credit shall be passed on to the recipient (consumer) by way of a commensurate reduction in prices. The Bill also provides for creation of an authority or empowering an existing authority to exercise the powers related to anti-profiteering measure.

When asked about the refusal of GSTN to CAG for auditing its work, Adhia emphasised that the auditing body has got all powers to audit GSTN. "There's no such thing. We have already told that CAG will be fully auditing GSTN…CAG has got powers to audit all receipts of states as well as Centre and that power is inherent in the CAG Act. So the receipts that are coming to states and central government will be audited by CAG. GSTN as a company, their audit also will be done by CAG. They already said so…by CAG or CAG-appointed auditors," he said.

GSTN is non-government a private limited company set up in 2013 to provide information technology support for the implementation of the GST. CAG is reported to have written to the finance ministry asking for access to GSTN's data network after the latter refused to allow the auditor to see the details citing that it was a non-government company.

Courtesy: Indian Express

2nd April, 2017

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GST: TAX EVASION OVER RS 5 CRORE A NON-BAILABLE OFFENCE

NEW DELHI: Tax evasion of over Rs 5 crore under the GST regime would be non-bailable offence with the police having authority to make an arrest without a warrant.

The Central GST (CGST) Act provides that if the offences relating to taxable goods and/or services where the amount of tax evaded or the amount of input tax credit wrongly availed or the amount of refund wrongly taken exceeds Rs 5 crore, shall be cognizable and non-bailable.

In a 223-page FAQ on Goods and Services Tax (GST), the CBEC said other offences under the act are non-cognizable and bailable.

The government has set a target date of July 1 for roll out of the GST, which will subsume central excise, service tax, VAT and other local levies.

As per the FAQ, cognizable offence means serious category of offences in respect of which a police officer has the authority to make an arrest without a warrant and to start an investigation with or without the permission of a court.

Non-cognizable offence means relatively less serious offences in respect of which a police officer does not have the authority to make an arrest without a warrant and an investigation cannot be initiated without a court order, it said.

Outlining the safeguards to be taken during arrest, the FAQ said if a person is arrested for a cognizable offence, he must be informed in writing of the grounds of arrest and he must be produced before a magistrate within 24 hours of his arrest.

If a person is arrested for a non-cognizable and bailable offence, the Deputy/ Assistant Commissioner of CGST/SGST can release him on bail and he will be subject to the same provisions as an officer in-charge of a police station under section 436 of the Code of Criminal Procedure, 1973.

The FAQ provides that, if a person does not appear before a CGST/SGST officer who has issued the summon, he is liable to a penalty of up to Rs 25,000.

Also, the tax department have guidelines to ensure that summon provisions are not misused by field officers.

As per the guidelines, summons are to be issued as a "last resort where assessees are not co-operating and this should not be used for the top management.

"Also the language of the summons should not be harsh and legal which causes unnecessary mental stress and embarrassment to the receiver," it said.

Further, summons by the superintendents should be issued after obtaining prior written permission from an officer not below the rank of Assistant Commissioner with the reasons for issuance of summons to be recorded in writing.

"Senior management officials such as CEO, CFO, General Managers of a large company or a Public Sector Undertaking should not generally be issued summons at the first instance.

They should be summoned only when there are indications in the investigation of their involvement in the decision making process which led to loss of revenue," the guidelines said.

The Central GST (CGST) and State GST (SGST) Act have empowered the officers from Police, Railways, Customs, village officers, and any other government officers to assist CGST and SGST officers under the GST regime.

Courtesy: The Indian Express

2nd April, 2017

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LOSING COUNTERVAILING DUTY EXEMPTION SHIELD LIKELY TO HURT HANDSET MAKERS

NEW DELHI: Indian handset makers fear loss of investment and jobs if the recent government comments that countervailing duty exemptions will be removed in the goods and services tax regime are carried through.

Industry associations are seeking urgent meetings with the government, which has been promoting Make in India for the past couple of years based on duty differential benefits, to resolve this issue. They want the electronics and IT ministry to back their case, people aware of the developments said.

"If this happens, it will result in huge job losses, losses for all entrepreneurs and will send a wrong message to foreign investors that there is no consistency in policy," said Shantanu Das Gupta, secretary-general of the Consumer Electronics and Appliances Manufacturers Association.

"If the duty differential is removed, local manufacturing will become unviable overnight, people will move to 100 per cent importing of fully made phones. The government must find an alternative to maintain the differential," he added.

Revenue secretary Hasmukh Adhia said on Monday that India was unlikely to provide any exemption from countervailing duty to IT or telecom manufacturers in the proposed GST regime. GST is an overarching tax structure that India is set to introduce in July. It would subsume all indirect taxes, leaving little space for offering incentives to individual sectors.

Continuation of duty differential is one of the incentives sought by Apple to manufacture iPhones in India.

Adhia said the only way to create duty differential is to impose higher customs duty in some cases, but industry executives said such a case is yet to be presented to the government from the industry.

Industry insiders said their associations have been seeking meetings on an urgent basis with the departments of IT and electronics, commerce and even the Prime Minister's Office, to highlight the issues and concerns of the industry.

"We want to work with the Ministry of Electronics and IT to back our case with the government, so that thousands of jobs and investments can be protected," said Pankaj Mohindroo, president of the Indian Cellular Association, which represents handset makers including Apple, Samsung, LG and several Indian brands, that have invested into creating local manufacturing units.

Since the introduction of an 11.5% duty difference between imported and locally made handsets, local production in India nearly tripled to Rs 54,000 crore in 2015-16, during which about 40 new mobile phone manufacturing units and more than a dozen component units have

come up in the country. The ICA had estimated local production to reach Rs 94,000 crore in the just ended fiscal 2016-17, riding on the current set of incentives which have been broadened to chargers, batteries and headsets in budget 2016-17.
About 60,000 direct and an equal number of indirect jobs have been created by the local manufacturing industry, while component manufacturing units have added another 15,000 jobs.

The overhang of the new macro government policy is also a burning issue for several companies – Indian and foreign – that have already invested in setting up mobile phone manufacturing units to gain benefit from the duty differential.

For international investors who are already in India, say Foxconn, Flextronics and Salcomp, investments are going on. But insiders say suppliers who were pursuing to come to India for creating a viable ecosystem were now holding off their bets.

"Duty differential has to be maintained to keep a level playing field for Indian manufacturers," said Rajeev Jain, chief financial officer at Intex Technologies, one of the local players that plans to further invest in setting up a large-scale facility at Kasna, Greater Noida.

Courtesy: The Economic Times

4th April, 2017

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GOVERNMENT READY TO ROLL OUT GST FROM JULY 1, GAVE INDUSTRY ENOUGH TIME: HASMUKH ADHIA

NEW DELHI: The government is pushing for rolling out goods and services tax (GST) from July 1 and industry has been given sufficient time with the rules, law and basic structure in place for implementing the reform measure and now they must put in place the IT infrastructure for the roll-out, a top official said on Monday.

"We are ready for implementing it from July . The law is ready , the rules have been finalised and are in public domain and our IT infrastructure is ready," revenue secretary Hasmukh Adhia told TOI.

He said that the GST Network (GSTN), which is putting in place the information technology backbone for the new tax regime, will start live tes ting in the first week of May ."We reviewed the GSTN on Saturday and they are prepared.The industry wanted some time and they have got it, now it should start putting its software in place," the revenue secretary said.

Although the government has time till September for rolling out GST, given the amendment to the Constitution, it is keen for a quicker transition so that the teething problems, if any , are sorted out at the earliest. As a result, all efforts will be made to meet the July deadline.

The government had earlier thought of implementing the tax that will subsume central excise, service tax, VAT and several other levies, including cesses and surcharges, from April. The deadline had to be deferred as the states and the Centre took more time to iron out their differences.

In Kolkata, minister of state for finance Arjun Ram Meghwal too stuck to the July roll-out date. "Hundred per cent GST will be implemented from July 1," he said.

Some industry bodies and tax practitioners have suggested that a September deadline was more feasible as industry would be better prepared.

Last week, the government finalised four sets of rules, while draft for public comments on five other aspects was released on Saturday . The state and the central bureaucracy will now sit down and fix product-and service-wise rates -called fitment in tax parlance. A decision on most aspects is expected at the next meeting scheduled for Srinagar in the second half of May . The GST Council has agreed on four slabs of 5%, 12%, 18% and 28% with a cess on tobacco, soft drinks, pan masala, luxury vehicles and coal.

Courtesy: The Economic Times

4th April, 2017

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OPPOSITION LOOKS SET TO SUPPORT KEY GST BILLS IN RAJYA SABHA

Opposition parties, including Congress, adopted a conciliatory approach as the GST framework reached the last mile before it is sent to the President for his signature

New Delhi: Opposition parties in the Rajya Sabha toned down on Wednesday their criticism of the proposed goods and services tax (GST) framework on Thursday and looked set to support the four key bills laying the foundation for the singular tax reform. The Lok Sabha cleared the legislation a week ago.

Opposition parties, especially the Congress, adopted a conciliatory approach as the biggest tax reform in independent India reached the last mile before it is sent to the President for his signature. Once rolled out, GST will transform 29 states and three union territories into a single, seamless market administered by a council that derives authority from the pooled sovereignty of central and state governments.

"I congratulate Mr Arun Jaitley (finance minister) and the government for being in power when the bills are passed. It is not a perfect GST. In a political economy, it is difficult and undesirable to have one tax rate. This is a moment for collective celebration," said senior Congress leader Jairam Ramesh. Ramesh said he was not moving any amendments to the bills.

ALSO READ : GST bills in Rajya Sabha, Opposition questions preparedness on new tax regime

The four bills forming the cornerstones of the GST regime—the Central GST Bill, the Integrated GST Bill, the GST (Compensation to States) Bill and the Union Territory GST Bill—were passed in Lok Sabha on 29 March.

The Congress sought a road map for having fewer tax rates under GST and for inclusion of the commodities which are at present excluded such as five petroleum products, real estate, electricity and liquor. Crude oil, natural gas, aviation fuel, diesel and petrol are kept out of GST initially, but the council will decide when to bring these into the GST's ambit.

Congress member Anand Sharma described the exclusion of these items from GST as "worrisome" as states will have different tax rates on these items. He also urged finance minister Arun Jaitley to address a possible rise in inflation on account of tax rate on services possibly going up to 18% in the GST regime, up from 15% now.

"Electricity, which is vital for the core sectors of the economy, has been kept out. Energy intensity is very high in the core sector, up to 33%. Also, real estate has been kept out. When you are fighting black money, why real estate should not come in? So is alcohol. We understand the constraints. When you keep 40% of revenue outside GST, it will make tax rates very high. In developed countries, GST rate is less than 17%," said Sharma.

Congress leader from Madhya Pradesh, Digvijay Singh, said having five rates—5%, 12%, 18%, 28% and 28%—plus cess could cause hardship for traders. Bhupender Yadav, a Bharatiya

Janata Party (BJP) MP from Rajasthan, said having a single tax rate was not possible for a country of immense income disparities.

Earlier in the day, BJP's Subramanian Swamy suggested that the non-government shareholding in Goods and Services Tax Network, a not-for-profit private limited company set up to provide IT infrastructure and services for tax payers and governments, be limited to public sector banks. As of now, 51% is with non-government financial institutions. Swamy sought the change as GSTN, a repository of taxpayer data, cannot reportedly be audited by the Comptroller and Auditor General of India.

Courtesy: LiveMint

6th April, 2017

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PARLIAMENT PASSES FOUR BILLS TO PAVE WAY FOR GST JULY ROLLOUT

Parliament today passed four legislations to pave the way for roll out of the historic Goods and Services Tax (GST) from the target date of July 1.

The Central GST Bill, 2017, Integrated GST Bill, 2017, GST (Compensation to States) Bill, 2017, and the Union Territory GST Bill, 2017 were returned by the Rajya Sabha after negation of a host of amendments moved by the opposition parties.

The Lok Sabha had passed these bills on March 29.

All the states will now have to pass the States GST Bill after which the new indirect tax regime can be rolled out.

Replying to about 8-hour-long debate, Finance Minister Arun Jaitley insisted that the GST, which will usher in a uniform indirect tax regime in the country, will not lead to inflation as apprehended by some sections. The rates are to be discussed by the GST Council on May 18-19.

Jaitley said once the new regime is implemented, the harassment of businesses by different authorities will end and India will be have one rate for one commodity throughout the country.

The powerful GST Council, comprising Centre and states, has recommended a four-tier tax structure -- 5, 12, 18 and 28 per cent. On top of the highest slab, a cess will be imposed on luxury and demerit goods to compensate the states for revenue loss in the first five years of GST implementation.

Jaitley said the successive governments have contributed towards the GST and no one person can take credit for it. "This Bill, I have no hesitation in conceding, is a collective property," he said.

With implementation of the GST, revenue of the Centre, the states and the industry and trade must benefit, he added.

Courtesy: Money Control

6th April, 2017

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HANDSET COMPANIES MAY GAIN UNDER GST TOO

NEW DELHI: The government appeared to be working towards creating alternative solutions to continue duty differential such that making mobile phones in India remains an attractive proposition even under the goods and services tax (GST) regime.

The common understanding was arrived on Wednesday evening, after joint secretaries from the Prime Minister's Office and departments of IT, revenue, foreign trade and DIPP, among others held a two-hour long meeting with representatives of government-backed Fast Track Task Force (FTTF), which is implementing the plan to achieve 500 million mobile phones by 2019 under Make in India.

"We have absolutely no doubt this office (PMO) will drive this (local phased manufacturing program) because we get the sense they're extremely serious about Make in India and making sure what we've set out to achieve in the mobile phone and component industry will happen," FTTF chairman Pankaj Mohindroo, told ET after the meeting. "They're extremely serious about value addition," he added.

The discussions at the meeting appear to have brought some relief to those who have put in thousands of crores to set up and expand local manufacturing of mobile phone devices in India, especially after revenue secretary Hasmukh Adhia's recent comments that India was unlikely to provide any exemption from countervailing duty to IT or telecom manufacturers in the proposed GST regime.

GST is an overarching tax structure that India is set to introduce in July. It would subsume all indirect taxes, leaving little space for incentives to individual sectors. Adhia said the only way to create duty differential is to impose higher customs duty in cases.

Indian handset makers fear loss of investment and jobs if no alternative or protection was provided. "Differential duty has been instrumental in boosting the local manufacturing of mobile handsets and IT, withdrawal of the same can cause a major setback to the industry. However, imposition of higher custom duty can only be beneficial if the government decides to raise it significantly higher," said Manish Sharma, president of Consumer Electronics and Appliances Manufacturers Association (CEAMA) , suggesting imposing basic custom duty of 10% on mobile phones, from nil today.

During the discussions with the PMO, FTTF representatives raised concerns regarding discontinuation of duty incentives, which they said could throw a spanner in the larger plans of phased manufacturing to get more value addition into the country.

A long term plan with predictable policy regime and associated benefits, or incentives, should be put forth, one of the executives present at the meeting, is learnt to have told the government.

Courtesy: The Economic Times
8th April, 2017

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TAXPAYERS TO BE RATED ON GST COMPLIANCE

Taxpayers registered under the goods and services tax (GST) regime will be assigned a rating, based on how promptly they upload invoices, pay taxes and file returns

New Delhi: Taxpayers registered under the new goods and services tax (GST) regime that is set to be implemented from 1 July will be assigned a rating, based on how promptly they upload invoices, pay taxes and file returns.

The ratings will be made public on the GST Network (GSTN) website as tax authorities seek to build peer pressure among companies to ensure compliance.

The rules that govern the new indirect tax regime require the matching of invoices for claiming input tax credit. For example, a manufacturer procuring goods from a supplier will not be able to claim credit for the tax paid until the seller uploads the invoices and the claims of the manufacturer and supplier are matched.

This means that in case two suppliers offer the same price to the manufacturer, the company may opt for the one that has a better compliance rating.

“Input tax credit is crucial for working capital of firms,” said Archit Gupta, chief executive officer of Cleartax.in, which has ventured into helping firms file their tax returns under GST. “So if two vendors are offering similar prices to a manufacturer, the latter will opt for the firm that uploads its invoices and files returns on time and hence has a better rating.”

For this reason, many big manufacturers, especially in the automobile and consumer goods industries, are working with their suppliers to train them for the transition to the GST regime.

GST, a destination-based tax, is one of the most ambitious tax reforms that India has undertaken. It will subsume a host of indirect taxes being levied by the central and the state governments, including excise duty, service tax, value-added tax, entertainment tax, luxury tax and entry tax. Under GST, the entire system of tax return filing, invoice uploading and tax payment will be online through the GSTN—the information technology backbone of GST.

“Regularity in uploading the invoices, filing of returns and taxes will be the main criterion for rating the taxpayers. The ratings will be updated at periodic intervals and also will be put up in the public domain,” said Prakash Kumar, chief executive of GSTN.

GSTN is preparing to handle more than 3 billion invoices a month from an estimated 8 million taxpayers.

The central GST bill that received Parliament’s approval last week also has a provision to facilitate the ratings. “Every registered person may be assigned a goods and services tax compliance rating score by the government based on his record of compliance with the provisions of this Act,” it says, adding that the parameters will be prescribed.

Courtesy: LiveMint
10th April, 2017

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GSTN DATA WILL BE TOTALLY SECURE, SAYS CEO PRAKASH KUMAR

Only the tax payer and the concerned assessing officer would have access to information submitted to the GSTN portal

Goods and Services Tax Network (GSTN), a company set up to provide IT infrastructure and services to the Central and State Governments, tax payers and other stakeholders for implementation of the GST, will have a completely foolproof security protection of its data and tax-related information with total stability and backup facility, according to GSTN CEO Prakash Kumar.

Mr Kumar said only the tax payer and the concerned assessing officer would have access to information submitted to the GSTN portal by tax payers post GST. Speaking at a PHD Chamber of Commerce and Industry event, Mr Kumar said even functionaries of GSTN would not have any access to tax-related information of tax payers after GST is enforced and that tax payers should rest assured on the front of data protection. “Such has been the arrangement made in GSTN for protection of data security with best available tools and technologies of the time and that no leakage or even tampering is almost impossible on data and information submitted to GSTN portal”, he said.

"Security of your data is of prime importance because in the invoice, the item cost is also included. We are cognisant of the fact that if your competitor comes to know of it, it will be a big setback for you. So all the information which will come to us, it is always in encrypted mode and the best possible security systems we have provided from the perimeter to inside," he added.

BJP MP Subramanian Swamy had raised concerns over GSTN's shareholding pattern and that it might compromise data security. According to GSTN website, GSTN is non-Government, private limited company. "The Government of India holds 24.5% equity in GSTN and all States of the Indian Union, including NCT of Delhi and Puducherry, and the Empowered Committee of State Finance Ministers (EC), together hold another 24.5%. Balance 51% equity is with non-Government financial institutions," the website stated.

Mr. Kumar said GSTN will, by mid-May, complete training of 60,000 central and state officers to prepare them for the new IT backbone for GST. He said 75.28% of the existing Value Added Tax (VAT) assessees have migrated to the GSTN portal, adding that 31.5% of service tax assessees have enrolled so far. Until recently, 56.5 lakh out of an estimated 80 lakh excise, service tax and VAT assessees across the country have enrolled themselves with the GSTN portal, said Mr. Kumar, adding that in a state like Karnataka, 92.9% of tax payers have already registered with the portal and all other states including Union Territories are making good progress for seeking registration.

The portal will be able to handle around 300 crore invoices per month which will be generated under the GST regime. Gopal Jiwarajka, President, PHD Chamber, sought security of data

protection of tax payers and any compromise on that would prove counter-productive and defeat the purpose of the paperless taxation.

Courtesy: The Hindu
11th April, 2017